



Americans for Financial Reform
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December 2, 2014

Dear Representative,

On behalf of Americans for Financial Reform (AFR), we are writing to urge you to oppose HR 5471, legislation that would amend the Dodd-Frank Act to expand exemptions from derivatives clearing requirements for financial affiliates of commercial entities.¹

This legislation is both harmful and unnecessary. It is harmful because it would significantly reduce the statutory ability of the Commodity Futures Trading Commission (CFTC) to police risky behavior in the \$700 trillion global derivatives markets. It is unnecessary because the CFTC has already accommodated the legitimate needs of end users through multiple no-action letters which permit affiliates of commercial entities to make use of the clearing exemption.²

The derivatives markets were at the center of the 2008 financial crisis, a crisis which caused trillions of dollars in damage to the U.S. economy and cost millions of Americans their jobs. The Dodd-Frank Act established a new system of oversight for these previously unregulated markets. A crucial new protection mandated in the Dodd-Frank Act was the requirement that derivatives trades be executed through central clearinghouses that would manage their risks properly and demand collateral to back up these potentially risky trades.

However, commercial companies making use of derivatives to hedge risks for manufacturing physical products or commodity raw materials were exempted from this clearing requirement, since such commercial companies make up a relatively small fraction of the derivatives market and in some cases may have limited ability to provide collateral. In addition, the Dodd-Frank Act also exempted financial entities affiliated with such commercial companies from the clearing requirement, so long as the financial entity is hedging specific production-related risk on behalf of the commercial affiliate and is acting as the agent of the commercial company in doing so.

HR 5471 would eliminate the statutory requirement that the affiliated financial entity is hedging risk on behalf of the commercial company and acting as the agent of the commercial affiliate. Should HR 5471 pass, the only statutory protection against abuse of the end user exemption by affiliated financial entities left in place would be a requirement that the financial entity was

¹ [Americans for Financial Reform](#) is an unprecedented coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups.

² Commodity Futures Trading Commission, Division of Clearing And Risk, "[No-Action Relief For Swaps Entered Into By Eligible Treasury Affiliates](#)", CFTC No-Action Letter 13-22, June 14, 2013; Commodity Futures Trading Commission, Division of Clearing And Risk, "[Further No-Action Relief For Swaps Entered Into By Eligible Treasury Affiliates](#)", CFTC No-Action Letter 14-44, November 26, 2014.

somehow hedging or mitigating the risks of a commercial affiliate. As many purely financial derivatives trades may be interpreted to somehow ‘mitigate the risks’ of the broader corporate group, including commercial affiliates, this protection is vague and provides only limited authority to the CFTC to protect against abuses of the exemption.

This seemingly technical change could have far-reaching implications. There are numerous major financial entities that have commercial affiliates and could claim that there was some relationship between their derivatives trading and hedging risks for some commercial affiliate. For example, the Senate Permanent Subcommittee on Investigations has recently documented that the major Wall Street banks engage in massive commodity production and trading activities, and stated that these “financial companies often traded in both the physical and financial markets at the same time, with respect to the same commodities, frequently using the same traders on the same trading desk.”³ The change in HR 5471 would greatly reduce the ability of the CFTC to police risk management for this kind of co-mingling of commercial and financial activities, both at major banks and at commercial companies that have major financial subsidiaries such as GE Capital.

There are cases in which financial affiliates of commercial entities may genuinely be hedging the production-related risks of commercial affiliates but may not in a narrow sense be acting ‘as an agent’ of the commercial affiliate. Through administrative action, the CFTC has already permitted such affiliated ‘central treasury units’ to make use of the clearing exemption in a wide range of cases.⁴ The agency has thus made clear that it is taking a broad interpretation of what it means to hedge ‘on behalf of the [commercial affiliate] and as an agent’, and is eager to accommodate legitimate hedging needs. But if this restriction were eliminated entirely, as HR 5471 would do, then the CFTC would be significantly limited in its ability to crack down on any attempt by financial entities to evade risk management requirements by claiming that they were mitigating the risk of commercial affiliates.

We urge you to reject HR 5471 and preserve the CFTC’s ability to properly oversee crucial derivatives markets and act when necessary to require strong risk management practices. Thank you for your consideration. For more information please contact AFR’s Policy Director, Marcus Stanley at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform

³ United States Permanent Subcommittee on Investigations, “[Wall Street Bank Involvement With Physical Commodities, Majority and Minority Staff Report](#)”, Permanent Subcommittee on Investigations, United States Senate, November 20, 2014.

⁴ Commodity Futures Trading Commission, Division of Clearing And Risk, “[No-Action Relief For Swaps Entered Into By Eligible Treasury Affiliates](#)”, CFTC No-Action Letter 13-22, June 14, 2013; Commodity Futures Trading Commission, Division of Clearing And Risk, “[Further No-Action Relief For Swaps Entered Into By Eligible Treasury Affiliates](#)”, CFTC No-Action Letter 14-44, November 26, 2014.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development

- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)

- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network

- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

