



**AMERICANS
FOR FINANCIAL REFORM**
ACCOUNTABILITY • FAIRNESS • SECURITY

Americans for Financial Reform
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June 14, 2012

Mr. Gary Gensler
Chairman, The Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street NW
Washington DC, 20581

Dear Chairman Gensler:

We understand that the Commission is currently developing an interpretive release on the cross-border application of Title VII of the Dodd-Frank Act. As Congress recognized when it passed the Dodd-Frank Act, in order to protect the U.S. economy and American taxpayers from the demonstrated risks associated with overseas swaps trading by foreign subsidiaries of U.S. banks, the Commission must regulate overseas derivatives trading that has a “direct and significant” impact on the U.S. economy. Americans for Financial Reform¹ greatly appreciates the strong stance you have taken on this issue in recent weeks and we write to express our fervent support for the broad cross-border application of Dodd-Frank rules.

JPMorgan Chase’s recent multi-billion-dollar losses illustrate once again the significant risks associated with overseas swaps trades by foreign subsidiaries of U.S. banks and the need to subject these foreign entities to Dodd-Frank regulation. JPMorgan’s losses reportedly resulted from bad trades in complex synthetic securities made by a single trader—the “London Whale”—at the bank’s U.K. subsidiary. JPMorgan in the United States assumed these losses, which are estimated to be as high as \$5 billion. Losses that were sustained in overseas trading by a supposedly separate entity of a U.S. bank rebounded on a U.S. firm.

There have in fact frequently been significant domestic consequences – to taxpayers as well as to financial institutions - of risky trading by the subsidiaries of US institutions conducted outside our borders and outside the reach of U.S. regulations. U.S. taxpayers spent \$183 billion dollars to bail out American Insurance Group after its London subsidiary—AIG Financial Products—incurred losses from bad swaps trades backed by insufficient capital that threatened to bankrupt its U.S. parent. Bear Stearns received considerable support from the Federal Reserve after the failure of two of its hedge funds that operated out of the Cayman Islands precipitated the bank’s collapse. Similarly, Citigroup has received two multi-billion dollar infusions from the U.S.

¹ AFR is a coalition of more than 250 American organizations who have come together to advocate for reform of financial sector regulation. Members of the coalition include consumer, civil rights, investor, retiree, labor, faith based and business groups, along with prominent economists and other experts.

government to help the bank recover from losses that stemmed from overseas trading by its foreign subsidiaries.

Unless strong clearing, and margin requirements apply to foreign subsidiaries of multinational U.S. institutions, these institutions will continue to exploit gaps between regulatory regimes in ways that expose American taxpayers and the U.S. economy to risk. Unless transparency requirements apply without regard to the location of the transaction, regulators will continue to be blindsided by risky conduct occurring outside their direct oversight. Extraterritorial application of Dodd-Frank's derivatives rules will help to protect U.S. taxpayers from the risk of pressure to bail out U.S. banks as a result of actions and losses by their foreign subsidiaries. Further, the broad-based application of Dodd-Frank rules would help to avoid a "race to the bottom" in which foreign countries continually relax their financial regulations in order to attract and retain U.S. banks' swaps business.

We recognize that foreign jurisdictions often resent and sometimes resist extraterritorial application of U.S. laws. This resistance is particularly strong when foreign legislators believe that they are defending nationally headquartered banks by exempting them from rules that would make the international financial system less vulnerable to regulatory arbitrage. We acknowledge the problem of overlapping jurisdictional authority and support the Commission's efforts to preempt conflicts that might arise from the extraterritorial application of Dodd-Frank rules. Specifically, we support the Commission's initiatives at the International Organization of Securities Commissions to multilateralize best regulatory practices and to implement the extraterritorial application of Dodd-Frank through revisions to existing international memoranda of understanding with foreign regulatory authorities.

Additionally, we support the substituted compliance model reportedly being considered by the Commission, which would authorize U.S. financial regulators to defer to local jurisdictions that have adopted rules that are consistent with and as stringent as U.S. standards. For the compliance model to work the Commission must adopt a transparent process with clearly articulated standards for determining comparability of other regulatory regimes; these standards must require not just comparable rules, but evidence that the rules are effectively enforced. If such an approach is adopted, the extraterritorial application of Dodd-Frank rules will help advance the harmonization process and enhance the stability of international financial markets by providing a powerful incentive for foreign jurisdictions to adopt strong and effective regulatory regimes.

