



Americans for Financial Reform
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June 23, 2010

To Members of the H.R. 4173 Restoring American Financial Stability Act of 2010
Conference Committee
Washington, DC 20510

Re: Retain Strong Senate/Base text Derivatives Language

Dear Conferee:

We write on behalf of Americans for Financial Reform, an unprecedented coalition of over 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, religious and business groups as well as Nobel Prize-winning economists. Having reviewed the House offer on the derivatives title of the Wall Street reform, we are writing to renew our call for conferees to adopt the Senate language without weakening amendments.

We appreciate the work of both bodies in this area, and the efforts reflected in the House offer to move forward from the legislation adopted by the House last December. However, based on our initial review, we have not identified any areas where the House offer strengthens the base text. And, in a number of key areas vital to effective reform, the House offer remains significantly weaker than the base text. The following are the areas of highest priority:

- **Central Clearing**

If the legislation is to achieve its stated goal of restoring stability and safety to the financial system, it must ensure that the vast majority of standardized contracts are required to go through central clearing. The Senate legislation achieved this goal, by providing an exemption for legitimate commercial end-users but ensuring that financial institutions could not exploit that exemption. The House offer has serious short-comings. Most importantly, it does not provide the CFTC with the enforcement powers it needs to ensure that contracts that are clearable actually clear. It not only does not resolve the technical problem identified by Senator Cantwell, it would make that problem un-fixable. Additionally, we are concerned about what appears to be a very limited definition of financial entities. If the list of financial entities is thus restricted, the entire clearing requirement will be gutted. It is essential that conferees retain base text provisions related to central clearing. Nothing is more important to the overall effectiveness of this title of the bill.

- **Exchange Trading**

The House legislation fatally weakened the mandatory exchange trading requirements in the bill by including voice brokerage services in the definition of exchange. We were very disappointed to see this provision included in the House offer. If we are to receive the benefits that come from exchange-trading – including enhanced safety, more effective regulation, and price competition – this provision must be rejected and the stronger Senate language on exchange-trading must be retained.

- **Capital and Margin Requirements**

A central method of limiting risk in the financial sector is to have the CFTC set capital and margin requirements on uncleared swaps. This acts as a disincentive to using uncleared swaps and ensures that counterparties have sufficient resources on hand to fulfill their obligations. The House offer strikes language from the Senate bill that would require capital and margin on uncleared swaps to be set “substantially higher” than for cleared swaps. The Senate provision was supported by the Obama Administration and Chairman Barney Frank. Further, the House offered language requires regulators to set limits only on the types of swaps for which an entity is considered a major swap participant rather than on all swaps transactions carried out by the entity. This means that if a bank is considered a swaps dealer because of business in interest rate swaps, it will not face the same capital and margin requirements for its business in credit default swaps, equity swaps or commodity swaps. There is no logical justification for that distinction. The House offer weakening margin and capital requirements must be rejected.

- **Swaps Dealer Fiduciary Duty**

In response to well documented abuses by swaps dealers who have repeatedly duped certain less sophisticated institutional investors into transactions that were harmful to their interests (and costly to the taxpayers and workers whose interests they represent), the Senate bill imposes a heightened standard of care on swaps dealers in their dealings with government entities, pension funds, retirement plans, and endowments. The House offer would render this provision all but meaningless by applying it only when the swaps dealer is acting as an advisor without defining what it means to act as an advisor. If that term were interpreted as it has been under securities laws, where recommendations by brokers have been exempted from the fiduciary duty on the grounds that the broker is not acting as an advisor, it is not clear that the heightened duty would ever apply – the very problem the House bill seeks to correct in the retail context. In addition, swaps dealers would be free under the House offer to lure special entities into inappropriate transactions so long as the special entity has an independent representative, and it would put the swaps dealer in the inappropriate position of determining whether that adviser is qualified. Senate negotiators have worked out a reasonable compromise on this issue that is backed by both investor advocates and many pension funds. We urge conferees to reject the House offer and instead incorporate the compromise Senate language in the conference report.

- **Foreign exchange**

The Senate bill regulates foreign exchange swaps unless the Secretary of the Treasury determines that they should be exempt. Under the proposed House language, foreign exchange swaps will be automatically exempt from regulation. They will not be required to be cleared or exchange traded, and users will not have access to adequate pricing information. If such a dramatic exclusion is to be made, the public deserves an explanation from the Secretary of the Treasury on why such a move is necessary. The Senate language, requiring a finding by the Treasury prior to an exemption, should be retained.

