Consumer Federation of America

June 2, 2015

Re: Oppose H.R. 2289

Dear Representative,

We are writing on behalf of the Consumer Federation of America (CFA)[1] to ask you to oppose "The Commodity End User Relief Act" (H.R. 2289), which the House is expected to vote on this month. This legislation would hamstring the Commodity Futures Trading Commission (CFTC) from effectively overseeing and regulating commodities and derivatives markets, leaving consumers exposed to fraud, manipulation, and abusive practices, and putting the safety and stability of the U.S. financial system at risk. The language in this bill largely mirrors the language offered in last year's CFTC reauthorization bill, which the Obama Administration strongly opposed because it undermined the efficient functioning of the CFTC and offered no solution to address the persistent inadequacy of the agency's funding. We urge you to resist this relentless attack on the CFTC by voting against this misguided and harmful legislation.

First, this bill would impose an assortment of new, onerous cost-benefit analysis requirements on the CFTC which are likely to delay and obstruct agency action. Under the Commodity Exchange Act, the CFTC already has a statutory mandate to evaluate the costs and benefits of its actions in light of numerous considerations, including the protection of market participants and the public, efficiency, competitiveness, financial integrity, price discovery, and sound risk management practices. This bill would add seven new considerations for the CFTC to undertake. Included in the new economic analysis regime is a requirement for the Commission to assess available alternatives to direct regulation and to determine whether, in choosing among alternative regulatory approaches, those alternatives to direct regulation maximize the net benefits. The practical effect is a further tilting of the regulatory process in favor of adopting an approach that best benefits industry rather than the public.

Essentially, if this bill is adopted, the CFTC will be required to undertake an in-depth, burdensome economic analysis for each regulation it proposes and compare its proposal to every conceivable alternative. Such a framework likely will create insurmountable barriers that cripple the agency from putting forth rule proposals and finalizing them in a timely manner so as to effectively protect market participants and the overall economy. In addition, the CFTC would be required to evaluate the cost to the Commission of implementing the proposed action, including providing a methodology for quantifying the costs. While this provision is clumsily worded, it appears that the practical effect of requiring the CFTC to consider costs to itself and its staff will be to paradoxically add time and costs to the cost side of the equation, thereby hindering rulemaking. It is also disturbing that this legislation would require the CFTC to undertake exhaustive cost-benefit analyses without providing the agency with the necessary resources to fulfill those obligations.

The new cost-benefit analysis requirements also are likely to result in increasing opportunities to thwart CFTC regulations through legal challenges. The practical effect of the new heightened requirements will be that any time an industry participant objects to new rules, it will have several new bases for a lawsuit, and it will seek to defeat those rules by claiming that the agency did not undertake a proper

[1] CFA is a non-profit association of nearly 300 national, state, and local pro-consumer organizations. It was formed in 1968 to represent the consumer interest through research, advocacy and education.

economic analysis by considering, and then disposing of, all the possible theoretical alternatives. It is reasonable to believe that armed with such strong ammunition, industry-supported lawsuits seeking to dismantle any new regulations will be successful, a problem again made worse by the agency's lack of funding to effectively defend against such suits.

This legislation also subverts the CFTC's authority to regulate foreign derivatives activities that have a direct and significant effect on U.S. commerce. As our nation has learned painfully and repeatedly from the collapses of Long Term Capital Management, AIG, and Lehman Bros., and from the JPMorgan London Whale trading debacle, even when derivatives contracts are booked through a foreign subsidiary of a U.S. financial institution, the risks of those derivatives often flow back to the United States, threatening the U.S. economy and potentially putting U.S. taxpayers on the hook for any resulting losses. That is why Dodd-Frank gave the CFTC broad authority to regulate overseas derivatives when they put our national economic interests in peril.

Pursuant to that cross-border framework, the CFTC allows a foreign host country's regulations to substitute for U.S. regulations *only after* the CFTC has made a finding that the foreign host country's regulations are comparable to U.S. rules. However, this bill would create a presumption that each of the eight foreign jurisdictions with the largest swaps markets automatically have swaps rules that are considered to be comparable to and as comprehensive as U.S. swaps requirements. The bill makes this determination despite the fact that the CFTC has found only six jurisdictions to be comparable for certain entity-level requirements, and has declined to make comparability determinations for transaction-level requirements for jurisdictions other than the European Union and Japan. Switching the presumption will subjugate the CFTC's authority and expertise on the matter. Furthermore, combining the reversed presumption and overwhelming cost-benefit analysis requirements could mean that the CFTC is effectively thwarted from applying the appropriate regulatory safeguards to certain foreign derivatives transactions. As a result, the CFTC's ability to protect the U.S. economy from the dangers resulting from foreign derivatives transactions could be impaired.

Derivatives markets affect the U.S. economy in profound ways, and the risks that derivatives pose to the U.S. economy are well-known. The Dodd-Frank Act brought meaningful reforms to increase transparency and accountability in the derivatives markets and provided the CFTC the necessary authority to properly oversee and regulate the market. However, this legislation would put those reforms at risk and hamper the CFTC's ability to adequately protect consumers, market participants, and the U.S. economy. We cannot afford to suffer the grave consequences of another derivatives-laced financial crisis, but this legislation makes it more likely that we will. Accordingly, we urge you to oppose H.R. 2289.

Sincerely,

Micah Hauptman

Micah Hauptman
Financial Services Counsel

Barbara Roper

Barbara Roper
Director of Investor Protection