NEW DEMS New Democrat Coalition

Rep. Joseph Crowley, Chair
Rep. Jim Himes, Vice-Chair
Rep. Ron Kind, Vice-Chair
Rep. Rick Larsen, Vice-Chair
Rep. Allyson Schwartz, Vice-Chair

April 15, 2011

The Honorable Timothy Geithner
Secretary
The U.S. Department of Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Ben Bernanke
Chairman
The Federal Reserve Board
20th Street and Constitution Avenue, NW
Washington, DC 20429

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairmen Gensler, Schapiro, Bernanke and Secretary Geithner:

During debate of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the New Democrat Coalition played a critical role in advocating for an approach that would reduce systemic risk and increase transparency in the derivatives market. Given the significant role that New Democrats played in authoring many key provisions in the derivatives title, we want to ensure that the rules are promulgated in a way that adheres to Congressional intent.

The new law puts in place strong protections for taxpayers in the event of a default. By encouraging clearing and the imposition of margin, the Dodd-Frank Act will mutualize the risk among the participants in a swap deal and ensure that enough capital is on hand to cover any losses. For many U.S. companies swaps are important tools to responsibly manage risk, stabilize prices, and, in turn, the entire economy. That is why when crafting the language on margin, Congress intended to ensure end users of derivatives who are responsibly hedging their ordinary business risk would not be subject to prohibitive cost increases. The new margin rules must exempt end users from margin requirements and should not have the effect of discouraging these sound risk management practices.

Another goal of the Dodd-Frank Act is to provide regulators with detailed real-time information needed to protect and monitor swap activity. That is why the new law encourages as much trading activity as possible to occur on regulated transparent exchanges. Congress also recognized, however, that there is not always sufficient liquidity in the exchanges to support all types of swaps. Swap Execution Facilities (SEFs) were designed by Congress to act as an alternative mechanism for bringing transparency and disclosure to the derivatives markets. The rules implementing these provisions should provide SEFs with the flexibility to operate distinctly from exchanges. We believe the SEC's proposed rule on SEFs is consistent with this goal and the CFTC's final rule should mirror the SEC's approach.

Real time reporting of swap transactions and block trades will also help infuse transparency into the market and provide regulators important data to monitor systemic risk. The market relies on data repositories to function without delay to ensure liquidity while allowing market participants to meet the requirements of the law. When writing reporting rules, your agency should protect liquidity in the

markets for businesses looking to hedge risk and ensure the infrastructure and technology is in place for the derivatives market to function without delay and at a minimal cost.

Considering the interconnected nature of financial markets and the sizeable role derivatives play within the global economy, international harmonization of the regulations should be a major priority during the rulemaking process. A coordinated regulatory approach with our global counterparts will provide for the seamless flow of information and help target and eliminate systemic problems before they occur. The new regulatory regime, however, must be achieved in a way that prevents regulatory arbitrage and limits unintended consequences that could increase systemic risk. For example, the requirements for banks to push-out their swap desks into separately capitalized entities may make it more challenging for U.S. regulators to monitor swap activity and exposure at these institutions on a net basis which could increase systemic risk and costs. In turn, this could drive derivatives trading into less regulated international markets and will inevitably make it more difficult for U.S. counterparties to manage risks in the swaps market. We ask that your agency consider these implications when constructing rules to ensure the U.S. market can continue to operate on a level, and more stable, playing field.

Lastly, the sequencing of the rules is an important element to avoid market disruptions and provide certainty that market participants can adjust their operations to meet the new requirements. The regulatory gaps that contributed to the financial crisis developed over many decades, and the new framework we've created is designed to protect the markets for many years to come. Regulatory certainty is urgently needed in the markets, but it is just as important that the rulemaking process be thorough so that we end up with the right result. Please consider appropriately phasing-in the final rules and implementation guidelines to ensure acceptable rulemaking with minimal disruptions to the market.

For too long, the derivatives market has lacked a regulatory apparatus that has made it susceptible to opaque transactions posing unwarranted risk to the economy. The New Democrats, together with our colleagues in the House and Senate, devised a regulatory structure in the Dodd-Frank Act that will enhance transparency and improve accountability in the derivatives market. While your agency continues the complicated rulemaking process, the New Democrats ask that the rules promulgated balance the needs to reduce systemic risk, promote transparency, and encourage growth in the economy.

