House Committee on Financial Services
Subcommittee on Capital Markets and Government Sponsored Enterprises

Hearing on "The Swap Data Repository and Clearinghouse Indemnification Correction Act of 2012"

Donald F. Donahue
President and Chief Executive Officer
The Depository Trust & Clearing Corporation

March 21, 2012

Chairman Garrett and Ranking Member Waters,

Thank you for scheduling today's hearing on Congressmen Dold and Moore's bipartisan legislation to address the indemnification provisions and modify the confidentiality requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). I appreciate the opportunity to testify and bring greater attention to the unintended consequences of provisions that have the potential to fragment the current global data set for over-the-counter (OTC) derivatives and derail efforts to increase transparency and help regulators mitigate risk in this marketplace.

Over the past year, DTCC, among others, has been raising concerns over the impact of the DFA's broad extraterritorial reach, particularly as it relates to the confidentiality of market data and the indemnification agreement provisions of the law. These concerns have been echoed by regulatory officials and policymakers globally, including by representatives of the European Parliament, European Commission and Council, by Asian governments and by both Republican and Democratic Members of the U.S. Congress.

This Subcommittee's leadership is vital as there is a clear need to shine a light on these technical provisions of the DFA – provisions that, if not addressed, risk decreasing the current level of transparency into OTC derivatives markets. Having a bipartisan group of Members in both the House and Senate recognize the unintended consequences of these provisions and commit to working within Congress and with policymakers internationally to develop a mutually agreeable resolution is very promising.

Two Important DFA Extraterritorial Provisions Require Congressional Action
The two key extraterritorial provisions in the DFA that risk fragmenting global swap data are the confidentiality and indemnification provisions and the so-called "plenary access" duties imposed on swap data repositories (SDRs). These issues merit further examination by Congress and require legislative resolution.

First, Sections 728 and 763 of the DFA require SDRs registered with the Commodity Futures Trading Commission (CFTC) or Securities and Exchange Commission (SEC) to receive a written agreement from "third-party" non-U.S. regulators confirming that the supervisory agency requesting the information will abide by certain confidentiality requirements and indemnify the SDR and the regulating U.S. Commission(s) for any expenses arising from litigation relating to the information.

Second, the duties imposed on a registered SDR – both with the CFTC and the SEC – require, among other things, that the SDR provide "direct electronic access to the Commission (or any designee of the Commission, including another registered entity)." The phrase "direct electronic access" has been identified to us by non-US regulators as problematic because it creates an unnecessary degree of ambiguity and may be interpreted by the regulatory agencies and others as a requirement that a registered SDR must provide access to all swap data retained by the SDR – even when that SDR might maintain swap data for transactions with no identifiable nexus to U.S. regulation.

The concern that a U.S. regulator might demand data that falls wholly outside its jurisdiction as part of its "direct electronic access," coupled with the lack of clear extraterritorial guidance from the CFTC and the SEC, would functionally prevent non-U.S. SDRs from registering in the United States. If this occurs, swap data would splinter across jurisdictions and frustrate regulators' abilities to monitor global systemic risk.

Plenary Access & Indemnification in Dodd-Frank: Solving a Problem That Does Not Exist

The original indemnification and plenary access provisions, while well-intended, are unworkable as currently drafted and threaten to undo the existing system for data sharing that was developed through the cooperative efforts of more than 40 regulators worldwide under the auspices of the OTC Derivatives Regulators' Forum (ODRF) and, more recently by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS IOSCO).

For nearly two years, regulators globally have followed these guidelines to access the information they need for systemic risk oversight. It is the standard that DTCC uses to provide regulators around the world with access to global credit default swap (CDS) data that is held in its Trade Information Warehouse (TIW). It is accurate to say that the plenary access and indemnification provisions attempt to solve a problem that does *not* exist – and, in doing so, create several new problems that heretofore did not exist.

Asian and European regulators have identified indemnification and plenary access as among the most troubling extraterritorial provisions of the DFA because of their potential to fragment the current global data set for OTC derivatives. They recognize, as do many Members of the House and Senate here in the United States, that these provisions would reduce the level of transparency that currently exists in these markets.

