



**Americans for Financial Reform**  
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Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing (No. S7-44-10)

Dear Ms. Murphy:

On behalf of Americans for Financial Reform, thank you for the opportunity to comment on the proposed rule, “Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing”. Americans for Financial Reform (“AFR”) 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 distinguished 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.

Moving derivatives trading out of the shadows and into the light of open clearing and exchange trading is vital to building a more secure financial system, and a fundamental element of the reforms required by the Dodd-Frank Act. For this reason, the process by which swaps are reviewed for clearing is of the utmost importance, and should be carried out with the maximum transparency and attention to detail.

Substance of Security-Based Swap Submissions: Qualitative and Quantitative Factors

Proposed amendments to Rule 19b-4 and Form 19b-4 require clearing agencies to include in their submissions to the Commission a discussion of each of the five factors Dodd-Frank requires the Commission to consider in making a determination as to whether a swap should be required to clear. The factors, generally, relate to liquidity of the market for the swap under consideration, whether the clearinghouse has the infrastructure in place to provide for clearing, systemic risk and legal concerns. We support the proposal to require clearing agencies to discuss each of these considerations in a formal submission to the Commission.

AFR is concerned, however, that the proposed rule does not include enough requirements to ensure that the submissions on Form 19b-4 provide sufficiently detailed information about the swap under consideration. The proposed rule provides a variety of examples of disclosures that a clearing agency could be required to provide in fulfilling this requirement. For example, clearing agencies could be required to include copies of standard legal contracts, a discussion of how the clearing agency will meet the financial and operational obligations related to the swap it is proposing to clear, or an analysis of clearing agency risk management procedures.

We urge the Commission to require clearinghouses to include in Form 19b-4 all of the information that the proposed rule suggests that a clearing agency “could” include. The range of information discussed in the proposed rule appears to be essential information necessary for the SEC to efficiently and effectively determine whether the clearing agency should be allowed to clear the swap, or whether the swap should be required to clear.

An additional issue is that the disclosures the Commission would require clearing agencies to provide are focused on the prudence of a clearing agency’s proposal to clear new products. AFR believes that a clearing agencies’ decision not to clear a new product is just as important. We urge the Commission to add to the disclosure requirements information about a clearing agency’s decision not to clear a swap. Specifically, we urge the Commission to require clearing agencies to file submissions when the clearing agency rejects a class of swaps for clearing. These additional disclosures should also be publicly available. They will help ensure that one goal of Dodd-Frank, to ensure that all non-exempt swaps that a clearing agency can prudently clear are cleared, is met.

#### Timing Related to Security-Based Swap Submissions and Notice to Clearing Agency Members

The proposed rule states that the Commission will publish each Security-Based Swap Submission and make it available for public comment. Proposed Rule 19b-4 would require clearing agencies to make their submissions available to the public on their web sites. We support both of these proposals.

#### Prevention of Evasion of the Clearing Requirement

The Commission states that the broad definition of “clearing agency” under the Exchange

Act may provide opportunities for evasion of the clearing requirement under Dodd-Frank. The Exchange Act definition includes, not just clearing corporations, but “securities depositories” and “matching services” as well. We agree with the Commission’s statement that “other types of clearing functions and services offered by clearing agencies would not achieve the goal of central clearing contemplated under the Dodd-Frank Act – improving the management of counterparty risk.” AFR strongly supports proposed Rule 3Ca-2, which “would clarify the reference to ‘submits such security-based swap for clearing to a clearing agency’ in Exchange Act Section 3C(a)(1) to mean that the security-based swap must be submitted for central clearing to a clearing agency that functions as a CCP.”

### Security-Based Swap Submissions – Request For Comments

In its request for comments, the Commission asks:

“Should a clearing agency, in connection with each submission or in some circumstances, be required to include an independent validation of its margin methodology and its ability to maintain sufficient financial resource? Why or why not, or in which circumstances? If independent validation is required, how should the Commission assess the independence and technical expertise of the party providing the independent validation?”

