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U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: "The Impact of Dodd-Frank on Customers, Credit, and Job Creators"

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

DATE: July 10, 2012

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

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Good morning Chairman Garrett, Ranking Member Waters, and members of the subcommittee. I am Thomas C. Deas, Jr., Vice President and Treasurer of FMC Corporation and Chairman of the National Association of Corporate Treasurers, an organization of treasury professionals from several hundred of the largest public and private companies in the country.

Thank you for the opportunity to testify on behalf of the U.S. Chamber of Commerce at today's hearing: *"The Impact of Dodd-Frank on Customers, Credit, and Job Creators."* This is a timely hearing and a unique opportunity to discuss the impact of the Dodd-Frank Act on the ability of companies like mine to access the financial markets to fuel business expansion, job creation, and economic growth.

We very much appreciate the opportunity to address some of the issues arising from the unintended consequences of the Dodd-Frank Act. While we have sought to inform the regulators of our concerns, and believe they continue to seek ways to address our issues, we appreciate that as with any complicated piece of legislation continued Congressional oversight is necessary if we are to avoid economic consequences no one could foresee. This is particularly the case for end-users like FMC that were not the subject of the Act, but now find ourselves significantly affected by its implementation.

While the drafters and implementers of the Dodd-Frank Act and other initiatives such as proposed money market fund regulations have focused on the financial services industry, the impacts are being felt by Main Street businesses as well. Uncertainties about aspects of the law we thought were clear, like the derivatives end-user exemption from margining and central clearing, harm the ability of companies to manage and mitigate risk. The implementation of the Volcker Rule can imperil our ability to raise funds from the debt and equity markets. Also, potential money market regulations could harm our ability to manage business cash flow and fund short-term borrowings in the commercial paper market.

The effect of all these new rules would be to increase the demands on the capital of American businesses, such as to fund derivatives margin accounts or money market fund hold-backs, while at the same time making it more difficult and expensive to raise that capital. Regulatory uncertainty and complexity can be as concerning for the economy as the underlying risks the regulations are meant to address.

We are concerned that as we enter a period of increasing financial stress as evidenced by the continuing European sovereign debt crisis and what seem to be slowing global economic indicators, the tools and markets on which we have relied will no longer be as

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accessible to us. The prudent reaction to these uncertainties is to hold back in reserve financial resources that would otherwise be used to grow our businesses.

Let me take a few minutes to give a more in-depth focus of the effects of the Dodd-Frank Act and money market fund regulations on Main Street companies.

Derivatives

Along with many other U.S. manufacturers and agricultural producers, FMC also uses over-the-counter ("OTC") derivatives to hedge business risks in a cost-effective way. We are very concerned that several of the proposed derivatives regulations could hamper our use of this important tool and adversely affect our global competitiveness. I had the valuable experience of negotiating and executing some of the very first OTC derivatives – currency swaps – back in 1984. The OTC derivatives market has grown from its inception at that time to its current size by offering end-users a degree of customization not available in exchange-traded derivatives. FMC and other end-users enter into OTC derivatives customized to match the amount, timing, and where necessary, the currency, of their underlying business exposures. By matching derivatives to our business exposures, we create an effective economic hedge. The value of the derivative moves in an equal, but opposite, way in relation to the value of the underlying risk we are hedging. Let me give you a specific example of how proposed derivatives regulation could hamper my company's ability to compete against foreign producers.

FMC competes very effectively against foreign companies in several markets for our crop protection chemicals. For example in Brazil, we have leading positions in sugar cane and cotton, developed with significant product and technical support from our U.S. operations. To enhance FMC's product offering to Brazilian soybean farmers and profitably grow our business there, we offer to sell our agricultural chemicals for use at planting time in exchange for an agreed quantity of soybeans at harvest time. We can do this because we simultaneously enter into a custom OTC derivative that offsets the amount and timing of the future delivery of soybeans by our customers. In a developing economy like Brazil, farmers do not have FMC's degree of access to the worldwide financial markets. We provide our products to Brazilian farmers on terms that insulate them from the risk of changes in future commodity prices and foreign exchange movements in the price of the Brazilian real against the U.S. dollar. In the Brazilian soybean market, we compete against international producers based in Germany, Switzerland, and Australia, as well as local Brazilian companies. Because of significant differences in the way derivatives regulations are being implemented in Europe and elsewhere outside the United States, FMC and other U.S. companies could be put at a

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competitive disadvantage. On July 7th, the G-20 international committees coordinating derivatives regulation published their recommendation that non-financial end-users that are not systemically important be exempted from mandatory margining and central clearing. If the U.S. regulations remain out of step with those of our international trading partners, American businesses will be hurt.

