February 4th, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC  20549-1090

Re: File Number S7-43-10 – End-User Exception to Mandatory Clearing of Security-Based Swaps

Dear Ms. Murphy:

On behalf of Americans for Financial Reform, thank you for the opportunity to comment on the proposed rule, “End-User Exception to Mandatory Clearing of Security-Based Swaps.” Americans for Financial Reform is 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 economists.

Reckless swaps and derivatives trading played a critical role in the financial crisis, turning the fallout from the crash of the domestic housing market into a global economic catastrophe. The Dodd-Frank Wall Street Reform and Consumer Protection Act put in place key statutory changes intended to prevent the recurrence of a systemic crisis like the one experienced in 2008. It is now up to the regulators to ensure the success of Dodd-Frank by putting rules in place that are comprehensive and do not create loopholes that will be exploited in the future. The proposed rule will be critical in providing the Commission a comprehensive view of the security-based swap market and giving regulators access to data critical to the safety and soundness of the market.

Proposed Rule 3Cg-1(a)(5), Meeting Financial Obligations

Proposed Rule 3Cg-1(a)(5) requires end-users, when relying on the clearing exception to engage in an over-the-counter swap transaction, “to provide certain information to the Commission regarding the methods used to mitigate credit risk.” The proposed rule defines several types of credit risk mitigation tools and requires end-users to disclose to the Commission whether any or all of these tools are used in the security-based swap transaction in question. We agree that this information should be disclosed. AFR believes, however, that in order to ensure the financial integrity of the security-based swaps market, the Commission should collect substantially more information.

AFR urges the SEC to require additional disclosures designed to provide a clear picture of financial risks associated with transactions believed to be eligible for the exception. The required “Financial Obligation Notice” should be strengthened to require information about:
the types of collateral provided by the end-user and the impact of posting collateral on the end-user’s ability to meet its financial obligations;

whether the collateral requirements are unilateral or bilateral;

contractual terms and whether they are triggered by changes in the credit-rating or other financial circumstances of either of the counterparties;

whether any “third-party” guarantor of the end-user’s obligations is a parent or affiliate of the person invoking the end-user exception; and

the identity of any collateral agent, custodian or other entity involved in segregating collateral.

In Footnote 28 of the proposed rule, the Commission states that in some swaps transactions, counterparties “choose not to mitigate credit risk and instead rely on the general creditworthiness of their opposite counterparty, given the circumstances and financial terms of the transaction.”\(^1\) The Commission goes on to reference guidance issued by the Office of the Comptroller of the Currency that states “[c]redit exposure arising from derivative activities should be addressed within the same framework used to assess credit risk in traditional banking activities.”\(^2\) In other words, when an end-user enters an uncollateralized swap with a bank, the bank is still taking on credit risk and that risk is substantially similar to an uncollateralized loan or a credit facility. An uncollateralized swap transaction, therefore, is really two transactions – a hedging transaction and a loan. The bank charges the end-user for this implied loan by embedding a fee in the swap transaction.

If Dodd-Frank is to be implemented in a way that truly brings transparency to the derivatives markets, these two transactions must be separately reported to the SEC. Americans for Financial Reform urges the SEC to include in the Financial Obligation Notice a disclosure that breaks out the amount paid by the end-user for the swap and, separately, the fee paid for the implied loan. This will help the Commission to more effectively evaluate the derivatives market. More importantly, however, it will provide end-users with the information they need to shop for the best price and make informed decisions about whether choosing to use the regulated, cleared swaps market is more cost effective.

Required Consideration of a Clearing Exemption for Small Banks, Savings Associations, Farm Credit System Institutions and Credit Unions

The Dodd-Frank Act directs the Commission to consider whether to exempt from mandatory clearing banks, savings associations, farm credit system institutions and credit unions with less than $10 billion in assets. Proposed Rules 3Cg-a(b) and (c) would exempt such institutions from mandatory clearing. The Commission’s stated reason for proposing the exemption is that smaller financial institutions “may face difficulties in meeting the burdens associated with a mandatory clearing requirement due to their limited operations or infrequent use of security-based swaps.”

\(^1\) Footnote 28 of File No. S7-43-10.

Americans for Financial Reform urges the Commission to ensure that any financial institution that engages in more than de minimis activity in the swaps market is required to clear, including small banks, savings associations, farm credit system institutions and credit unions. If these institutions’ security-based swap activity is truly de minimis, they should still be required to file Financial Obligation Notices in order to ensure that regulators have a comprehensive view of activity in the security-based swap market and a clear picture of the counterparty relationships.

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Congress has imposed on the SEC the heavy responsibility of adopting regulations that bring meaningful reform to the over-the-counter derivatives markets and help to prevent a repetition of the devastating financial crisis of 2008. The proposed rule falls short of what is needed to meet that responsibility. Accordingly, we urge the Commission to require entities exempt from clearing security-based swaps to disclose substantially more information than would be required by the proposed rule and to ensure that any financial entity that engages in more than a de minimis amount of security-based swap transactions is required to clear.

Thank you again for this opportunity to share our views on the proposed rule. If you have the further questions, please contact Heather Slavkin, AFL-CIO at (202) 637-5318.

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.

- 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
- 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

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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 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
TICAS
U.S. Public Interest Research Group
United Food and Commercial Workers
United States Student Association
USAAction
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

www.ourfinancialsecurity.org
• 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

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