An independent validator may be helpful in verifying elements of a submission. However, use of independent validators should not become a substitute for developing the internal capacity of the Commission to assess critical elements of the performance of a clearing agency. Setting proper margins and maintaining sufficient financial resources to insure that clearing is safe for participants is a core function of a clearing agency. Assessment of clearing agency core methodologies and financial stability should not be outsourced to a private for-profit entity.

It should also be noted that the Commission must pay careful attention to whether a private entity is genuinely independent when it is paid by a clearing agency to perform an external validation. The difficulties in this area were demonstrated during the financial crisis by the problems experienced with credit rating agencies, which were not genuinely independent of the issuers of the securities they rated.

Regular monitoring and oversight of the risk measurement methodologies and financial resources of clearing agencies should be used to ensure the Commission itself can properly assess new margin methodologies when they are proposed. In addition, as a member of the Financial Stability Oversight Council (FSOC), the Commission should draw on the information and technical expertise in other agencies, such as the Office of Financial Research in the Treasury Department and the prudential regulators in the Federal Reserve.

Regarding the mandated clearing of securities-based swaps, the Commission requests comments on whether:

“In a Commission-initiated review, should the Commission consider information that is different from the information the Commission has proposed for a clearing agency to provide in a Security-Based Swap Submission to enable the Commission to make a determination regarding a clearing requirement? If so, what information should be considered and why?”

Yes, the Commission should be able to consider information that is different from that provided by the clearing agency making the Security-Based Swap Submission. The Dodd-Frank legislation provides the Commission with a mandate to help ensure the stability of the financial system. By its nature, ensuring systemic stability may require information that comes from many different areas in the financial system and is beyond the purview of any single clearing agency. The Commission should be able to draw on information provided by the other member agencies in the FSOC in order to judge the implications of clearing for systemic stability.

As an example of why this might be necessary, recall that prior to the financial crisis no one entity understood the many ways in which the financial system had become dependent on credit default swaps (CDSs) for mortgage bonds. This dependence occurred across many different markets, instruments, and entities (e.g. CDSs were used to structure synthetic mortgage-backed securities that were then used as collateral in the interbank repo market). Dodd-Frank clearly envisions that regulators will work cooperatively through the FSOC to understand these interconnections and promote system-wide stability.

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 Commission has a responsibility to the American people to ensure that reckless derivative trading does not, once again, threaten the stability of the global financial system.

We, therefore, urge the Commission to require clearing agencies to disclose detailed information about the swap or class of swaps it proposes to clear – and also to require the submission of publicly available information regarding the reasons why the clearing organization rejects a given swap or class of swaps for clearing. In addition, AFR urges the Commission to include in the final rule the proposals that would allow for public comment on a clearing agency’s Security-Based Swap Submission and prevent evasion of the clearing requirement. Finally, AFR believes the Commission should avoid excessive dependence on private external validators for assessing the core elements in a Security-Based Swap submission, and should draw on the range of available data and technical expertise represented among the members of the Financial Stability Oversight Council (FSOC) in assessing the effects of clearing and performing market surveillance.

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.*

### **National Organizations**

- A New Way Forward
- AARP
- Accountable America
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Family Voices
- American Income Life Insurance
- Americans for Democratic Action, Inc.
- Americans for Fairness in Lending
- American Sustainable Business Council
- Americans United for Change
- Business for Shared Prosperity
- 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
- Community Law Center
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- Help Is On the Way, Inc
- HNMA Funding
- 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
- Keystone Research Center
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- The Leadership Conference on Civil and Human Rights
- MoveOn.org Political Action
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Investment Professionals
- National Association of Neighborhoods
- National Coalition for Asian Pacific American Community Development
- 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 Institute
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Council of Women's Organizations
- National Worksright Institute
- 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
- Responsible Endowments Coalition
- Sargent Shriver Center on Poverty Law
- Scam Victims United
- SEIU
- Sojourners
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Carrots and Sticks Project
- The Fuel Savers Club
- The Seminal
- UNET
- Union Plus
- United for a Fair Economy
- U.S. PIRG
- Unitarian Universalist for a Just Economic Community
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce
- We The People Now
- Western States Center