Sincerely,

Rep. Jim Himes
Member of Congress

Rep. Gary Peters
Member of Congress

Rep. Joseph Crowley
Member of Congress

Rep. Ron Kind
Member of Congress

Rep. Allyson Schwartz
Member of Congress

Rep. Rick Larsen
Member of Congress

Rep. Jason Altmire
Member of Congress

Rep. Andre Carson
Member of Congress

Rep. Carolyn McCarthy
Member of Congress

Rep. Jim Moran
Member of Congress

Rep. Bill Owens
Member of Congress

Rep. Jared Polis
Member of Congress

Rep. Cedric Richmond
Member of Congress

Rep. Terri Sewell
Member of Congress

Rep. John Carney
Member of Congress

Rep. Gerry Connolly
Member of Congress

Rep. Gregory Meeks
Member of Congress

Rep. Chris Murphy
Member of Congress

Rep. Ed Perlmutter
Member of Congress

Rep. Laura Richardson
Member of Congress

Rep. Loretta Sanchez
Member of Congress

Rep. Adam Smith
Member of Congress

Rep. David Scott
Member of Congress

Rep. Pedro Pierluisi
Member of Congress

Congress of the United States
Washington, DC 20510

May 17, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429

Mr. John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Dear Chairman Bair, Chairman Bernanke, Chairman Gensler, and Acting Comptroller Walsh,

We are writing with respect to your proposed regulations applying margin requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to derivatives between non-U.S. subsidiaries of U.S. entities and non-U.S. counterparties. We are concerned that these proposals will inevitably result in significant competitive disadvantages for U.S. firms operating globally. Moreover, the proposals are inconsistent with Congressional intent regarding the territorial scope of the new regulatory framework for derivatives.

As you know, rewriting the regulatory framework for derivatives trading in the U.S. is an important step in making our financial system more resilient and more transparent. But absent harmonization between new rules here and abroad, disparate treatment of U.S. firms will only encourage participants in the derivatives markets to do business with non-U.S. firms. Accordingly, it is important to strike a balance between implementing the new safeguards and harming the competitiveness of U.S. financial institutions vis-à-vis their international counterparts.

Congress was cognizant of the need to strike this balance, and included provisions in Dodd-Frank that explicitly instruct regulators to guard against evasion of the law as well to impose the regulations extraterritorially beyond the U.S. only if there is a "direct and significant connection" with U.S. activities or commerce. These provisions are intended to protect both the safety of the financial system, by preventing regulatory arbitrage for the purpose of evading the law, and the competitiveness of U.S. institutions, which is necessary for a healthy U.S. banking system. We are concerned that your respective rule proposals would disrupt that balance and could have significant negative effects on the competitiveness of U.S. institutions. Under the proposals, margin requirements do not apply to non-U.S. banks doing business with non-US clients, but they do apply to non-U.S. subsidiaries and affiliates of U.S. institutions doing business with non-

US clients outside the U.S. This disparity in treatment creates a severe disincentive for non-U.S. companies to do business with overseas affiliates or subsidiaries of U.S. financial institutions.

In light of these concerns, we ask that you reconsider the extraterritorial application of these requirements. The application of new margin requirements to activity taking place wholly outside the U.S. must be coordinated with international regulators. We urge you to work closely with your international counterparts to ensure that they adopt as rigorous a regulatory regime for the over-the-counter swaps markets in their countries as we will have in ours. Ideally, those rules would perfectly mirror the U.S. rules. This would minimize the opportunity for regulatory arbitrage by non-U.S. customers of U.S. entities.

We certainly cannot afford a "race to the bottom" in regulatory standards, but, absent a comparable margin regime in other jurisdictions, adopting these rules would accomplish little more than reducing the competitiveness of U.S. financial institutions vis-à-vis their international counterparts and causing them to lose business to foreign entities through regulatory arbitrage by their non-U.S. customers.

Thank you for your consideration.

Sincerely,

Charles Schumer

Gary L. Ackerman

Gregory W. Meeks

Carolyn McCarthy

Joseph Crowley

Michael G. Grimm

Kirsten E. Gillibrand

Carolyn B. Maloney

Steve Israel

Nan Hayworth

RL Hanna

Eliot L. Engel

Yvette D. Clarke

Congress of the United States
Washington, DC 20515

June 20, 2011

Honorable Sheila C. Blair
Chairman
Federal Deposit Insurance Corp.
550 17th Street. NW
Washington, DC 20429

Mr. John G. Walsh
Acting Comptroller
Office of the Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

The Honorable Ben S. Bernanke
Chairman
The Federal Reserve System
20th & Constitution Avenue, NW
Washington, DC 20551

Honorable Leland A. Strom
Chairman and CEO
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Edward J. Demarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairmen, Acting Comptroller and Acting Director:

Thank you for your continued efforts to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). We greatly appreciate the hard work put forth by you and your staff.