In an effort to avoid unintended consequences, European policymakers specifically considered and rejected an identical indemnification requirement in the European Market Infrastructure Regulation (EMIR), opting instead for a policy based on the principle of "reciprocal equivalence." In Asia, the Monetary Authority of Singapore has aligned its regulations with the Europeans in this area and Japan expects its draft regulations, due in a few days, to be similarly aligned. However, policymakers in Hong Kong have begun to move forward with developing a national repository for its swap data.

Indemnification Would Fragment the Global Data Set and Impede Regulatory Oversight
It is highly unlikely third-party regulators will comply with the DFA requirement that they must provide an indemnification in order for U.S.-registered SDRs to share critical market data with them for two primary reasons.

First, the concept of indemnification is based on U.S. tort law and, therefore, inconsistent with many of the traditions and legal structures in other parts of the world. Many regulators worldwide have indicated that they would be unable or unwilling to provide an indemnity agreement to a private third party as required under the DFA. Second, these same regulators have noted that they are already following policies and procedures to safeguard and share data based on both the ODRF and recently adopted International Organization of Securities Commissions (IOSCO) guidelines.

Without an indemnity agreement, U.S.-based repositories may be legally precluded from providing regulators outside the U.S. with market data on transactions that are under their jurisdiction. The clear risk is that global supervisors will have no viable option other than to create local repositories to avoid indemnification—a move that is the definition of data fragmentation. While each jurisdiction would have an SDR for its local information, it would be extremely difficult and time consuming to effectively share information between regulators.

A proliferation of local repositories would undermine the ability of regulators to obtain a comprehensive and unfragmented view of the global marketplace. If a regulator can only "see" data from the SDR in its jurisdiction, then that regulator cannot get a fully aggregated and netted position of the entire market as a whole. And if a regulator cannot see the whole market, then the regulator cannot see risk building up in the system or provide adequate market surveillance and oversight. In short, regulators will be blind to the market conditions as a direct result of the indemnification provision. In the name of transparency, this provision creates opacity.

The CFTC and the SEC have carefully reviewed the impact of the indemnification provision and in a joint report concluded, "Congress may determine that a legislative amendment to the indemnification provision is appropriate."

Plenary Access: Congress Needs to Clarify Intent of Statute and Rules
The concept of "plenary access" was intended to ensure that U.S. authorities have appropriate access to an SDR registered in their jurisdiction for direct oversight. Direct oversight is necessary to ensure thorough examination of the SDR's operations, guaranteeing the completeness and accuracy of the data published by the SDR. This type of access, which could more easily be achieved by imposing a statutory books and records obligation related to the operation of the SDR, is distinct from that required by non-supervisory regulators who rely upon the SDR's data for systemic risk oversight. The level of access to an SDR's data should reflect the purpose for which a regulator seeks to review the SDR's information.

The DFA rules proposed and adopted by the CFTC and SEC are helpful, but they do not adequately address this problem. The concern remains that it can be interpreted too broadly, giving U.S. regulators access to data in which a U.S. nexus does not exist. Congress should seriously consider and assist in finding an appropriate solution that clarifies that U.S. regulators may access the swap data of its registrant SDRs only to the extent necessary to perform its oversight and surveillance responsibilities or to regulate the operation of the SDR.

Without clarifying language in the law, it is likely that non-U.S. financial firms executing transactions without a U.S. nexus would avoid reporting their trade data to a U.S.-registered SDR. Much like indemnification, plenary access would fragment swap transaction data across countless repositories that reside around the world, frustrating systemic risk oversight efforts. DTCC has analyzed potential methods to resolve this complicated issue, and remains ready and willing to assist legislators in fashioning a remedy to ensure regulators can access the information that they need.

Within the context of considering legislation that would repeal the indemnification provisions, addressing the concerns over plenary access would compliment these efforts and help create a framework for global swaps data that is accessible to regulators in the United States and around the world.

Indemnification and Plenary Access: A Case Study

To illustrate the combined impact of indemnification and plenary access and underscore why it has emerged as a major source of concern for regulators worldwide, let's examine the case of two British banks executing a CDS trade in the U.K. involving a British underlying entity. Under the plenary access provision, if the trade was reported to a U.K.-based but U.S.-registered SDR, U.S. regulators could claim, as the regulator of the SDR, a legal right to view data on this transaction – even though the U.S. SDR regulator has no material interest in the counterparties, the transaction, or the underlying entity (as opposed to a prudential regulator seeking data for market oversight purposes). To compound the situation, the indemnification provision would require the British regulator to indemnify the U.S.-registered SDR in order to access this same data – despite the fact that the entirety of the trade falls within the British regulator's jurisdiction.

