AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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LEGISLATIVE ALERT

June 11, 2013

Dear Representative:

The AFL-CIO opposes the "Swaps Jurisdiction Certainty Act" (H.R. 1256) scheduled for floor consideration this week. If passed, this bill would undermine the framework Congress put in place in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to prevent risky derivatives trading from contributing to another global financial crisis. It would impose major new procedural hurdles that would impede the Commodity Futures Trading Commission's (CFTC) ability to move forward with effective rules designed to prevent risks that arise from overseas derivatives trading from impacting the U.S. economy.

The 2008 financial crisis provided vivid illustrations of how derivatives transactions conducted by U.S. institutions in overseas markets can wreak havoc on the U.S. economy - both the AIG bailout and the Lehman Brothers failure were caused to a large extent by offshore derivatives trades.

As we saw with AIG and Lehman Brothers, U.S. institutions can easily conduct derivatives transactions outside U.S. borders that put U.S. financial institutions at risk. With this in mind, Congress granted the CFTC, which regulates around 90 percent of U.S. derivatives markets, authority in Section 722(d) of Dodd-Frank to oversee derivatives transactions that "have a direct and significant connection with activities in, or effect on, commerce of the United States."

The CFTC has issued proposed guidance that strikes an appropriate balance. It protects U.S. taxpayers and the U.S. economy while allowing overseas subsidiaries of U.S. banks to be regulated under 'substituted compliance' by their local regulator when the CFTC makes a specific determination that the relevant foreign rules are as strong as the U.S. rules.

H.R. 1256 would seriously undermine the CFTC's ability to protect U.S. taxpayers from risks that arise from overseas derivatives trading by creating a presumption that these transactions are exempt from U.S. regulation. To overcome this presumption, the CFTC and the Securities and Exchange Commission (SEC) would be required to determine that the foreign country rules are not 'broadly comparable' to U.S. rules, issue joint rules, and make formal reports to Congress.

The CFTC's ability to effectively oversee offshore derivatives transactions that create risks to the U.S. economy is central to whether Title VII is ultimately successful in mitigating the risks in the derivatives markets that nearly brought down the economy less than five years ago.

Don't let another AIG or Lehman Brothers happen under your watch. Vote against the "Swaps Jurisdiction Certainty Act" (H.R. 1256) and prevent a major loophole from undermining the basic derivatives market protections that Congress so sensibly put in place when it passed Dodd-Frank in 2010.

Sincerely,

William Samuel, Director
Government Affairs Department