



April 13, 2016

Dear Senator,

On behalf of Americans for Financial Reform, we are writing to urge you to vote against the “Commodity End User Relief Act”, a bill that reauthorizes the Commodity Futures Trading Commission (CFTC) and makes other statutory changes.¹

This legislation makes no progress at all on the key issue facing the CFTC, the the severe level of underfunding that prevents the agency from fully and properly implementing its new responsibilities under the Dodd Frank Act. Instead, it interferes in numerous areas of highly technical regulation to restrict agency discretion and force outcomes favorable to Wall Street interests. The CFTC has already been highly responsive to legitimate end user concerns in its rulemaking, which makes it even more inappropriate to use the reauthorization process to grant special favors to industry lobbyists.

This Legislation Makes No Progress on CFTC Underfunding

The CFTC’s current funding level of \$250 million is \$80 million below the requested funding level of \$330 million, and is inadequate to perform the core functions of the agency. Today, the CFTC’s full time staff level barely exceeds that prevailing in the mid-1990s. Yet the volume of commodity futures trading has grown six-fold just over the past ten years. In addition, the Dodd-Frank Act has made the CFTC responsible oversight of previously unregulated over the counter derivatives markets that helped crash the world economy during the 2008 financial crisis. So even beyond the rapidly growing commodity futures markets, the CFTC is now responsible for approximately \$400 trillion in financial swaps markets — an additional eight-fold increase in the notional value of the market the CFTC must supervise.

The CFTC’s request for funding is miniscule compared to the size of CFTC-supervised markets and the risks they present to the economy. In addition, much of the funding requested by the agency is slated to be used for purposes strongly supported by Congress. For example, additional funding will be used for improving oversight of cybersecurity, a major threat to market stability and national security, international harmonization of derivatives rules, better economic analysis and monitoring of the market impact of rules, and better oversight of customer margin to prevent another MF Global disaster. Without additional funding, it is unlikely that the agency can effectively perform its core function of market oversight, let alone make progress on these issues.

Every other financial regulatory agency besides the CFTC is guaranteed a reliable flow of funding through a self-funding or fee based arrangement that is scaled to the size of its oversight

¹ Americans for Financial Reform is an unprecedented coalition of more than 200 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. A list of coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

responsibilities. The CFTC's reliance on appropriations means that it places a greater burden on the general budget and that it has been consistently underfunded relative to the growth of its markets. This legislation could have been used to make progress on a self-funding arrangement for the CFTC, but the crucial issue of funding is not even addressed.

Title III of the Legislation Inappropriately Weakens CFTC Powers in Numerous Areas

Instead of making progress on funding, this bill contains numerous inappropriate giveaways to lobbyists. The statutory changes in Title III would restrict CFTC discretion to police key areas of the market. In many cases the CFTC has already addressed these issues through no-action letters and exemptions in rulemaking. But the statutory changes made here would further weaken and restrict CFTC oversight.

Section 303 of the legislation creates a broad statutory exemption for a wide variety of options contracts involving commodities from CFTC authority. By defining these options as 'forwards' the CFTC would be entirely deprived of oversight authority. The existing statutory exemption for commodity forwards exempts a fairly limited set of transactions that are relatively simple and involve a commitment to physical delivery. The significantly broader statutory exemption here would open the door to an exclusion for potentially much broader set of complex financial contracts based on commodities. The CFTC has already granted extensive exemptions from various swaps requirements for commodity contracts with embedded volumetric optionality, but has correctly resisted the much broader exemption that would be created by this legislation.

Section 304 of the legislation would reverse a current CFTC rule that will lower the de minimis threshold for swaps dealers from its current level of \$8 billion notional to \$3 billion. (This change is scheduled to happen in December, 2017). The current high level of the de minimis threshold has been a major contributor to the failure to register a significant number of energy swaps dealers, and the upcoming cut in the threshold could lead to significantly better coverage of the energy sector.

The CFTC has already studied the de minimis issue and is free to take action to change its rules if the data support such a change. We believe that the \$8 billion de minimis dealer threshold is too high in some markets and a change is not justified.

Section 305 of the legislation would open up a loophole in the rules governing capital requirements for non-bank swap dealers (apparently including swap dealers owned by a bank holding company). The section creates a statutory requirement that the CFTC permit the use of any capital or margin models that are approved by banking regulators for use in setting capital or margin requirements. This is an inappropriate requirement as the capital regime for banks is quite different than the regime for non-banks. Banks are subject to minimum capital requirements under the Collins Amendment and the U.S. implementation of Basel rules that effectively place a minimum bound on the extent to which capital requirements can be reduced by models, even models approved for use in the capital process. Non-banks do not face these requirements, and it is thus much easier to use models to perform regulatory arbitrage. This is also a provision that is clearly designed to benefit large internationally active financial institutions, not true end users.

Section 306 of the legislation would significantly expand the range of commodity holdings that would be exempted from position limits designed to prevent speculation in commodity markets. Commodity position limits, passed in response to strong evidence that excessive speculation was

having a negative impact on crucial energy markets, were a key advance in the Dodd-Frank Act. This section weakens commodity position limits by expanding the current statutory exclusion for ‘bona fide hedge’ positions. It greatly reduces CFTC discretion to determine what counts as a risk reducing hedge, and also mandates that the agency accept so-called ‘anticipatory hedging’, or positions that supposedly reduce risks that the company does not yet face but forecasts that it might face in the future. As we saw with the case of JP Morgan’s ‘London Whale’, where trades that later lost billions of dollars were justified as ‘hedged’, the question of what constitutes a true risk reducing hedge is very complex. The CFTC’s proposed rules already grant a generous exemption from position limits for verifiable hedging transactions. By opening the door to vague and uncertain claims of ‘hedging’, this section would greatly undermine the effectiveness of the position limits rule.

Section 307 of the legislation gives a broad exemption from CFTC rules governing registration and activities of commodity pool operators and commodity trading advisors for charitable and non-profit organizations. Non-profit organizations such as endowments and charitable trusts hold some \$3 trillion in total assets. While a narrow version of such an exclusion could be sensible for the CFTC to do in its rules, it is dangerous to grant such a broad statutory exemption for an entire segment of the economy holding a large amount of assets.

Other sections of Title III are closer to existing CFTC rules, but still raise significant concerns. Section 301 of the legislation puts statutory limits on the CFTC’s ability to protect publicly owned utilities from potential exploitation in transactions involving complex derivatives. The Commission has already acted to exempt public energy utilities from the relevant ‘special entity’ rules in cases where they placed an undue burden on utilities. This section is therefore unnecessary, and would also tie the CFTC’s hands in addressing potential future abuses. Section 302 of the legislation bans the CFTC from requiring complete record keeping for trades by certain entities that are participants in CFTC-regulated markets but not independently registered with the CFTC. Again, the CFTC has already acted to provide administrative relief on this issue. In cases where trading violations have occurred, more extensive record keeping than is permitted by this section may be called for, and the agency’s discretion should not be reduced.

This legislation would be very harmful to CFTC oversight in a number of important areas and would not benefit the agency in addressing the critical issue of underfunding. Areas of bipartisan consensus (such as the customer protection provisions in Title I) have already been addressed by the CFTC in administrative action and if further statutory action is desired they could easily be done as an independent bill. We urge you to reject this bill.

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

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, Phoenix AZ
- UNET