



**Americans for Financial Reform**  
1825 K St NW, Suite 210, Washington, DC, 20006  
202.263.4533

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: CFTC RIN 3038-AC98, 3038-AD02

Dear Mr. Stawick:

On behalf of Americans for Financial Reform (“AFR”), thank you for the opportunity to comment on the above-captioned notice of proposed rulemaking of the Commodity Futures Trading Commission (“CFTC”), on “Financial Resources Requirements for Derivatives Clearing Organizations”. AFR is a coalition of over 250 national, state and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, religious and business groups along with economists and other experts.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) sets out to move the vast majority of the \$582.6 trillion notional value over-the-counter derivatives market onto regulated, well-capitalized clearinghouses.<sup>1</sup> If these clearinghouses are sufficiently capitalized and manage risks well, they will bring stability to the derivatives market. Unfortunately, too big to fail financial institutions have historically not done a good job managing risk. In passing the Dodd-Frank Act, Congress recognized this risk and gave the Financial Stability Oversight Council (“FSOC”) authority to designate clearinghouses as systemically important and gives the CFTC authority to subject those institutions to heightened regulation.

With these risks in mind, and given the importance of clearinghouses under the Dodd-Frank Act as the central counterparties for derivatives trades and the likelihood that the failure of a clearinghouse would pose a systemic threat, we urge the CFTC to establish capital requirements for DCOs. In addition, we urge the CFTC to take a more active role in establishing the parameters for DCO’s stress tests.

### **Proposed Regulations of Derivatives Clearing Organizations (“DCOs”)**

The Commission has proposed two tests to determine the adequacy of a DCO’s financial resources: (a) proposed Regulation 39.11(a)(1) “would require a DCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions; and (b) proposed Regulation 39.11(a)(2) would require a DCO to maintain sufficient financial resources to cover its operating costs for at least one year, calculated on a rolling basis.” We agree that the appropriate measure is whether a DCO will have sufficient financial resources to withstand major losses.

---

<sup>1</sup> Semiannual OTC derivatives statistics at end-June 2010.

We believe, however, that the calculation in proposed Regulation 39.11(a)(1) should be based on risk exposure as well as number of defaults. In a concentrated market, a single default can have great consequence. In a more diverse market, the probability of multiple defaults is greater and is a more meaningful scenario. Both measures are relevant.

We strongly agree with the Commission's proposed Regulation 39.11(b)(3) that would allow a DCO to allocate financial resources either to meet the requirements that it maintain sufficient capital to withstand the default of its largest member or that it maintain sufficient capital to cover its operating costs for one year. This would avoid double-counting of financial resources and further ensure that financial health of each DCO.

Proposed Regulation 39.11(c)(1) would require a DCO to perform monthly stress tests to ensure it has sufficient capital to withstand the default of its largest member and cover its operating expenses for one year but allows DCOs to determine the methodology used in their stress tests. While the proposed rule provides for CFTC review of the methodology, we are concerned that the proposal gives DCOs too much discretion. As the 2008 financial crisis illustrated, systemically risky financial institutions often underestimate their risk exposures. Given the central role that clearinghouses will play as counterparties for hundreds of trillions of dollars of derivatives trades that interconnect financial institutions and operating companies around the world, we believe it is critical that the CFTC play a central role in establishing the standards by which these institutions will measure their exposure to future risks. We urge the CFTC to define minimal standards that will ensure that DCO stress tests are stringent and incorporate realistic metrics of worst-case scenarios that DCOs may experience.

We are also concerned about the ability of a DCO to count its right to impose assessments on members toward its calculation of financial resources in proposed Regulation 39.11(c)(2). It is important that all DCOs are financially viable, independent of the possibility that they could call in resources from their members in times of distress. The notice of proposed rulemaking notes that no futures clearinghouse in the U.S. has ever undertaken assessments. It is unclear, in a time of broad market distress, which is certain to exist if a large clearinghouse counterparty were to go into default, whether a DCO's members would be willing and able to pay their assessments. We urge the CFTC to prohibit DCOs from including their assessment power in their calculations of financial resources.

With regard to liquidity of financial resources, proposed regulation 39.11(e)(1) would require a DCO to have enough cash "to fulfill its obligations as a central counterparty during a one-day settlement cycle." Proposed Regulation 39.11(e)(2) would require a DCO to have enough highly-liquid assets to cover its operating expenses for six months and allows the DCO to use funds available from a line of credit to fulfill this liquidity requirement. In a liquidity crisis, financial institutions have trouble selling assets formerly thought to be highly-liquid and lenders often pull lines of credit. We therefore believe the Commission should adopt more stringent liquidity requirements. DCO's should be required to have sufficient cash to fulfill their obligations for 10 business days and lines of credit should not count toward liquidity requirements.

### **Proposed Regulations of Systemically Important Derivatives Clearing Organizations**

The Dodd-Frank Act authorizes the CFTC to promulgate more stringent rules for systemically important DCOs ("SIDCOs") because of the possibility that the failure of such an institution could cause instability in the financial system and the broader economy. We applaud the Commission for proposing more stringent rules for SIDCOs.

Proposed Regulation 39.29(a) “would require a SIDCO to maintain sufficient financial to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions.” This test is nearly identical to that which would apply to DCOs under proposed Regulation 39.11(a)(1) except that SIDCOs would be required to have sufficient resources to withstand the default of two clearing members while DCOs would only have to have enough capital withstand a single default. Again, we believe the appropriate calculation should be based on risk exposure as well as number of defaults. In a concentrated market, a single default can have great consequence. In a more diverse market, the probability of multiple defaults is greater and is a more meaningful scenario. Both measures are relevant.

The Commission also proposed Regulation 39.29(b), which would prohibit a SIDCO from counting assessments toward the calculation of its ability to withstand the default of the clearing member to which the SIDCO has the largest financial exposure. The proposed regulation would, however, allow the SIDCO “to count the value of assessments, after the 30 percent haircut, to meet up to 20 percent of obligations arising from a default by the clearing member created the second largest financial exposure.” As stated above with regard to counting assessments toward the calculation of financial resources for DCOs, we do not believe assessments should be included in this calculation. It is important that all DCOs are financially viable, regardless of whether they might be able to call on their members to bail them out. We urge the CFTC to prohibit DCOs from including their assessment power in their calculations of financial resources.

\* \* \*

During the financial crisis of 2008, it became clear that unregulated derivatives trading undertaken by undercapitalized financial institutions poses real threats to the safety and stability of the financial markets. By the time these threats were revealed, it was too late to stop the overflow into real economy. The Dodd-Frank Act sets out to ensure that this never happens again. It is up to the regulators, especially the CFTC, to establish rules that will make sure that risks in the derivatives markets never again threaten the safety of the U.S. and global financial markets. We urge, therefore, urge the CFTC to implement robust financial resources requirements for DCOs and SIDCOs.

We appreciate the opportunity to comment on the “Financial Resources Requirements for Derivatives Clearing Organizations.” If you have any questions, please contact Heather Slavkin at 202-637-5318 or [hslavkin@aficio.org](mailto:hslavkin@aficio.org).

## **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.*

- A New Way Forward
- AARP
- ACORN
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- 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 Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- 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
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- 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
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights

- Move On
- 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 Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- 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 Seminal
- U.S. Public Interest Research Group
- 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

***Partial list of State and Local Signers***

- 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
- 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
- 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
- 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