



Americans for Financial Reform
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October 26, 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, DC 20549-1090

Re: Applications By Security-Based Swap Dealers Or Major Security-Based Swap Participants For Statutorily Disqualified Associated Persons To Effect Or Be Involved In Effecting Security-Based Swaps, File Number S7-14-15

Dear Secretary Fields,

Americans for Financial Reform (“AFR”) appreciates this opportunity to comment on the above-mentioned proposed rule (the “Proposed Rule”) by the Securities and Exchange Commission (the “Commission” or “SEC”). AFR is a coalition of more than 200 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, faith based, and business groups.

We believe that it is important that the Commission work to establish true mechanisms for accountability. One way to do that is to develop procedures that allow for public transparency into exemptions and exclusions from prohibitions triggered by statutory disqualifications. We believe that the Rule of Practice 194 process outlined in the Proposed Rule provides an opportunity to meet these goals. However, we believe that there are several changes that need to be made to the final rule in order to realize this potential.

Section 15F(b)(6) of the Securities Exchange Act of 1934 (the “Exchange Act”) prohibits a registered security-based swap dealer or major security-based swap participant (“SBS Entity”) from working with people (“natural persons”) or entities (“non-natural persons”) who are subject to a statutory disqualification. The Proposed Rule outlines a process that allows a SBS Entity to apply to the Commission for permission to work with the statutorily disqualified associated person. As the Proposed Rule notes, without Rule of Practice 194, SBS Entities would still be able to apply to the Commission for relief from Section 15F(b)(6) of the Exchange Act, and the Commission could still grant such relief. We appreciate the Commission’s efforts to formalize the process, which creates the opportunity for increased accountability, and of transparency into applications for relief. But in order to actualize that opportunity, there are several key changes that need to be made: to increase accountability, the proposed deference must change, there

should be no blanket exclusions from the prohibition for entities, and it is also important that the final rule maintain a broad definition of associated persons, and ensure maximum transparency by making applications and exhibits public.

I. The Commission Should Not Automatically Defer to Other Regulators or SROs

Rule of Practice 194 outlines a process by which the Commission would respond to applications by SBS Entities with regard to associated persons who were statutorily disqualified due to offenses described in Section 3(a)(39)(A) through (F) of the Exchange Act. Proposed paragraph (j) permits SBS Entities to work with statutorily disqualified associated persons without making an application to the Commission so long as another regulator or SRO had granted a waiver. We do not believe that proposed paragraph (j) serves the public interest, and we strongly oppose the Commission adopting this approach, as we have serious concerns with the deference to other agencies and SROs.

The proposed deference in paragraph (j) raises several serious concerns. First, Finra's statutory disqualification process is typically designed for individuals. Second, when the Commission gives deference to other agencies, the Commission is not able to review the facts of the cases, which runs counter to the goal of increasing transparency and accountability in this process. Third, in addition to the offenses described in Section 3(a)(39)(A) of the Exchange Act, Section 15F(b)(4) of the Exchange Act creates a new statutory disqualification that we believe is also relevant to this rulemaking. We believe these are separate and independent provisions, and that the Commission should treat them as such. Finally, allowing deference to SROs in particular is inconsistent with current practice. As described in footnote 101 of the proposed rule, Exchange Act Rule 19h-1 "provides for Commission review of proposals submitted by SROs to allow a member or associated person subject to a statutory disqualification to become or remain a member or associated person of a member."¹ It does not make sense to change this practice and increase deference to self-regulatory agencies, which may be particularly likely to be subject to inappropriate pressure to waive disqualifications.

II. The Commission Should Retain the Broad Definition of Associated Person

There are several questions in the proposed rule on what the definition of "associated person" should be (Q-30, Q-35, Q-36); We strongly support the Commission's proposed approach to include both natural persons and non-natural persons in the definition of associated person, and believe it should retain the broad definition of associated person. The Commission has always looked at individuals *and* institutions, and it must continue to do this.