Just as a U.S. regulator would not be inclined to have sensitive data on U.S. trades available to non-U.S. supervisors – or, for that matter, have to provide indemnity to access data that is rightly theirs to view – regulators globally consider this extraterritorial reach inappropriate and inconsistent with widely established and agreed upon data sharing practices.

In contrast, under both the current ODRF guidelines and the recently adopted IOSCO regimes that have served regulators and the markets well, supervisors are provisioned to access data where there is a nexus to the jurisdiction or entity. Therefore, US regulators can view data where there is a U.S. nexus and, equally, British regulators can view data with a U.K. nexus. And in no case is an indemnification agreement needed before access to data is provided.

"Swap Data Information Sharing Act of 2012": A Potential Legislative Solution

The *Swap Data Information Sharing Act of 2012* would make U.S. law consistent with existing international protocols by removing the indemnification provisions from sections 728 and 763 of the DFA. DTCC strongly supports this legislation, which represents the only viable solution to the unintended consequences of indemnification.

The *Swap Data Information Sharing Act of 2012* is necessary because the statutory language in the DFA leaves little room for regulators to act without U.S. Congressional intervention. This point was reinforced in the recent CFTC/SEC *Joint Report on International Swap Regulation*. The Report noted that the Commissions "are working to develop solutions that provide access to foreign regulators in a manner consistent with the DFA and to ensure access to foreign-based information." It goes on to say, as noted earlier, "Congress may determine that a legislative amendment to the indemnification provision is appropriate."

This bill would send a strong message to the international community that the United States is strongly committed to global data sharing and determined to avoid fragmenting the current global data set for OTC derivatives.

However, resolving indemnification without addressing plenary access leaves open the likelihood that global swap data will be fragmented by jurisdiction. The two pieces must be dealt with together. Resolving one without the other does not diminish the likelihood of data fragmentation occurring. While this legislation is a strong step in the right direction, it is one of two key technical corrections that is required to ensure regulators continue to have the highest degree of transparency into OTC derivatives markets.

Congress needs to address the issue of plenary access by simply and clearly clarifying the intent of the statue and reinforcing that access to data is limited to only those records in which the regulator has a material interest. Under the attached suggested amendment, which would add the so-called "books and records" provision to the law, regulators in the U.S. would continue to have full and complete access to any and all data to which there is a U.S. nexus. This would align U.S. policy with the current global data sharing standards that have been in place since 2010 and which have provided regulators with all of the information needed to oversee market participants and activity in their jurisdiction.

By amending and passing this legislation to ensure that technical corrections to both indemnification and plenary access are addressed, Congress will help create the proper environment for the development of a global trade repository system to support systemic risk management and oversight.

Bipartisan, Bicameral Congressional Support for Resolving Indemnification

As the unintended consequences of the indemnification provisions have been brought to light, there is bicameral, bipartisan support to resolve this issue. For example, Senator Agriculture Committee Chairwoman Debbie Stabenow (D-MI) and Ranking Member Pat Roberts (R-KS), and House Appropriations Agriculture Subcommittee Congressman Jack Kingston (R-GA) and Ranking Member Sam Farr (D-CA), authored separate letters last year to their counterparts in the European Parliament expressing interest in working together on a solution to the issue.

In addition, several other Members of Congress have also publicly declared their support for a technical correction to the provision. As CFTC Chairman Gary Gensler indicated in testimony to this Committee in June 2011, both he and SEC Chairman Schapiro have written to European Commissioner Michel Barnier regarding the indemnification provisions of the DFA and are currently engaged in efforts to find a solution to the challenges of this section.

DTCC Has Deep Experience Operating Global Trade Repositories

DTCC currently operates two subsidiaries specifically responsible for providing repository services to the global derivatives community: the TIW operated by The Warehouse Trust Company LLC for credit derivatives, a U.S. regulated entity; and DTCC Derivatives Repository Limited (DDRL) for equity derivatives, a U.K. regulated entity.