Competitive Consequences of End-User Margining

At the time of passage of the Dodd-Frank Act, we understood from the legislative language as well as from letters and colloquies by the principal drafters, that end-users would be exempted from any requirement to post cash margin. However, rules proposed last year would give the prudential regulators the authority to impose a framework with many complicated parameters, each of which is subject to future adjustment, which could result in many end-users – regardless of their size – having to post cash margin for their derivatives transactions. This proposal and the uncertainties it creates represent real challenges to making business decisions about the future. The European Union regulators have generally exempted non-financial end-users from mandatory margining. They have accepted the argument that end-users, whose derivatives activity comprises less than 10 percent of the total OTC derivatives market, are not significantly contributing to systemic risk and should be exempt from regulations designed for swap dealers.

At this point, U.S. end-users still do not know with certainty what their future cash margin requirements will be. The U.S. regulators have taken a pair of offsetting transactions that match completely, and settle with offsetting cash payments at maturity, as does FMC's soybean sale and hedge, and created a new and unwelcome uncertainty – that of funding a daily fluctuating cash margin call. While this may be appropriate for swap dealers making a market in derivatives or those using derivatives for speculative purposes, its application to end-users hedging underlying business exposures creates an imbalance that is economically burdensome to end-users.

Cost of End-User Margining

FMC's derivatives are executed with several banks, all of which are also supporting our company through their provision of credit lines. None of these banks require FMC to post any form of collateral to secure their credit support. Our banks also do not require FMC to post cash margin as collateral to secure mark-to-market fluctuations in the value of derivatives. Instead they price the overall transactions to take this risk into account. This structure gives us certainty so that we never have to post cash margin while the derivative is outstanding. However, if we are required by the regulators to post margin, we will have to hold aside cash and readily available credit to meet those margin calls.

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Depending on the extent of price movements, margin might have to be posted within the trading day as well as at the close of trading. Because failure to meet a margin call would be like bouncing a check, and would constitute a default, our corporate treasury would act very conservatively in holding cash or immediately available funds under our bank lines of credit to assure we could meet any future margin call in a timely fashion and with a comfortable cushion.

Adopting more conservative cash management practices might sound like an appropriate response in the wake of the financial crisis. However, end-users did not cause the financial crisis. End-users do not contribute meaningfully to systemic risk because our use of derivatives constitutes prudent, risk mitigating hedging of underlying business transactions. Forcing end-users to put up cash for fluctuating derivatives valuations means less funding is available to grow our businesses and expand employment. The reality treasurers face is that the money to margin derivatives has to come from somewhere and inevitably less funding will be available to operate and grow our businesses.

FMC and other members of the Business Roundtable estimated that BRT-member companies would have to hold aside on average $269 million of cash or immediately available bank credit to meet a 3 percent initial margin requirement. Though the rule proposed by regulators is not specific as to the precise amount of collateral, in our world of finite limits and financial constraints, any cash margin requirements represent a direct dollar-for-dollar subtraction from funds that we would otherwise use to expand our plants, build inventory to support higher sales, undertake research and development activities, and ultimately sustain and grow jobs. In fact, the study extrapolated the effects across the S&P 500, of which FMC is also a member, to predict the consequent loss of 100,000 to 120,000 jobs. The effect on the many thousands of end-users beyond the S&P 500 would be proportionately greater. We would also have to make a considerable investment in information systems that would replicate much of the technology in a bank's trading room for marking to market and settling derivatives transactions.

We have heard that the regulators may propose that purely internal trades, for example between a parent company and a wholly owned subsidiary, should be subject to the whole range of real-time reporting, margining, clearing, and other requirements applicable to swap dealers. Since these inter-affiliate trades, entered into in many cases for internal accounting and cost-allocation purposes, do not present any systemic risk, they should be exempt. FMC and many other Main Street companies would have to transfer risk management activities using derivatives, currently conducted efficiently at

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corporate headquarters, into each subsidiary, once the required information systems are developed, tested and made operational. This could make derivatives-based risk management more difficult and prohibitively more expensive.

