AFR Americans for Financial Reform

June 14, 2018

Dear Representative:

On behalf of Americans for Financial Reform, we are writing to urge you to vote against HR 5749 and HR 6035, two of the bills under consideration at today's markup.[1] HR 5749 would reduce requirements for our largest Wall Street banks to hold their own equity capital against potential losses on complex derivatives, increasing the chance of a public taxpayer bailout. HR 6035 would expand exemptions from securities laws that deprive investors of information about public companies.

HR 5749, the "Options Market Stability Act", would create a statutory mandate to reduce capital charges on listed options for the major options clearing banks. Goldman Sachs, Bank of America/Merrill Lynch, and the Dutch bank ABN Amro would gain most of the benefits from this bill. These giant financial institutions would be able to run their option clearing business using less of their own equity capital. Having less private equity capital available to absorb losses heightens the risk of a public taxpayer bailout during a market collapse.

HR 5749 would dictate the way regulators measure the risk of cleared options. This would have the effect of reducing the capital banks hold to absorb any losses on options contracts. The bill has been advanced by the Chicago Board Options Exchange (CBOE) on the argument that the requirement for these systemically critical banks to hold capital against options is increasing the price of cleared option products for financial entities. This may be true, but the goal of regulators and Congress is not to minimize the price of cleared options for wealthy investors, but instead to ensure that these options are priced fairly based on the private sector holding equity capital against the risk of loss. With vastly reduced capital requirements for options, banks with access to the public safety net such as Bank of America and Goldman Sachs would effectively be receiving a government subsidy that lowered the cost of their services.

Congress should not force regulators to lower capital requirements and effectively subsidize option clearing at the nations' largest banks. HR 5749 is being advanced while the Trump Administration regulators are already cutting large bank capital requirements in numerous ways, including significant proposed cuts in required leverage capital and changes in derivatives risk adjustments that will also have the effect of cutting derivatives capital, including for listed options. The additional special favors for big banks in HR 5749 should be rejected.

It is possible that a substitute amendment will be advanced to HR 5749 which will replace the mandate to regulators to reduce required risk controls for derivatives with a set of considerations

[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 AFR members is available at http://ourfinancialsecurity.org/about/our-coalition/

that regulators must follow in doing their rule making regarding derivatives risk exposure. This amendment would represent a major improvement on the base bill and would not tie regulators hands in the same way. We remain concerned that several of the listed considerations in the amendment could give large banks the ability to sue regulators in court to reduce risk controls. However, the amendment would be far preferable to the base bill, which is a totally inappropriate pro-industry intervention.

HR 6035, the "Streamlining Communications for Investors Act", would expand the exemption that currently allows "well known seasoned issuers" (WKSIs) to communicate with potential investors about a securities offering before registering those securities with the SEC to apply to underwriters and dealers. WKSI companies have a market capitalization of at least $700 million and a track record of at least one year as public companies. While these companies may be familiar with securities regulations, investors still need timely and up-to-date information about the securities being offered in order to make informed investment decisions. By expanding the exemption from registration requirements, H.R. 6035 increases the likelihood that investors will be asked to make investment decisions without adequate information to assess the risks involved.

This legislation proposes to expand the WKSI safe harbor by revising Rule 163 under the Securities Act of 1933, which was passed by the SEC in 2005. The SEC created the WKSI safe harbor and has the authority to expand it if it determines that doing so is necessary. In fact, in 2009 the Commission proposed a rule that would have allowed underwriters and dealers to use the safe harbor. The Commission did not, however, finalize the rule. We believe that it is inappropriate to remove the SEC's discretion over the question of whether to expand the applicability of the WKSI exemption. For these reasons, we oppose H.R. 6035.

If you have questions, please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672. Thank you for your attention to this letter.

Sincerely,

Americans for Financial Reform