In response to the G20 commitments made at the September 2009 Pittsburgh Summit, the Financial Stability Board (FSB) Report on OTC Derivatives Market Reform, and forthcoming statutory legislation in various jurisdictions, the international financial community recently selected DTCC's DDRL entity to provide global repository services for interest rates and FX swaps. DTCC also was selected to operate the commodities repository (together with the European Federation of Energy Traders) under its newly established Netherlands entity, Global Trade Repository for Commodities B.V.

DTCC is working closely with global partners and asset class experts to design repositories to meet the regulatory reporting requirements identified in the respective regional or national jurisdictions. DTCC has completed its first phase of creating and operating the new Global Trade Repository for Interest Rates (GTR for Rates) and Commodities (GTR for Commodities). The GTR for Rates recently began regulatory test reporting. DTCC is currently in discussions with industry and regulatory authorities, developing consensus on the right framework for the GTR for Commodities' reporting.

DTCC has extensive experience operating as a trade repository and meeting transparency needs. In November 2008, in response to mounting concerns and speculation regarding the size of the CDS market following the collapse of Lehman Brothers, DTCC began public aggregate reporting of the CDS open position inventory. Today, this reporting includes open positions and volume turnover, providing aggregate information that is extremely beneficial to both the public and regulators in understanding the size of the market and activity.

Further, following the ODRF data access guidelines for the TIW, DTCC launched a regulatory portal in February 2011, which provides automated counterparty exposure reports and query capability for market and prudential supervisors and transaction data for central banks with aggregate report views by currency and concentration. Nearly 40 regulators world-wide have signed up to the portal. DTCC plans to expand on this portal as it launches its global trade repository services for the other asset classes.

Thank you for your time and attention this afternoon. I am happy to answer any questions that you may have.

TESTIMONY OF GARY GENSLER

CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION

BEFORE THE

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES

WASHINGTON, DC

June 16, 2011

Good morning Chairman Bachus, Ranking Member Frank and members of the Committee. I thank you for inviting me to today's hearing on the international context of financial regulatory reform. I also thank my fellow Commissioners and CFTC staff for their hard work and commitment on implementing the legislation.

I am pleased to testify alongside my fellow regulators.

Global Crisis

It has now been more than two years since the financial crisis, when both the financial system and the financial regulatory system failed. So many people – not just in the United States, but throughout the world – who never had any connection to derivatives or exotic financial contracts had their lives hurt by the risks taken by financial actors. The effects of the crisis remain. All over the world, we still have high unemployment, homes that are worth less than their mortgages and pension funds that have not regained the value they had before the crisis. We still have significant uncertainty in the financial system.

Though the crisis had many causes, it is clear that the swaps market played a central role. Swaps added leverage to the financial system with more risk being backed up by less capital. They contributed, particularly through credit default swaps, to the bubble in the housing market and helped to accelerate the financial crisis. They contributed to a system where large financial institutions were thought to be not only too big to fail, but too interconnected to fail. Swaps – initially developed to help manage and lower risk – actually concentrated and heightened risk in the economy and to the public.

At the conclusion of the September 2009 G-20 summit held in Pittsburgh, leaders of 19 nations and the European Union concurred that "[a]ll standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."

We now are working across borders to achieve that goal.

Derivatives Markets

Each part of our nation's economy relies on a well-functioning derivatives marketplace. The derivatives market – including both the historically regulated futures market and the heretofore unregulated swaps market – is essential so that producers, merchants and other end-users can manage their risks and lock in prices for the future. Derivatives help these entities focus on what they know best – innovation, investment and producing goods and services – while finding others in a marketplace willing to bear the uncertain risks of changes in prices or rates.

With notional values of approximately $300 trillion in the United States – that's more than $20 of swaps for every dollar of goods and services produced in the U.S. economy – and approximately $600 trillion worldwide, derivatives markets must work for the benefit of the public. Members of the public keep their savings with banks and pension funds that use swaps to manage their interest rate risks. The public buys gasoline and groceries from companies that rely upon futures and swaps to hedge their commodity price risks.