Summary of Derivatives End-Users' Concerns

Let me take a moment to summarize some of our principal concerns with the implementation of derivatives regulation:

- First, we are concerned that the regulations have imposed an uncertain framework for cash margin on end-user trades, potentially diverting billions of dollars from productive investment and employment into an idle regulatory levy.
- Second, even if the final regulations clearly exempt end-users from margin requirements, we still have the risk that the regulators will require swap dealers to hold excessive capital in reserve against uncleared over-the-counter derivatives – with the cost passed on to end-users as they manage their business risks. We believe that swap dealers' capital requirements should be appropriate to the actual loss experience of the specific type of derivative. The unintended consequence of excessive capital requirements could be for some end-users to cease hedging risks and for others to use foreign markets.
- Finally, we are concerned that regulators will make customized derivatives prohibitively expensive through margin and increased capital requirements, with the effect of forcing us into standardized derivatives from common trading facilities that will not provide the exact match we seek with our underlying business exposures. It is the customization available with OTC derivatives that is so valuable to us and makes the derivatives effective in hedging our exposures.

I know many people who suffered through the financial turmoil of 2008 are tempted to label all derivatives as risky bets that should be curtailed. However, I hope these examples of prudent use of derivatives by my company and other end-users who form the backbone of our country's economy have demonstrated the wisdom of the end-user exemptions that we believe to have been the legislative intent.

I will note that in general those charged with the responsibility of drafting derivatives regulations have been very forthcoming and open in soliciting input from end-users; however, the end-user exemption we thought was clear is now uncertain and several important rules have not been finalized. We support legislation to create a true exemption from margin requirements that would apply to all end-users. The consequences of getting derivatives regulation wrong will be borne by American business and ultimately our fellow citizens.

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Volcker Rule

The broadness and ambiguity surrounding provisions of the Volcker Rule—a regulation spread out over five agencies dealing with practices the regulators have stated that they themselves don't fully understand is likely to have a chilling effect on those activities that are at the heart of capital-raising activities for American companies. A misapplication of the Volcker Rule can harm U.S. competitiveness, capital efficiency, and financial stability.

Main Street companies like FMC rely on financial institutions for access to the capital markets and to mitigate financial risks. U.S. businesses use the debt and equity markets to fund their long-term capital needs. While the market-making and underwriting exceptions to the Volcker Rule attempt to recognize this fact, the inability to define these practices gives us concern about the ability of regulators to enforce the Volcker Rule. Additionally, a potential regulatory scrutiny on a trade-by-trade basis could make financial institutions reluctant to engage in permissible activities, harming the ability of companies to raise capital.

Impaired market liquidity and reduced access to credit
We are concerned the Volcker Rule could impair the ability of banks to function as market makers. FMC's most recent bond issue, $300 million of senior notes due in 2022, was underwritten by a syndicate made up of banks that also support us through their commitment of $1.5 billion of credit lines. As underwriters of our bond issue, these firms take on the responsibility to hold our bonds in inventory if necessary to make an orderly market for the issue as it is launched. However, the Volcker Rule could significantly constrain this function by dictating how financial institutions should manage their holdings of our bonds. The Volcker Rule also could constrain underwriting activities if the retention of bonds in a bank's portfolio is determined to constitute proprietary trading.

A conservative application of the Volcker Rule could force financial institutions either to raise their fees for these activities, or to become risk adverse and not engage in them at all. This could reduce the flow of capital to Main Street companies, while diminishing liquidity in our capital markets. If financial institutions can no longer hold inventory or are unwilling to do so it will be more difficult for FMC to raise capital.

With reduced market liquidity, transaction spreads widen, risks increase, and price changes become more volatile. To compensate for these new risks, investors will demand higher rates. We have estimated that on FMC's most recent bond issue, the

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additional cost over its ten-year life could amount to $15 million – a direct subtraction from funds we would otherwise be able to invest for growth.

Restricted trading in proper and allowable businesses

The originally proposed Volcker Rule is inherently complicated and forces regulators to define the intent of a trade. At the worst extreme, financial institutions could be required to prove the intent of each trade. This cannot be done in any reliable or consistent way. One entity's proprietary trade is another entity's market-making activity. Proprietary trading defies a symmetrical definition.

