



Americans for Financial Reform
1629 K St NW, 10th Floor, Washington, DC, 20006
202.466.1885

June 16, 2014

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 4413, “The Customer Protection and End User Relief Act”.¹ This legislation would have a severe negative impact on the Commodity Futures Trading Commission (CFTC) and its ability to police commodities and derivatives markets crucial to our economy. The new restrictions it places on CFTC rulemaking would require additional years of bureaucratic and legal red tape prior to agency action, even in areas where Congress has clearly directed the CFTC to act and where action is badly needed to protect the public interest.

This legislation also includes no provisions that address the CFTC’s most fundamental problem – the lack of resources to accomplish its mission. Due to both the agency’s new responsibilities under the Dodd-Frank Act for hundreds of trillions of dollars in previously unregulated derivatives markets, and the growth of the commodities markets the agency has traditionally regulated, the size of CFTC-regulated markets has increased roughly 15-fold over the last decade. But funding for the agency lags enormously behind. As CFTC commissioner Mark Wetjen recently stated, “The unfortunate reality is that, at current funding levels, the agency is unable to adequately fulfill the mission given to it by Congress: to prevent disruptions to market integrity, to protect customer assets, monitor and reduce the build-up of systemic risk, and ensure to the greatest degree possible that derivatives markets are free of fraud and manipulation”.² The agency authorization process could and should be an opportunity to supplement appropriations with some form of agency self-funding. Self-funding mechanisms are used by all other financial regulatory agencies and have been endorsed by the Obama Administration.

Instead of addressing the pressing problem of funding, HR 4413 would instead load down the CFTC with additional mandates that would drain resources and act as a roadblock to necessary oversight and enforcement. HR 4413 would more than double the number of cost benefit analyses the agency must perform prior to taking any action. Since any of these analyses could serve as grounds for a lawsuit, this measure would greatly expand Wall Street’s ability to dispute any agency action in court, tilting the regulatory playing field still further in their favor. The legislation would also create an initial presumption that CFTC rules did not apply to so-called ‘cross-border’ transactions, which include a vast number of transactions involving foreign subsidiaries of U.S. banks. The agency would have to perform a ‘determination’ (jointly with the Securities and Exchange Commission) each time it wanted to regulate such transactions. HR 4413 also includes additional internal process requirements for the CFTC that would also act as

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.

² <http://www.cftc.gov/PressRoom/SpeechesTestimony/opawetjen-6>

barriers to action. These additional requirements would affect everything from the supervision of key employees to the ability to respond to public requests for information.

In combination, these changes would greatly reduce the CFTC's capacity to effectively police Wall Street. HR 4413 also includes many additional changes. Some of them, such as amendments to indemnification requirements for swaps data repositories, are reasonable. Other changes – including (but not limited to) provisions that expand the definition of 'commercial end user' to include financial entities (Sections 321 and 352), exemptions for entities with billions of dollars in swaps business from 'swap dealer' oversight (Section 355), provisions that would permit marketing of complex institutional commodity pools to retail investors (Section 357), and provisions that weaken limits on commodity market speculation (Section 358) – raise serious questions of their own.

But even before considering these issues, the major new restrictions on the agency created by the cost-benefit and cross-border provisions of this bill mean that supporting needed derivatives regulation requires opposing this legislation.

Provisions Related to Cost Benefit Analysis and Judicial Review

The CFTC already has a statutory requirement to consider the costs and benefits of its actions, and to evaluate these costs and benefits as applied to a long list of considerations, including market efficiency, price discovery, and protection of the public. Section 203 of HR 4413 would massively expand this requirement. The section would more than double the number of different factors the CFTC must evaluate in any rulemaking, order, or guidance, and change the standard of evaluation from consideration of costs and benefits to a more extensive and burdensome 'reasoned determination' of costs and benefits. The section also includes a particularly sweeping mandate that would require the agency to determine whether an action 'maximizes net benefits' compared to all possible regulatory alternatives. This requirement alone, which seems to require comparison of any actual regulation to a potentially vast number of theoretical alternatives, could be read to require dozens of additional agency analyses.