That's why international oversight must ensure that these markets function with integrity, transparency, openness and competition, free from fraud, manipulation and other abuses. Though the CFTC is not a price-setting agency, recent volatility in prices for basic commodities – agricultural and energy – are very real reminders of the need for common sense rules in the derivatives markets.

International Coordination

To address changes in the derivatives markets as well as the real weaknesses in swaps market oversight exposed by the financial crisis, the CFTC is working to implement the Dodd-

Frank Wall Street Reform and Consumer Protection Act's derivatives oversight reforms. Our international counterparts also are working to implement reform.

Japan has acted and is now working to implement its reforms. In September of last year, the European Commission (E.C.) released its swaps proposal. The European Council and the European Parliament are now considering the proposal. Asian nations, as well as Canada, also are working on their reform packages.

As we work to implement the derivatives reforms in the Dodd-Frank Act, we are actively coordinating with international regulators to promote robust and consistent standards and avoid conflicting requirements in swaps oversight. The Commission participates in numerous international working groups regarding swaps, including the International Organization of Securities Commissions Task Force on OTC Derivatives, which the CFTC co-chairs with the Securities and Exchange Commission (SEC). The CFTC, SEC, European Commission and European Securities Market Authority are intensifying discussions through a technical working group.

As we do with domestic regulators, we are sharing many of our memos, term sheets and draft work product with international regulators. We have been consulting directly and sharing documentation with the European Commission, the European Central Bank, the UK Financial Services Authority, the new European Securities and Markets Authority, the Japanese Financial Services authority and regulators in Canada, France, Germany and Switzerland. Two weeks ago, I met with Michel Barnier, the European Commissioner for Internal Market and Services, to discuss ensuring consistency in swaps market regulation.

The Dodd-Frank Act recognizes that the swaps market is global and interconnected. It gives the CFTC the flexibility to recognize foreign regulatory frameworks that are comprehensive and comparable to U.S. oversight of the swaps markets in certain areas. In addition, we have a long history of recognition regarding foreign participants that are comparably regulated by a home country regulator. The CFTC enters into arrangements with our international counterparts for access to information and cooperative oversight. We have signed memoranda of understanding with regulators in Europe, North America and Asia.

Furthermore, Section 722(d) of the Dodd-Frank Act states that the provisions of the Act relating to swaps shall not apply to activities outside the U.S. unless those activities have "a direct and significant connection with activities in, or effect on, commerce" of the U.S. We are developing a plan for application of 722(d) and expect to receive public input on that plan.

I will highlight a few broad areas where both regulators in the U.S. and regulators abroad are implementing swaps oversight reform.

Broadening the Scope

Foremost, the Dodd-Frank Act broadened the scope of oversight. The CFTC and the SEC will, for the first time, have oversight of the swaps and security-based swaps markets. The

CFTC's remit is growing from a marketplace that has a notional value of approximately $40 trillion to one with a notional value of approximately $300 trillion.

Similar to the Dodd-Frank Act, the European Commission's proposal covers the entire product suite, including interest rate swaps, currency swaps, commodity swaps, equity swaps and credit default swaps. It is important that all standardized swaps are subject to mandatory central clearing. We are working with our counterparts in Europe to make sure that all swaps, whether bilateral or traded on platforms, are subject to such mandatory clearing.

Centralized Clearing

Another key reform of the Dodd-Frank Act is to lower interconnectedness in the swaps markets by requiring standardized swaps between financial institutions to be brought to central clearing. This interconnectedness was, in part, the reason for the $180 billion bailout of AIG.

Clearing is another area where the Dodd-Frank Act and the E.C.'s proposal generally are consistent. In both cases, financial entities, such as swap dealers, hedge funds and insurance companies, will be required to use clearinghouses when entering into standardized swap transactions with other financial entities. Non-financial end-users that are using swaps to hedge or mitigate commercial risk, however, will be able to choose whether or not to bring their swaps to clearinghouses.

Capital and Margin

The Dodd-Frank Act includes both capital and margin requirements for swap dealers to lower risk to the economy. Capital requirements, usually computed quarterly, help protect the public by lowering the risk of a dealer's failure. Margin requirements, usually paid daily, help protect dealers and their counterparties in volatile markets or if either of them defaults. Both are important tools to lower risk in the swaps markets.