The complexity of the Volcker Rule will force financial institutions to adopt the most conservative interpretation of the rule and the least favorable intent of any trade. With the burden of proof on the banks, the compliance costs could become prohibitive. The net result will likely be the elimination of otherwise acceptable market-making activities. This could result in banks exiting or scaling back such routine activities as selling our commercial paper, providing cash management sweep accounts and multi-currency trade finance. These are services treasurers view as critical tools to execute sound financial management.

Competitive disadvantage for U.S. businesses and financial institutions

The United States' major trading partners have rejected U.S. requests that they adopt analogs to the Volcker rule. This puts American businesses, like FMC, and U.S. financial institutions at a disadvantage. By eliminating a core revenue stream from U.S. banks, the Volcker Rule would effectively reduce the ability for U.S. banks to compete and grow. Additionally, in order to avoid the territorial jurisdiction of the Volcker Rule, foreign financial firms may retreat from the U.S., further depriving American businesses of capital and degrading the ability of U.S. regulators to oversee and regulate financial activity.

Finally, most companies will still have financial risks that need to be managed. U.S. business could be forced to turn increasingly to foreign banks in overseas markets. This could have the unintended consequence of simultaneously weakening U.S. banks while strengthening foreign banks.

Increased compliance costs for Main Street businesses

The reach of the Volcker Rule can extend to non-financial businesses, although they present no meaningful systemic risk. For example, many manufacturing companies offer financing services to their customers. They may own a commercial or consumer finance subsidiary or have a credit card company. These businesses will incur increased

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costs and higher compliance burdens. Some will pass these costs on to their customers. Others will simply discontinue the financial or card services. In any event, the result is higher-cost credit for those willing to pay and less credit for most small businesses and consumers.

Many U.S. companies also engage in activity overseas through joint-ventures. These joint-ventures provide unique trading opportunities for American companies to create jobs at home and generate positive returns for their investors. Any member of a joint-venture that has a Volcker compliance program will force the entire joint venture to have a Volcker compliance program. Therefore, American companies could be viewed as a less reliable partner for these types of business activities.

We at FMC are celebrating our eighty-first year of listing on the New York Stock Exchange. When we came to the exchange in 1931 it was to access the largest and most liquid source of equity capital in the world. We have benefited from over a thousand-fold increase in our equity market capitalization since then. We have also utilized the U.S. public debt markets where investors and borrowers have come together with an efficiency unparalleled in the world. We ask your help in assuring these markets remain viable to support continued growth of Main Street companies like ours.

Money Market Funds

Other critical financial regulations being proposed in parallel with the Dodd-Frank Act affect money market funds, which are under scrutiny for designation as being systemically risky by the Financial Stability Oversight Council. These funds play a critical role in the U.S. economy because they work well to serve the investment and short-term funding needs of businesses across America. Corporate treasurers rely on money market funds to manage cash efficiently and affordably. Cash balances for companies fluctuate on a daily, weekly, monthly or other periodic basis, and depending on the nature of the business, some companies' cash levels can swing widely - from hundreds of dollars to hundreds of millions of dollars. A corporate treasurer's job is to ensure that there is sufficient liquidity to meet working capital needs, and money market funds are the most liquid, flexible and efficient way to manage short-term investments. They are also an important source of short-term funding through their purchases of companies' commercial paper.

Money Market Funds as an Investment

There are many reasons why money market funds are an attractive investment choice for businesses. For companies with cash surpluses, money market funds offer a stable

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$1.00 price per share that allows for ease of accounting for frequent investments and redemptions. They also offer market rates of return for cash that may sit idle, earning no interest in a commercial bank account. Moreover, investments in money market funds can be made and redeemed on a daily basis without fees or penalties, providing the liquidity needed to manage fluctuating working capital needs.

These funds also offer a diversified and expertly managed short-term investment vehicle. This allows companies to invest in one fund while diversifying exposure to a number of underlying investments. Additionally, money market funds perform a credit analysis of their underlying assets and report this in a transparent way that facilitates our own credit analysis of the fund. Corporate treasurers are professional stewards of our companies' cash and we take our responsibility seriously. Money market funds allow significant cash inflows and outflows to be managed efficiently and effectively with the risk spread across a diversified portfolio.

Money Market Funds as a Financing Source

Money market funds also represent a major source of funding to the corporate commercial paper market in the U.S., purchasing approximately 40% of all outstanding commercial paper. In April 2012, we estimate that U.S. money market funds held approximately $380 billion in commercial paper. This source of financing is vital to companies across America as commercial paper is an easy, affordable way to obtain short-term financing. Without money market funds, the commercial paper market would be substantially less liquid, forcing companies to turn to more expensive means of financing. Higher financing costs will create a drag on business expansion and job creation.

