



New  
Democrat  
Coalition

Rep. Joseph Crowley, Chair  
Rep. Melissa Bean, Vice-Chair  
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Rep. Allyson Schwartz, Vice-Chair  
Rep. Adam Smith, Vice-Chair

June 16, 2010

The Honorable Barney Frank  
Chairman  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Spencer Bachus  
Ranking Member  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Chris Dodd  
Chairman  
Committee on Banking,  
Housing and Urban Development  
534 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Shelby  
Ranking Member  
Committee on Banking,  
Housing and Urban Development  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairmen, Ranking Members and Members of the Conference Committee:

As members of the New Democrat Coalition, we urge the House and Senate conferees to address several priority issues as you finalize much needed regulatory reforms for our financial sector. The New Dems have been at the forefront of calling for an overhaul of our nation's financial regulatory structure. We have advocated for reforms that will provide unprecedented new consumer and investor protections, end taxpayer bailouts, reduce systemic risks to our financial markets, and promote transparency and accountability through robust regulatory oversight of derivatives.

As the House and Senate work to reconcile the differences between our two approaches, the New Dems believe that the final bill should include the following provisions from the House-passed bill, which will provide strong protections for consumers, investors and taxpayers:

#### **ESTABLISHING AN INDEPENDENT CONSUMER FINANCIAL PROTECTION AGENCY**

The House took a critical step to empower and protect consumers by creating a new independent Consumer Financial Protection Agency. For too long, fragmented oversight has enticed some financial institutions to create products that evaded regulation and took advantage of consumers. By streamlining and consolidating financial product regulation, we can crack down on fraud and manipulation and help restore public confidence in the financial sector.

#### **PROTECTING TAXPAYERS THROUGH DISSOLUTION AUTHORITY**

Congress must ensure that taxpayers will never again be on the hook for bailing out large financial institutions, because a chaotic collapse of these large companies would wreak havoc across the entire financial system, as the collapse of Lehman Brothers did. For this reason, the House adopted Systemic Dissolution Authority that would manage the collapse while avoiding a taxpayer bailout. This authority would dismantle a failing institution that poses a systemic risk in an orderly manner, akin to the way the FDIC currently unwinds failing banks. While we hope this authority will never be used, it would empower regulators to first use a company's assets to shut down a failing institution – firing corporate

executives and wiping out shareholders – and then protect taxpayer dollars by using money from the financial industry, obtained through pre-funded risk-based assessments on systemically significant institutions (in contrast, the Senate bill would put Treasury in the position of borrowing money as needed while unwinding failing firms and later recouping those funds from the financial industry). While we support inclusion of a pre-funded assessment, we are encouraged by the study and authorization for a contingent capital regime contained in the bill’s base text. We believe this regime, once adequately studied and implemented, can serve as an effective bulwark against future systemic failure while adequately funding any dissolution should it be required.

## **PRESERVE END USERS’ ABILITY TO MANAGE RISKS AND REDUCE CONSUMER COSTS**

The New Dems worked to craft legislation that dramatically increases oversight, accountability and transparency in the derivatives market, where the inability of regulators and the private sector to evaluate existing risks exacerbated the financial crisis. The House bill contained strong provisions requiring all derivatives – without exception – to be cleared through clearinghouses, traded on public exchanges, and/or reported. These provisions are essential because they will allow regulators to demand that companies like AIG post adequate capital reserves and margins on risky trades in a fully transparent manner. They will also ensure that the risk of failure in these contracts will be mutualized among the companies that engage in them, not the taxpayers.

The House also provided clear protections for end users who pose no risk to the stability of the financial system so they may continue to use derivatives to prudently manage their risks. Whether they are being used by a rural electric cooperative looking to hedge against spikes in energy inputs, an airline protecting itself from rising fuel costs, or a community bank guarding against interest rate fluctuations for loans, derivatives play an important role in reducing risk in our commercial sector, and keeping prices stable and low for consumers. We believe that the end user provisions should reflect the intent of the Murphy-McMahon-Kratovil Amendment to H.R. 4173, which received 304 votes on the House floor and which focuses the definitions of Major Swap Participant and Major Security-Based Swap Participant on the risk of outstanding net exposures and the consideration of an institution’s relative position in uncleared swaps.