The Dodd-Frank Act authorizes bank regulators, the CFTC and the SEC to set both capital and margin "to offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared."

In Europe, Basel III includes capital requirements for swap dealers. The E.C.'s swaps proposal includes margin requirements for uncleared swaps to lower the risk that a dealer's failure could cascade through its counterparties.

Data Reporting

The Dodd-Frank Act includes robust recordkeeping and reporting requirements for all swaps transactions. It is important that all swaps – both on-exchange and off – be reported to data repositories so that regulators can have a window into the risks posed in the system and can police the markets for fraud, manipulation and other abuses.

There is broad international consensus on the need for data reporting on swaps transactions. The E.C. proposal includes similar requirements to the Dodd-Frank Act's requirements. Regulators in Japan, Hong Kong and China also have indicated the need for reporting of swaps data.

Business Conduct Standards

The Dodd-Frank Act explicitly authorizes regulators to write business conduct standards to lower risk and promote market integrity. The E.C. proposal addresses similar protections through what it calls "risk mitigation techniques." This includes documentation, confirmation and portfolio reconciliation requirements, which are important features to lower risk. Further, the Dodd-Frank Act provides regulators with authority to write business conduct rules to protect against fraud, manipulation and other abuses.

Promoting Transparency

In the U.S., the Dodd-Frank Act brings transparency to the derivatives marketplace. Economists and policymakers for decades have recognized that market transparency benefits the public.

The more transparent a marketplace is, the more liquid it is, the more competitive it is and the lower the costs for hedgers, borrowers and their customers.

The Dodd-Frank Act brings transparency in each of the three phases of a transaction.

First, it brings pre-trade transparency by requiring standardized swaps – those that are cleared, made available for trading and not blocks – to be traded on exchanges or swap execution facilities.

Second, it brings real-time post-trade transparency to the swaps markets. This provides all market participants with important pricing information as they consider their investments and whether to lower their risk through similar transactions.

Third, it brings transparency to swaps over the lifetime of the contracts. If the contract is cleared, the clearinghouse will be required to publicly disclose the pricing of the swap. If the contract is bilateral, swap dealers will be required to share mid-market pricing with their counterparties.

The Dodd-Frank Act also includes robust recordkeeping and reporting requirements for all swaps transactions so that regulators can have a window into the risks posed in the system and can police the markets for fraud, manipulation and other abuses.

In Europe, the E.C. is considering revisions to its existing Markets in Financial Instruments Directive (MiFID), which includes a trade execution requirement and the creation of a report with aggregate data on the markets similar to the CFTC's Commitments of Traders reports.

Furthermore, in February 2011, IOSCO issued a report on trading that included eight characteristics that trading platforms should have. Many of the IOSCO members participating in the report indicated a belief that added benefits are achieved through multi-dealer trading platforms. The IOSCO report concluded that, beyond the added benefits of pre-trade transparency, trading helps mitigate systemic risk and protect against market abuse.

Japan’s swaps reform promotes transparency through mandated post-trade reporting to a trade repository. Hong Kong is examining exchange-trading and electronic platform requirements as it pursues derivatives reform. China intends to mandate electronic trading of RMB FX forwards, RMB forward swaps and RMB currency swaps on trading platforms by the end of 2012.

Foreign Boards of Trade

The Dodd-Frank Act broadened the CFTC’s oversight to include authority to register foreign boards of trade (FBOTs) providing direct access to U.S. traders. To become registered, FBOTs must be subject to regulatory oversight that is comprehensive and comparable to U.S. oversight. This new authority enhances the Commission's ability to ensure that U.S. traders cannot avoid essential market protections by trading contracts on FBOTs that are linked with U.S. contracts.

Access to Data

The Dodd-Frank Act includes a provision that generally requires domestic and foreign authorities, in certain circumstances, to provide written agreements to indemnify SEC- and CFTC-registered trade repositories, as well as the SEC and CFTC, for certain litigation expenses as a condition to obtaining data directly from the trade repository regarding swaps and security-based swaps. In addition, the trade repository must notify the SEC or CFTC upon receipt of an information request from a domestic or foreign authority.

After having consulted with staff, SEC Chairman Shapiro and I wrote to European Commissioner Barnier to indicate our belief that the indemnification and notice requirements need not apply to requests for information from foreign regulators in at least two circumstances.