Despite the demonstrated risks associated with opaque and unmargined swaps trades by the foreign subsidiaries of U.S. banks, Wall Street and its allies have lobbied relentlessly to exempt their foreign subsidiaries from U.S. financial regulation. Until recently, when JPMorgan's losses drew renewed attention to the perils of this approach, they appeared to be gaining ground with some members of Congress. If successful, these lobbying efforts would undercut efforts to

restore transparency and stability to derivatives markets and continue to expose U.S. taxpayers to economic uncertainty and the acute possibility of having to fund more bank bailouts.

Failure to apply Dodd-Frank protections to the foreign subsidiaries of U.S. banks would permit Wall Street to easily evade U.S. financial regulation by moving their swaps business overseas. Major U.S. banks and corporations operate thousands of subsidiaries throughout the world. For example, Citigroup has roughly 2,400 subsidiaries in over 80 countries, and Shell Oil has 1,144 subsidiaries in 105 countries. The vast international presence of Wall Street banks and their major U.S. clients would make it relatively simple for these companies to avoid regulation by routing swaps trades through their foreign subsidiaries and then transferring the cash flows to the U.S. parent. Indeed, up to 70 percent of derivatives transactions conducted by Wall Street banks are already routed through foreign subsidiaries; this figure will only increase if banks move their swaps business outside of the United States in order to avoid Dodd-Frank regulation. Thus, if Dodd-Frank applied only within the United States, it would have little impact on the swaps activities of major U.S. banks and their biggest clients. In addition to creating a major loophole in U.S. financial regulation, failure to implement Dodd-Frank across jurisdictions would have a negative impact on U.S. jobs. Wall Street has long lobbied against tougher regulations by arguing that such regulations would send jobs overseas. In the context of extraterritorial regulation, *failure* to apply Dodd-Frank regulations across jurisdictions would create an extremely powerful incentive to send highly paid financial services jobs to less regulated markets overseas. Inevitably, any increase in U.S. banks' foreign swaps activities will result in job cuts in the U.S. financial sector.

Wall Street's argument that the extraterritorial application of Dodd-Frank would place U.S. banks at a competitive disadvantage is grossly inaccurate. In the short term, Dodd-Frank requirements will make U.S. banks more financially secure than their foreign competitors and, subsequently, more attractive to investors—particularly at a time when investors are concerned about the credit crisis in Europe. Additionally, Dodd-Frank's margin requirements are unlikely to impose costs on U.S. banks and therefore will have little if any impact on the fees that commercial end-users pay U.S. banks to hedge against price declines in physical markets. In the long term, the cross-border implementation of Dodd-Frank rules will help establish rigorous, global regulatory standards that will both protect U.S. taxpayers from the threat of regulatory arbitrage and ensure that U.S. and foreign banks operate on a level playing field.

Congress directed the Commodity Futures Trading Commission to regulate overseas activities that have a "direct and significant connection" with the U.S. economy. We are encouraged by your commitment to this directive to apply Dodd-Frank rules to the foreign subsidiaries of U.S. banks. This cross-border approach to financial regulation is absolutely necessary if the Commission is to protect the U.S. economy and taxpayer from the substantial risks associated with uncleared and opaque swaps transactions. As President Obama prepares for the June 18-19 Heads of State meeting of the Group of 20, he can point to your agency's commitment to cross-border Dodd-Frank implementation as an important example of how the United States is leading

efforts to require global financial institutions to comply with rules that ensure that these institutions function transparently and efficiently.

Sincerely,

Americans for Financial Reform

Cc: Commissioner Bart Chilton
Commissioner Jill E. Sommers
Commissioner Mark Wetjen
Commissioner Scott D. O'Malia

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
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- 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
- 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
- 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 Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- 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 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
- 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
- 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
- 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
- The Holographic Repatterning Institute at Austin
- UNET