Some of this cost-benefit language does replicate cost-benefit instructions from the Office of Management and Budget that already applies to agencies within the executive branch, although not to independent financial regulatory agencies like the CFTC. In addition to this extension of reach, a crucial difference is that since HR 4413 would add this language in statute, each and every additional instruction regarding cost-benefit analysis could become grounds for a Wall Street lawsuit against a CFTC rule. The extensive new cost-benefit requirements in Section 203 amount to a roadmap for industry interests to tie up regulations in endless litigation, delays, and red tape. With critical rulemakings to implement new requirements like position limits to control commodity price manipulation still incomplete almost four years after they became law, the addition of new barriers to action would be dramatic movement in the wrong direction.

Heightening the effect of the new cost-benefit provisions are new internal process requirements in Section 204 of the legislation. Section 204 would apparently change the CFTC's internal structure so that the entire five-member Commission directly supervised the activities of all key division directors. These key employees would 'serve at the pleasure' of the entire Commission,

‘report directly’ to the entire Commission, and perform duties as prescribed by the entire Commission. Currently, as in other Federal agencies supervised by a multi-member Commission, the Chair of the CFTC supervises the employees of the Commission. Giving direct control of all employee activities to an entire five-member Commission is a recipe for endless delay and bureaucratic red tape. Currently, individual Commissioners are able to hire their own personal staff and express their views on Commission activities through the voting process. Should this legislation pass, any individual Commissioner, even if their views were in the minority, could interfere directly with the activities of Commission staff in implementing the law.

Provisions Relating to International Derivatives Markets

Section 359 of the bill contains sweeping new restrictions on the ability of the CFTC to properly oversee derivatives transactions conducted through foreign subsidiaries of U.S. banks, even when such transactions have a direct and significant connection to the U.S. economy. We need only look at the example of J.P Morgan’s ‘London Whale’ transactions, or the London derivatives transactions of AIG Financial Products which resulted in the largest bailout in U.S. history, to see that derivatives transactions conducted through nominally overseas entities can have a profound impact on the U.S. economy. Over half of Wall Street derivatives transactions are currently booked in nominally foreign subsidiaries, and it is very likely that more could easily be transacted in this way if there was an incentive to do so to avoid regulation.³

Section 359 of the bill, mirroring the ‘Swaps Jurisdiction Certainty Act’, controversial legislation which recently passed the House on a 301 to 124 vote, would create a presumption that U.S. rules would not govern transactions booked in major foreign jurisdictions. The legislation would force U.S. regulators to accept foreign rules for derivatives transactions booked by U.S. banks in any of the nine largest global financial markets. The CFTC could overturn this presumption that foreign rules would apply, but only through a complex procedure involving a joint determination with the Securities and Exchange Commission that foreign rules were not ‘broadly equivalent’ to U.S. rules, supported by an official report to Congress. Furthermore, any rules governing these cross-border derivatives would have to be identical between the SEC and the CFTC, despite the fact that these agencies regulate very different parts of the derivatives markets and have differing jurisdictional authority under the Dodd-Frank Act.

The drastic new limitations placed on CFTC jurisdiction over cross-border derivatives would have a profound impact on the ability of U.S. regulators to properly oversee derivatives transactions. It would effectively overturn a key provision in Section 722 of the Dodd Frank Act that gives the CFTC jurisdiction over all swaps transactions that have a ‘direct and significant’ effect on the U.S. economy. This provision of Dodd-Frank was put in place precisely to ensure that the trillions of dollars in swaps booked in offshore subsidiaries would be properly regulated and would not endanger the U.S. economy.

As mentioned above, this legislation also includes numerous other provisions targeted at various areas of CFTC regulation. Some of these provisions would take positive steps, while others could roll back financial protection in troubling ways. But even before considering these and other

³ Brush, Silla, “[Goldman Sachs Among Banks Fighting to Exempt Half of Swaps Books](#)”, Bloomberg News, January 30, 2012.

provisions positive or negative, the major new burdens the cost-benefit and international derivatives provisions of this bill place on the basic ability of the CFTC to do its job create overwhelming reasons to reject this legislation as currently written.

We urge you to vote against HR 4413 and preserve the CFTC's capacity to properly regulate crucial futures and derivatives markets. 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
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's 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, Pheonix AZ
- UNET