First, the indemnification and notice requirements need not apply when a trade repository is registered with the SEC or CFTC, is registered in a foreign jurisdiction and the foreign regulator, acting within the scope of its jurisdiction, seeks information directly from the trade repository. In such dual-registration cases, we acknowledged our belief that the Dodd-Frank Act's indemnification and notice requirements need not apply, provided that applicable statutory confidentiality provisions are met. Our staff is considering this, along with other recommendations, as it prepares final rules for the Commissions' consideration.

Second, as indicated in the SEC's and CFTC's proposed rules regarding trade repositories' duties and core principles, foreign regulators would not be subject to the indemnification and notice requirements if they obtain information that is in the possession of the SEC or CFTC. The

SEC and CFTC have statutory authority to share such information with domestic and foreign counterparts and have made extensive use of this authority in the past to share information with our counterparts around the world. Furthermore, separate statutory authority exists to allow the SEC and CFTC to obtain information from a trade repository on behalf of a foreign regulator if that foreign regulator is investigating a possible violation of foreign law.

I anticipate that the CFTC staff will make additional recommendations for the Commission's consideration to facilitate regulators' access to information necessary for regulatory, supervisory and enforcement purposes.

Rule-Writing Process

The CFTC is working deliberatively, efficiently and transparently to write rules to implement the Dodd-Frank Act. The Commission on Tuesday scheduled public meetings in July, August and September to begin considering final rules under Dodd-Frank. We envision having more meetings throughout the fall to take up final rules.

The Dodd-Frank Act has a deadline of 360 days after enactment for completion of the bulk of our rulemakings – July 16, 2011. The Dodd-Frank Act and the Commodity Exchange Act (CEA) give the CFTC the flexibility and authority to address the issues relating to the effective dates of Title VII. We are coordinating closely with the SEC on these issues.

The Dodd-Frank Act made many significant changes to the CEA. Section 754 of the Dodd-Frank Act states that Subtitle A of Title VII – the Subtitle that provides for the regulation of swaps – "shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provisions of this subtitle."

Thus, those provisions that require rulemakings will not go into effect until the CFTC finalizes the respective rules. Furthermore, they will only go into effect based on the phased implementation dates included in the final rules. During Tuesday's public Commission meeting, the CFTC released a list of the provisions of the swaps subtitle that require rulemakings.

Unless otherwise provided, those provisions of Title VII that do not require rulemaking will take effect on July 16. The Commission on Tuesday voted to issue a proposed order that would provide relief until December 31, 2011, or when the definitional rulemakings become effective, whichever is sooner, from certain provisions that would otherwise apply to swaps or swap dealers on July 16. This includes provisions that do not directly rely on a rule to be promulgated, but do refer to terms that must be further defined by the CFTC and SEC, such as "swap" and "swap dealer."

The order proposed by the Commission also would provide relief through no later than December 31, 2011, from certain CEA requirements that may result from the repeal, effective on July 16, 2011, of some of sections 2(d), 2(e), 2(g), 2(h) and 5d.

The proposed order will be open for public comment for 14 days after it is published in the Federal Register. We intend to finalize an order regarding relief from the relevant Dodd-Frank provisions before July 16, 2011.

Conclusion

Though two years have passed, we cannot forget that the 2008 financial crisis was very real. Effective reform cannot be accomplished by one nation alone. It will require a comprehensive, international response. With the significant majority of the worldwide swaps market located in the U.S. and Europe, the effectiveness of reform depends on our ability to cooperate and find general consensus on this much needed regulation.

Thank you, and I'd be happy to take questions.

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION AND FORESTRY
WASHINGTON, DC 20510–6000
202–224–2035

June 2, 2011

Ms Sharon BOWLES, MEP
European Parliament
ASP 10G 205
60, Rue Wiertz
B-1047 BRUSSELS
Belgium

Dr Werner LANGEN, MEP
European Parliament
ASP 15E 102
60, Rue Wiertz
B-1047 BRUSSELS
Belgium

Dear Colleagues:

As leaders of the United States Senate Committee with primary jurisdiction over Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("the Act"), we write to express our desire to work closely with the European Union as you reform regulation of the derivatives markets.