- **Definition of a Major Swap Participant**

The definition of a Major Swap Participant (MSP) is an important component of the bill because it determines who is included in the regulatory framework. The Senate bill has a broad definition that includes most financial entities. The House offer makes a good addition in this area by considering an entity's "substantial position" and removing the unilateral exemption for pension funds. However, the House offer contains a clause stating that the Commission should consider a person's position in uncleared, rather than cleared swaps. The effect is that large dealers will be able to perform a bait and switch – by initially clearing and retaining collateral on a high percentage of swaps and subsequently dealing in uncleared swaps. At the end of the day, an entity is systemically significant or it is not. This clause makes it too easy for entities to evade the definition of major swap participant and should be rejected.

- **Definition of a Swap Dealer**

The House offer misses the mark on defining a swaps dealer. On the one hand, it contains an exception that may allow some dealers to escape regulation. The offered language creates a "de minimis" exception for dealers who conduct small amounts of business. The problem is that it does not describe how "de minimis" is calculated – so a corporation with very high revenues could claim that its swaps dealing constitutes a "de minimis" amount of its overall business. On the other hand, the House offered language is overly broad. It defines a swaps dealer as anyone who "regularly enters into swaps with counterparties as an ordinary course of business for its own account." Since all swaps have counterparties, anyone using swaps could be treated as a dealer. The response to claims for better regulation should not include regulating the kitchen sink. The Senate language should be retained.

- **Aggregate position limits**

The Senate bill gives the CFTC the authority to set position limits on swaps trading. This will prevent large dealers from over-extending themselves in this highly risky market. The House offer discourages the CFTC from setting appropriate position limits, by directing the agency to set position limits at a level that does not lead to price

discovery moving overseas and by calling for a study of how much trading has moved overseas as a result of position limits. For too long, exaggerated fears that markets will move overseas have been used to justify weak regulation, a key factor leading to the worst financial crisis since the Great Depression. If the approach in the House offer were adopted, large dealers would cynically claim that they have lost price-discovery simply because mega-speculators were banned from the U.S. market. But the benefits of ending such harmful speculation far outweigh any such risks. Further, the House offer codifies the “Swaps Loophole” into law, because it gives swaps dealers the same status as bona fide physical hedgers. The Senate bill language directing the CFTC to set position limits on all swaps must be retained in the conference report.

- **Swaps Desk Spin-off**

We were very pleased to see that the House offer does not propose to weaken or remove Section 716 of the Senate bill requiring mandatory separation of swaps dealing from taxpayer-protected banks. Currently, the five largest banks in the United States, which control 90 percent of the U.S. swaps and derivatives market, are able to fund their swaps trading units with FDIC-insured deposits. With their access to the Federal Reserve’s discount window, they can borrow money to back their gambling in swaps at near-0% interest rates. By requiring the banks to spin off their swaps desks into separately capitalized affiliates, Section 716 would end the taxpayer subsidy of these giant players’ risky derivatives business. It is essential that conferees oppose any effort to strip out or weaken this vital provision of the derivatives reform legislation.

The decisions conferees make on this title are of fundamental importance to determining whether this legislation puts an end to the casino economy that brought the world to the brink of economic collapse. There must be no retreat from strong, comprehensive reform of over-the-counter derivatives markets. We therefore urge you to adopt the Senate derivatives title without weakening amendments.

Thank you for considering the Americans for Financial Reform position on these important issues. For more information on derivatives reform, please contact Heather Slavkin, AFL-CIO, at 202-637-5318 or hslavkin@aficio.org.

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.

National Organizations

- A New Way Forward
- AARP
- Accountable America
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Family Voices
- American Income Life Insurance
- Americans for Democratic Action, Inc.
- Americans for Fairness in Lending
- American Sustainable Business Council
- Americans United for Change
- Business for Shared Prosperity
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Community Law Center
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union

- Corporation for Enterprise Development
- CREDO
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- Help Is On the Way, Inc
- HNMA Funding
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Keystone Research Center
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights
- MoveOn.org Political Action
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Investment Professionals
- National Association of Neighborhoods
- National Coalition for Asian Pacific American Community Development
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Institute
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Peoples Action
- National Council of Womens Organizations
- National Workright Institute
- Next Step
- OMB Watch