- Woodstock Institute
- Working America
- World Business Academy
- World Privacy Forum

### *State Organizations*

- 207 CCAG
- 9 to 5, the National Association of Working Women (CO)
- AARP Rhode Island
- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans for Responsible Lending
- Arkansas Community Organizations
- Arkansas Public Policy Panel
- Association for Neighborhood and Housing Development (NY)
- Audubon Partnership for Economic Development LDC (New York, NY)
- Aurora NAACP
- BAC Funding Consortium Inc. (Miami, FL)
- Beech Capital Venture Corporation (Philadelphia, PA)
- Bell Policy Center (CO)
- California PIRG
- California Reinvestment Coalition
- Center for Media and Democracy
- Center for NYC Neighborhoods
- 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)
- Club Change of Martin County (Florida)
- Coalition on Homeless Housing in Ohio
- Coffee Party of Pensacola, Florida
- Coffee Party of Union Square, New York City
- Colorado AFL-CIO
- Colorado Center on Law and Policy
- Colorado Immigrants Rights Coalition
- Colorado PIRG
- Colorado Spring NAACP
- Community Action of Nebraska
- Community Capital Development
- 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, AR)
- Connecticut Association for Human Services
- Connecticut Citizen Action Group
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (New York, NY)
- Cooperative Fund of New England (Wilmington, NC)
- Corporacion de Desarrollo Economico de Ceiba (Ceiba, PR)
- CWA 7777 (CO)
- 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 Enterprises, Inc. (Berea, KY)
- Fitness and Praise Youth Development, Inc. (Baton Rouge, LA)
- Florida Consumer Action Network
- Florida PIRG
- Forward Community Investments (Madison, WI)
- Funding Partners for Housing Solutions (Ft. Collins, CO)
- Georgia PIRG
- Grow Iowa Foundation (Greenfield, IA)
- Homewise, Inc. (Santa Fe, NM)
- Humanitas Community Development Corporation
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Idaho Nevada CDFI (Pocatello, ID)
- Illinois PIRG
- Impact Capital (Seattle, WA)
- Indiana PIRG
- Indiana University PIRG
- Information Press (CA)
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc. (Mayville, NY)
- Keystone Research Center
- 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
- Massachusetts Fair Housing Center
- MASSPIRG
- 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
- Montana Community Development Corporation (Missoula, MT)
- Montana PIRG
- Mortgage Recovery Service Center of L.A.
- 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
- Next Step (MN)
- NOAH Community Development Fund, Inc. (Boston, MA)
- Nonprofit Finance Fund (New York, NY)
- Nonprofits Assistance Fund (Minneapolis, MN)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northern Community Investment Corporation (St. Johnsbury, VT)
- Northside Community Development Fund (Pittsburgh, PA)
- Ohio Capital Corporation for Housing (Columbus, OH)
- Ohio PIRG
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance (Charlottesville, VA)
- Rhode Island PIRG
- Rights for All People

- The Rocky Mountain Peace and Justice Center
- Rural Community Assistance Corporation (West Sacramento, CA)
- Rural Organizing Project OR
- San Francisco Metropolitan Transportation Authority
- Seattle Economic Development Fund dba Community Capital Development
- SEIU Local 105 (Colorado)
- SEIU Rhode Island
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia, AR)
- TexPIRG
- The Association for Housing and Neighborhood Development
- The Fair Housing Council of Central New York
- The Help Network
- The Loan Fund (Albuquerque, NM)
- Third Reconstruction Institute (NC)
- V-Family, Inc.
- Vermont PIRG
- Village Capital Corporation (Cleveland, OH)
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty – Florida
- Washington Community Action Network
- WashPIRG
- Westchester Residential Opportunities Inc. NY
- Wigamig Owners Loan Fund, Inc. (Lac du Flambeau, WI)
- WISPIRG

***Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Env. Planning
- Hayden & Craig, PLLC\
- The Holographic Repatterning Institute at Austin
- Mid City Animal Hospital (Phoenix, AZ)
- UNET