When it comes to prosecuting financial crimes following the 2008 financial crisis, law enforcement agencies have almost exclusively chosen to pursue entities, not individuals. While we don't necessarily favor this approach, given the emphasis that has been placed on pursuing entities, it would be completely counter-productive not to include entities in the definition of associated person. Further, in order to effectively disincentivize wrong-doing, there must be consequences when either individuals or firms commit felony offenses involving financial fraud

¹ 80 FR 51698 (proposed August 25, 2015)

or breach of trust. If SBS Entities were always permitted to work with non-natural associated persons regardless of any statutory disqualifications, there would be no deterrent for entities or firms committing the offenses that would result in a statutory disqualification, and it would dramatically reduce the disincentive against misconduct.

III. No Blanket Temporary Exclusions from the Prohibition for Non-Natural Associated Persons

Paragraph (i) in the proposed rule temporarily excludes SBS Entities from the prohibition in Exchange Act 15F(b)(6) for a period of 30 days following a non-natural associated person becoming subject to a disqualification. We do not agree with this proposed blanket temporary exclusion for non-natural associated persons, and believe instead that the prohibition should take effect as soon as an associated person becomes subject to a disqualification.

In the “Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants” final rule that was released concurrently with the proposed rule, the Commission cited comments that suggest that failing to provide a temporary exclusion from the 15F(b)(6) prohibition would lead to market disruptions. The cited commenter noted these disruptions may be most relevant when the associated person is an entity, because the SBS entity may rely on them for “advisory, booking, cash or collateral management services,” and the prohibition may lead to their having to temporarily cease operations, or move these services to another entity. But needing to move from one vendor to another is not a market-moving event—in fact, it is something that happens regularly, for reasons like a competing vendors’ improved pricing or enhanced services.

Further, claiming that there will be disruption to an SBS Entity's business is not a sufficient justification for ignoring criminal convictions and other offenses that trigger disqualifications. For example, in the case where the disqualified associated person is the broker-dealer arm of the SBS Entity that has been convicted of a felony, it would be highly inappropriate to simply waive the repercussions for the financial firm overall simply because it may lead to market disruptions.

We do understand that there may be some limited cases where an immediate change in a service provider would cause significant disruptions, and thus suggest that the Commission should be able to grant an exclusion up to 30 days where appropriate and necessary, but that such an exclusion should require a majority vote of the Commissioners. The blanket exclusion in the Proposed Rule is excessive and invites abuse; this more limited, transparent, and controlled approach would better foster accountability.

IV. The Commission Should Ensure Transparency in the Application Process

One of the most important factors in ensuring accountability is public transparency into accountability procedures. The Proposed Rule asks about what sorts of information should be made public in Rule of Practice 194. We believe that the application and any corresponding exhibits should be made public as soon as it is received.

As stated above, we disagree with the proposal that SBS entities should be given a temporary exclusion from working with non-natural associated persons subject to a disqualification. However, should the Commission decide to move forward with paragraph (i)(1) as proposed, we believe that the notice required to be sent to the Commission, which outlines the name of the SBS Entity, the name of the associated person, and a copy of the order that resulted in the disqualification, should be made public.

V. There Should Be No Assumed Commission Approval on Undecided Applications

The Proposed Rule asks what should happen if the Commission does not make a decision on an application for a non-natural associated person within 180 days (Q-23). Under the current proposal, if a decision is not made in 180 days, the temporary exclusion from Section 15F(b)(6) expires. We believe this is the right approach.

Flipping the presumption to assume that any application not decided on within 180 days should be deemed granted would create perverse incentives to slow-walk approvals. Currently, the expiration of the temporary exclusion from the prohibition in Exchange Act Section 15F(b)(6) creates an urgency for the Commission to make a decision.

VI. Conclusion

We welcome the formalized Proposed Rule of Practice 194, which creates an opportunity for enhanced clarity for both the public and the financial industry. Thank you for the opportunity to comment on these matters. We hope that you will seriously consider the recommendations we have set forth which will allow the Commission to realize the opportunity presented by this Proposed Rule. For questions, please contact Alexis Goldstein, AFR's Senior Policy Analyst, at 202-973-8005.

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

- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders 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