In crafting Title VII of Dodd-Frank, Congress was explicit in providing exemptions from mandatory clearing, exchange trading and margin for end-users hedging commercial risks. We are concerned that recent rule proposals may undermine these exemptions, substantially increasing the cost of hedging for end-users, and needlessly tying up capital that would otherwise be used to create jobs and grow the economy. Additionally, we are concerned about the

territorial scope of certain rule proposals that could put U.S. firms and U.S. markets at a competitive disadvantage.

Application of Margin Requirements on End-users

On April 12, both the Commodity Futures Trading Commission ("CFTC") and the prudential regulators issued Notices of Proposed Rulemaking ("NPR") to govern margin and capital requirements for Swap Dealers and Major Swap Participants ("MSPs") (and in the case of the prudential regulators' proposal, Security-based Swap Dealers and Major Security-based Swap Participants). Despite clear congressional intent to the contrary, the proposal issued by the prudential regulators could require Swap Dealers and MSPs to collect margin from nonfinancial end-users. Further, despite a statutory directive to permit the use of noncash collateral, the prudential regulators' proposal is overly restrictive when it comes to requiring and valuing highly liquid assets such as cash, treasuries and GSE securities, and does not provide sufficient clarity that the use of other forms of noncash collateral is permitted.

In addition, there is uncertainty regarding which entities will be deemed "financial end-users." Captive finance affiliates of manufacturing companies that exist to facilitate the sale of the parent company's goods should not be deemed "high risk financial end-users." Such a designation would subject these affiliates to significant and substantial cash burdens that would reduce their ability to provide financing to businesses and consumers. The definition of "financial entity" in Title VII explicitly excludes captive finance affiliates of manufacturers and grants them a full exemption from clearing requirements. The NPR appears to recognize this distinction, classifying captive finance affiliates as nonfinancial end-users:

> *Although the term "commercial end-user" is not defined in the Dodd-Frank Act, it is generally understood to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps and security-based swaps under section 2(h)(7) of the Commodity Exchange Act and section 3C(g) of the Securities Exchange Act, respectively. This exception is generally available to a person that (i) is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps, respectively. See 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c-3(g). (Footnote 35).*

We request that you clarify that transactions involving nonfinancial end-users that meet the above statutory requirements are exempt from margin, consistent with congressional intent. Additionally, we ask that you clarify that captive finance affiliates of manufacturing companies are classified as "nonfinancial end-users." Lastly, we urge regulators to ensure that any new capital requirements are carefully linked to the risk associated with the uncleared transactions, and not used as a means to deter over-the-counter derivatives trading.

Exemption from Clearing for Captive Finance Affiliates

As noted above, Congress specifically clarified that captive finance affiliates, "whose primary business is providing financing, and uses derivatives for the purpose of hedging

underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company" should be exempt from the clearing requirement.

The CFTC's proposed rule "End-User Exception to Mandatory Clearing" did not clarify the calculation of this exemption, creating uncertainty regarding the eligibility of many captive finance affiliates. In order to facilitate the sale of the parent company's manufactured goods, captive finance affiliates often finance the sale or lease of products that are connected to the underlying product. Examples include the financing of an implement or accessory for farming equipment, the purchase of a used car to facilitate the sale of a new one, or the financing of a marine vessel to facilitate the sale of the vessel's engines. Financing offered by the captive finance affiliate facilitates the sale of the parent or subsidiary's manufactured goods. If the CFTC were to require that 90 percent or more of a particular package of equipment be manufactured by the parent company or a subsidiary, the test itself would be an enormous burden to calculate and impractical to apply.

We ask that the CFTC provide further guidance with regard to the calculation of this exemption and its application, and to do so in a way that is flexible and responsive to the general practices and operational realities of captive finance affiliates. We would also ask that this clarification be provided for the identical provisions providing an exemption for captive finance affiliates from designation as MSPs.

Extraterritorial Application of Dodd-Frank

There continues to be a lack of clarity regarding the territorial scope of Dodd-Frank. Section 722(d) of Dodd-Frank specifically directed the regulatory agencies not to apply new requirements to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States. This is consistent with the historical practice by U.S. regulators of recognizing and deferring to foreign regulatory authorities when registered entities engage in activities outside the U.S. and are subject to comparable foreign regulatory oversight.