- Opportunity Finance Network
- Partners for the Common Good
- National People's Action (NPA)
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Responsible Endowments Coalition
- Sargent Shriver Center on Poverty Law
- Scam Victims United
- SEIU
- Sojourners
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Carrots and Sticks Project
- The Fuel Savers Club
- The Seminal
- UNET
- Union Plus
- United for a Fair Economy
- U.S. PIRG
- Unitarian Universalist for a Just Economic Community
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce
- We The People Now
- Western States Center
- Woodstock Institute
- Working America
- World Business Academy
- World Privacy Forum

State Organizations

- 207 CCAG
- 9 to 5, the National Association of Working Women (CO)
- AARP Rhode Island
- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans for Responsible Lending
- Arkansas Community Organizations

- Arkansas Public Policy Panel
- Association for Neighborhood and Housing Development (NY)
- Audubon Partnership for Economic Development LDC (New York, NY)
- Aurora NAACP
- BAC Funding Consortium Inc. (Miami, FL)
- Beech Capital Venture Corporation (Philadelphia, PA)
- Bell Policy Center (CO)
- California PIRG
- California Reinvestment Coalition
- Center for Media and Democracy
- Center for NYC Neighborhoods
- 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)
- Club Change of Martin County (Florida)
- Coalition on Homeless Housing in Ohio
- Coffee Party of Pensacola, Florida
- Coffee Party of Union Square, New York City
- Colorado AFL-CIO
- Colorado Center on Law and Policy
- Colorado Immigrants Rights Coalition
- Colorado PIRG
- Colorado Spring NAACP
- Community Action of Nebraska
- Community Capital Development
- 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, AR)
- Connecticut Association for Human Services
- Connecticut Citizen Action Group
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (New York, NY)
- Cooperative Fund of New England (Wilmington, NC)
- Corporacion de Desarrollo Economico de Ceiba (Ceiba, PR)
- CWA 7777 (CO)
- Delta Foundation, Inc. (Greenville, MS)
- Economic Opportunity Fund (EOF) (Philadelphia, PA)

- Empire Justice Center (NY)
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing Enterprises, Inc. (Berea, KY)
- Fitness and Praise Youth Development, Inc. (Baton Rouge, LA)
- Florida Consumer Action Network
- Florida PIRG
- Forward Community Investments (Madison, WI)
- Funding Partners for Housing Solutions (Ft. Collins, CO)
- Georgia PIRG
- Grow Iowa Foundation (Greenfield, IA)
- Homewise, Inc. (Santa Fe, NM)
- Humanitas Community Development Corporation
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Idaho Nevada CDFI (Pocatello, ID)
- Illinois PIRG
- Impact Capital (Seattle, WA)
- Indiana PIRG
- Indiana University PIRG
- Information Press (CA)
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc. (Mayville, NY)
- Keystone Research Center
- 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
- Massachusetts Fair Housing Center
- MASSPIRG
- 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
- Montana Community Development Corporation (Missoula, MT)
- Montana PIRG
- Mortgage Recovery Service Center of L.A.
- Neighborhood Economic Development Advocacy 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
- Next Step (MN)
- NOAH Community Development Fund, Inc. (Boston, MA)
- Nonprofit Finance Fund (New York, NY)
- Nonprofits Assistance Fund (Minneapolis, MN)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northern Community Investment Corporation (St. Johnsbury, VT)
- Northside Community Development Fund (Pittsburgh, PA)
- Ohio Capital Corporation for Housing (Columbus, OH)
- Ohio PIRG
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance (Charlottesville, VA)
- Rhode Island PIRG
- Rights for All People
- The Rocky Mountain Peace and Justice Center
- Rural Community Assistance Corporation (West Sacramento, CA)
- Rural Organizing Project OR
- San Francisco Metropolitan Transportation Authority
- Seattle Economic Development Fund dba Community Capital Development
- SEIU Local 105 (Colorado)
- SEIU Rhode Island
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia, AR)
- TexPIRG
- The Association for Housing and Neighborhood Development
- The Fair Housing Council of Central New York
- The Help Network
- The Loan Fund (Albuquerque, NM)
- Third Reconstruction Institute (NC)
- V-Family, Inc.
- Vermont PIRG
- Village Capital Corporation (Cleveland, OH)
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty – Florida
- Washington Community Action Network
- WashPIRG
- Westchester Residential Opportunities Inc. NY
- Wigamig Owners Loan Fund, Inc. (Lac du Flambeau, WI)
- WISPIRG

Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Env. Planning
- Hayden & Craig, PLLC\
- The Holographic Repatterning Institute at Austin
- Mid City Animal Hospital (Phoenix, AZ)
- UNET