We are also concerned that the Senate-passed definition of “financial entity” would significantly limit the ability of many legitimate commercial end users to finance their operations, because of their existing captive finance facilities or their controlling ownership structures. These restrictions would unduly penalize some small community banks and captive finance divisions for U.S. manufacturers in a way that would undermine sound risk management. Also, while the Senate language does provide regulators with a more effective framework to address any conflicts of interest in the ownership of exchanges, clearinghouses and trade execution facilities, it does not provide a workable definition for a trade execution facility or appropriate direction to the regulators that will allow them to evaluate the impact of exchange trading or clearing on market liquidity and the flow of credit in our capital markets – both critical elements in the House legislation necessary to protect economic growth among end users.

## **ELIMINATING RISKY TRADING PRACTICES AND STRENGTHENING FINANCIAL STABILITY**

A great deal of recent attention has focused on the Senate provision known as the “Volcker Rule,” first proposed by former Federal Reserve Chairman Paul Volcker, which would place restrictions on risky transactions for institutions with access to public assistance such as the Federal Reserve’s discount window. While the Volcker Rule had not taken its current form during the House regulatory reform debate, we agree with the principle that taxpayers should not subsidize risky financial behavior in

systemically significant institutions, and we support efforts to separate proprietary trading from commercial banking activities. We also agree with Chairman Volcker that banks must still be allowed to facilitate trades made in connection with client requests and risk management practices, as well as maintain their traditional role as asset managers for fee-based business ventures, which provide counter-cyclical balance during financial downturns. Furthermore, we believe clarification is needed to ensure regulated insurance companies (and their regulated affiliates) that are subject to state insurance investment laws are not prohibited from continuing all permitted investment operations (including limited equity investment) necessary to satisfy claim obligations to policyholders and other core business activities.

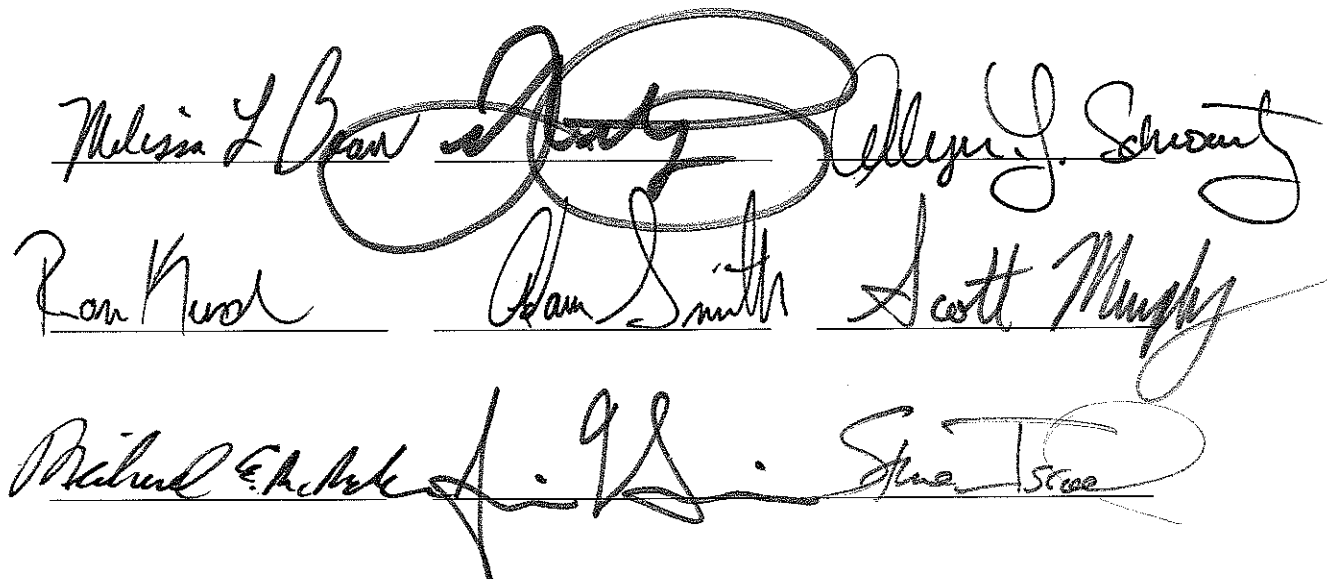
Similarly, we agree with leading regulators and Administration officials, including former Chairman Volcker and current Federal Reserve Chairman Ben S. Bernanke, Treasury Secretary Timothy F. Geithner, SEC Chairwoman Mary L. Schapiro and FDIC Chairwoman Sheila C. Bair, who have all expressed opposition to Senate Section 716 – also known as the “swaps desk spinoff” – that would increase systemic risk by forcing derivatives transactions into less regulated and less capitalized institutions and impede effective regulatory oversight of the derivatives markets. Legitimate conflict of interest concerns are addressed by the ban on proprietary trading in the Volcker Rule, and, accordingly, we believe Section 716 should be removed from the legislation.