Despite the statute and historical practice, the CFTC has proposed the possibility of treating foreign subsidiaries of U.S. persons as a U.S. person for purposes of swap dealer registration and, if it does so, prudential regulators' margin proposals would apply margin requirements to all of a U.S. financial institution's transactions – even between a non-U.S. subsidiary of a financial institution and non-U.S. customers that are conducted wholly outside the U.S. While robust oversight is necessary, this proposal could put U.S. firms at a direct and significant competitive disadvantage to their foreign competitors when dealing with non-U.S. counterparties outside the United States. In addition, extraterritorial application of Dodd-Frank to non-U.S. activities, particularly if it engenders reciprocal foreign regulatory treatment, could deter cross-border participation in markets, fragmenting them and making them less liquid and efficient.

We recommend that all of the agencies implementing Dodd-Frank be mindful of recognized principles of international law and provide further guidance and clarification regarding the territorial scope of the proposed rules with enough time for stakeholders to comment.

Thank you for your consideration of this letter. We appreciate and look forward to your response.

Sincerely,

Senator Debbie Stabenow
Chairman
Senate Committee on Agriculture,
Nutrition and Forestry

Frank D. Lucas

Representative Frank D. Lucas
Chairman
House Committee on Agriculture

August 2, 2011

The Honorable Timothy F. Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW

Dear Mr. Secretary:

Both in your capacity as Treasury Secretary and as the Chairman of the Financial Stability Oversight Council (FSOC), you have responsibility for ensuring that the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) does not jeopardize the health of the United States economy or threaten the ability of the U.S. financial services sector to deliver a broad array of products to consumers, investors, and companies.

Despite numerous assurances from you and other regulators, that the international community will follow the United States' lead on derivatives reforms, there is no indication that is happening. Specifically, there is no concrete evidence that international regulators or policymakers will in fact adopt the more controversial provisions in Title VII of the Dodd-Frank Act, such as Section 716, commonly known as the "swap push-out rule."

Moreover, it is undisputed that foreign regulators are moving at a slower pace in implementing derivatives reforms, which will inevitably lead to capital and liquidity flowing out of the United States to more hospitable regulatory environments. Unfortunately, concerns about the negative competitive consequences of Title VII are only heightened by the fact that some U.S. regulators apparently intend to advocate for an extremely broad extraterritorial application of the U.S. derivatives rules.

Title VII prohibits the extraterritorial application of the derivatives rules unless the offshore activity to be regulated has a "direct and significant" connection with or effect on U.S. commerce or when extraterritorial application is "necessary or appropriate" to prevent evasion of the Dodd-Frank Act. The language of Title VII clearly indicates it is to be applied outside the United States in only limited circumstances. None-the-less, there have been comments made by U.S. regulators that regulations implementing Title VII may apply to an offshore entity solely because it is a subsidiary or affiliate of a U.S. company. The prudential regulators seemingly took this approach in their recent margin proposal that explicitly exempts foreign dealers from margin requirements if they conduct swaps with other foreign counterparties, but does not allow off-shore subsidiaries of U.S. companies to avail themselves of this same exemption.

The mere fact that a non-U.S. entity is an affiliate or subsidiary of a U.S. company does not create a "direct and significant" impact on the U.S. and should therefore not be determinative as to whether such a non-U.S. entity should be subject to Title VII's requirements. Subjecting a non-U.S. entity to Dodd-Frank regulatory requirements solely because of its affiliation will create an unequal competitive environment for U.S. and non-U.S. institutions. Similarly, providing exceptions from regulation solely for non-U.S. entities not controlled by U.S. companies will disadvantage U.S. companies and their non-

U.S. operations. The Dodd-Frank Act already contains provisions that threaten to create a seriously uneven playing field, and the regulators should not further disadvantage U.S. companies through broad extraterritorial application of the derivatives rules. The U.S. should not extend its regulations to cover activities or entities which are or will be the subject of comprehensive supervision by a comparable non-U.S. regulator.

The timing, substance, and extraterritorial reach of Title VII of the Dodd-Frank Act have broad and extensive competitive consequences and raise a number of important public policy questions. Accordingly, I respectfully request that you provide a detailed response to the following questions by August 15, 2011.

- What is the Treasury Department doing to coordinate both the substance and timeframe for implementation of derivatives reforms with your non-U.S. counterparts?