International harmonization of regulation is critical to fostering transparent, global financial markets. A key objective of the Act was to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards" for the regulation of derivative transactions.

The goal of strengthening cooperation between our legislative bodies and our regulatory authorities remains steadfast. We look forward to working closely with you to harmonize rules on trade reporting, execution and other issues that affect the global markets. For example, there are issues regarding the potential extraterritorial applications of the Act by U.S. regulators. We agree that there are significant questions about the legal and jurisdictional reach of U.S. regulation and we are committed to working with you and our regulators to resolve these questions.

It is also important to ensure that we can safely share access to derivatives transaction information. There are concerns with the provision of the Act that mandates "indemnification" of Swap Data Repositories ("SDRs") and of the Commodity Futures Trading Commission for any expenses arising from litigation. Some of these data-sharing provisions were included in an effort to increase transparency while protecting the confidentiality of swap transaction data. While it is important to assure market participants that our regulators and SDRs have the highest security standards possible, we should develop a reporting regime that minimizes regulatory burdens and provides the transparency necessary for market efficiency and improved regulatory oversight.

Guided by the agreement reached by the 2009 Pittsburgh G-20 Communiqué, we are committed to working with you and our respective regulatory authorities to create standardized and complementary oversight of the derivatives markets.

Sincerely,

Senator Debbie Stabenow
Chairwoman

Senator Pat Roberts
Ranking Member

cc:
Michel Barnier, European Commissioner for Internal Market and Services
Nathan Faull, Director General, Internal Market and Services, European Commission
Gábor Bútor, Office of the Hungarian Presidency of the Council of the European Union

Congress of the United States
Washington, DC 20515

Ms Sharon Bowles, MEP
European Parliament
ASP 10G 205,
60, Rue Wiertz,
B-1047 Brussels,
Belgium

Dr Werner Langen, MEP
European Parliament
ASP 15E 102
60, Rue Wiertz,
B-1047 Brussels,
Belgium

Mr Jean-Paul Gauzès, MEP
European Parliament
ASP 13E 258
60, Rue Wiertz,
B-1047 Brussels,
Belgium

Mr Gábor Butor
Senior Financial Services Attaché
Permanent Representation of Hungary to the EU
Rue de Trèves 92-98
1040 Brussels,
Belgium

May 18, 2011

Dear Colleagues,

We are writing because of our concern with the indemnification provisions found in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203, the Dodd-Frank Act) and the unintended negative consequences the provisions may have on global market transparency and regulatory harmonization.

Sections 728 and 763 of the Dodd-Frank Act require swap data repositories (SDRs) to obtain indemnification agreements from foreign regulators before sharing information with these regulators. While we understand the concept of the provisions, mandating "indemnification" by certain non-U.S. regulatory entities may result in several unintended consequences. We understand that there is a growing concern in the European Parliament about the extraterritorial requirements related to international agreements of third-party countries to agree to SDRs.

If not clarified or amended, these provisions in the Dodd-Frank Act could adversely impact international efforts to ensure that regulators receive a consolidated perspective of market data and position concentrations. Ensuring this oversight will help to mitigate threats posed by systemic risk and global regulatory disharmony. Our goal is to enable cooperation amongst regulators world-wide, and support data access guidelines as described in the OTC Derivatives Regulators Forum. We support such a model that allows equal access to data.

As Congress indicated in the Dodd-Frank Act, the Commodity Futures Trading Commission must coordinate and work with its global counterparts to ensure that U.S. regulations are harmonized in order to avoid undermining the ability of regulators to obtain information on a global basis. This is especially true in areas that are paramount in ensuring systemic safety, such as data collection and storage.

We are aware of your concerns and hope to work with U.S. regulators to try and address the integration issues with the indemnity section of the Dodd-Frank Act.

Sincerely,

Jack Kingston
Chairman
House Appropriations Subcommittee on Agriculture
United States Congress

Sam Farr
Ranking Member
House Appropriations Subcommittee on Agriculture
United States Congress

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	**2. Organization or organizations you are representing:**
Donald F. Donahue	The Depository Trust & Clearing Corporation
3. Business Address and telephone number:	
[redacted]	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?**
☐ Yes ☑ No	☐ Yes ☑ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature:	

Please attach a copy of this form to your written testimony.