For example, a typical commercial paper issuer can fund its day-to-day working capital needs through flexible borrowings of maturities matched to the exact number of days they require. The least expensive bank borrowings are less flexible by being limited to maturities of one, two, three, six or twelve months. Bank borrowings with flexibility to be repaid daily, like commercial paper, are only available at significantly higher prime-based interest rates.

2010 Changes to Rule 2a-7

Before discussing possible further changes in the regulation of money market funds, it is important to emphasize that significant changes have already been implemented. Just two years ago, the U.S. Securities and Exchange Commission made enhancements to money market fund regulation through major revisions to its Rule 2a-7. These changes strengthened money market funds through more stringent liquidity requirements.

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Funds are now required to meet a daily liquidity requirement such that 10 percent of the assets turn into cash in one day and 30 percent within one week. This large liquidity buffer makes it unlikely that large redemption requests—even at the rate seen in the 2008 financial crisis—would force a fund to sell assets at a loss prior to their maturity.

Despite the fact that the 2010 reforms have just been implemented, advocates of further regulation have focused much attention on three significant structural changes to money market funds—redemption restrictions, a floating NAV, and a mandatory capital buffer. As discussed below, we believe each of these would have a significant negative impact on the ongoing viability of these funds, and also adversely affect the corporate commercial paper market.

Redemption Restrictions

We are concerned about the SEC's potential implementation of redemption hold-backs or other restrictions on our ability to access cash invested in money market funds. Some of our NACT member treasurers are already making plans to withdraw funds from money market accounts to have full access to their funds and avoid the complexities of monitoring simultaneous hold-back positions on multiple transfers into and out of money market funds. The more diversification we seek through spreading investments across multiple money market funds, the more we proliferate pockets of cash in multiple hold-back accounts. The counter to this would be to concentrate investments, producing the opposite result the regulators are trying to achieve.

If corporate treasurers have less efficient access to their cash investments, they would be forced to fund working capital needs through higher drawings on their credit facilities or issuing additional commercial paper, incurring additional costs.

Floating Net Asset Value

Treasurers are also concerned by the proposal to establish floating net asset values (NAVs) for money market funds. Most treasury workstations built for managing corporate cash do not have accounting systems in place to track NAVs on each transfer into and out of money market funds. They would also have to be modified to track short-term capital gains and losses for income tax purposes. Treasury workstations would need to be upgraded to accommodate these changes, and that investment would significantly lag behind the timing of implementing floating NAVs. As a result, corporate treasurers would likely withdraw money market fund investments until the systems issue is solved. We fear that these and other withdrawals will cause many money market funds to wind down significantly limiting this $2.6 trillion investment alternative.

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In addition, many companies have investment policies precluding them from investing in variable-rate instruments. We believe the cost-benefit trade-offs for the proposed change to a floating NAV are not justified.

Capital Buffer
One other proposal that the Securities and Exchange Commission has publicly discussed is the implementation of some type of capital buffer in an attempt to protect against losses. A capital buffer would have to be funded by contributions from the fund's sponsor. With the Federal Reserve continuing to target very low interest rates, many funds would be forced to cease operations, leaving fewer choices for investors. Additionally, some costs may be passed on to investors. If the capital buffer is built up over time by allocating some of the fund's yield to the buffer, it would take too long to build the necessary buffer to protect against losses. Similarly, the creation of a subordinated class of shares to provide the buffer would require additional returns to be paid to those shareholders, and in our near-zero interest rate environment, this could eliminate any remaining returns for investors. We fear increasing fees or reducing yields would be likely to deter many investors, including corporate treasurers, from investing in money market funds.

The cumulative effect of the proposed changes will drive money market fund investors to bank deposits, concentrating risk in a sector where over the past 40 years there have been 2,800 failures costing taxpayers $188 billion.

Conclusion

Thank you again for the opportunity to testify today on these important issues. We are very concerned that the lack of a clear end-user exemption from posting cash margin for derivatives, the application of an overly complex Volcker Rule, combined with regulations that could destroy money market funds will result in burdens on Main Street companies that will limit their growth and harm their international competitiveness.

We can and should take the time to get this right, because if we don't, American businesses, economic growth and job creation will suffer as a result.

I would be happy to respond to any questions you may have.