### **PROTECT THE ABILITY OF STATES, CITIES AND PENSION FUNDS TO ACCESS SWAPS**

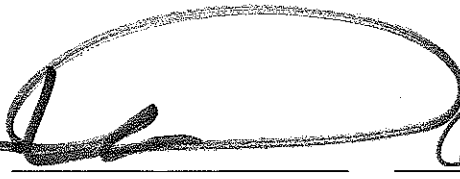
The Senate bill includes language establishing a “fiduciary” relationship between swap dealers and the states, cities and pension funds with whom they contract in swaps. While intended to protect these public entities from fraud and deceptive practices, this provision will impair the ability of these entities to manage risk and issue bonds, and therefore should be eliminated. The House legislation requires municipalities to retain financial advisors who have a fiduciary duty to the municipalities, and these provisions are similar to standards already in effect for pension funds under ERISA. The House language, which complements the provisions in ERISA, is a more effective way of protecting these entities from unfair business practices.

Thank you for your attention to these critical issues. The New Democrat Coalition stands ready to work with you to enact strong reforms that will put our nation’s economy back on track, ensure long-term economic stability and prevent future risks to our financial system.

Sincerely,



Handwritten signatures of several individuals, including Melissa L. Bean, Andy Schramm, Ron Hood, Dan Smith, Scott Murphy, and Michael E. ...



Jane Ham  Casey McAtey


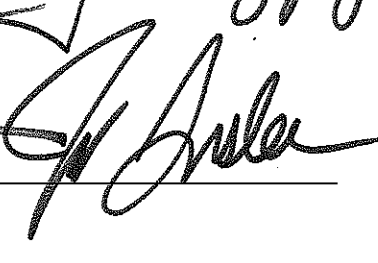
Brig Brin  Ana Delle Jim Moran

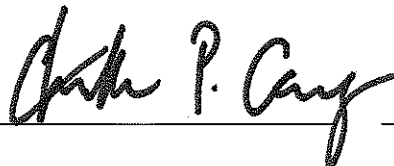
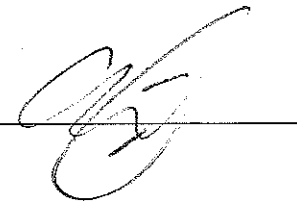
Eliot I. Engel  Kandi Blee Joe Sexton

Michael C. Li  Debbie Wasserman Schultz  Neil Zeman

Sybil M Thomas  Jason Altman

 Frank R. Lautenberg 

 Frank Lautenberg  Ron Klein

Jared Polis  P. Cruz 

 Robert H. Dutton  Davis

Jiffards Barry Belcher Ann Carnahan

Don McPhee Debbie Halverson Pat Elly

Bill Foster Loretta Sanchez