- If the Treasury Department believes, as it has asserted, that international harmonization of derivatives reforms can be achieved, what is the timeline for such an agreement, and how will Treasury ensure that there are no implementation gaps that could contribute to competitive disparities?

- What analysis has Treasury and/or the FSOC conducted to measure the competitive effect of Title VII on U.S. financial markets and derivatives end-users?

- Why is the existing prudential regulatory regime and consolidated supervision of U.S. bank holding companies, further enhanced by modifications enacted pursuant to the Dodd-Frank Act, insufficient to ensure the safety and soundness of U.S. parents of non-U.S. swaps entities transacting abroad, such that extraterritorial imposition of swaps margin rules is necessary?

- Is the extraterritorial application of margin rules necessary if, as you have previously indicated, other countries plan to harmonize their rules in coordination with the United States?

- Do you believe that the mere fact that a non-U.S. entity is an affiliate or subsidiary of a U.S. company is a sufficient statutory basis for extraterritorial application of Title VII requirements? If so, please explain how every transaction between a non-U.S. subsidiary (with a U.S. parent) and a foreign counterparty affects U.S. commerce in a "direct" and "significant" manner, or in the alternative, is designed to evade U.S. rules.

- The Treasury Department did not include Section 716 in its submission of draft derivatives legislative text to the Congress in 2009. Neither the Securities and Exchange Commission (SEC) nor the Commodity Futures Trading Commission (CFTC) provided Section 716 to the Congress. Federal Reserve Chairman Bernanke, SEC Chairman Schapiro, former Federal Deposit Insurance Corporation Chairman Sheila Bair and you all expressed serious concerns or outright opposition to the provision during the Dodd-Frank conference committee's deliberations. As Chairman of the FSOC, do you believe that Section 716 is necessary to ensure the safety and soundness of the U.S. financial system?

- As non-U.S. jurisdictions will not be enacting a provision similar to Section 716, what are you doing as FSOC Chairman to ensure that the SEC and CFTC will implement the rule so as to mitigate its impact on U.S. institutions' ability to compete against their foreign counterparts?

Thank you for your consideration of this important request. I look forward to your prompt response.

Sincerely,

SPENCER BACHUS
Chairman

Congress of the United States
Washington, DC 20515

October 4, 2011

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Ben S. Bernanke
Chairman of the Board of Governors
Federal Reserve System
2001 C Street, NW
Washington, DC 20001

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairmen Gensler, Schapiro, Bernanke and Acting Chairman Gruenberg:

As authors of the Wall Street Reform and Consumer Protection Act (P.L. 111-203) (Wall Street Reform Act), we commend your work implementing Title VII of this important new law. We have an enormous opportunity to set a new global standard for the operation of an efficient, transparent and well-regulated derivatives market. It is in a spirit of support for your efforts that we write with suggestions for how to avoid some unintended consequences that could undermine this objective.

As you know, the existing $600 trillion derivatives market operates as an integrated global market, despite the jurisdictional determinations made in Title VII between the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC). It is our hope that the two agencies will work closely and collaboratively together and that the new swap regulations can be sequenced and implemented in a logical, coordinated manner that encourages compliance and market competition.

Given the global nature of this market, U.S. regulators should avoid creating opportunities for international regulatory arbitrage that could increase systemic risk and reduce the competitiveness of U.S. firms abroad. Congress generally limited the territorial scope of Title VII to activities within the United States. This general rule should not be swallowed by the law's exceptions, which call for extraterritorial application only when particular international activities of U.S. firms have a direct and significant connection with or effect on U.S. commerce, or are designed to evade U.S. rules. We are concerned that the proposed imposition of margin requirements, in addition to provisions related to clearing, trading, registration, and the treatment of foreign subsidiaries of U.S. institutions, all raise questions about consistency with Congressional intent regarding Title VII.

Moreover, U.S. regulators should work with other international regulators to seek broad harmonization of appropriately tough and effective standards. This can be accomplished by an appropriate staging of the adoption or implementation of our rules abroad. Should current harmonization efforts ultimately fail or prove a race to the bottom that would undermine effective regulation, the U.S. would of course reserve the right to proceed to extend the application of its standards to overseas operations.

In addition, as you proceed through the rule-making process, we urge you to respect Congress' intent to protect the ability of end users and pension plans to use swaps in a cost-effective manner. In particular, Congress recognized the need to allow pension funds, states, municipalities and other "special entities" to continue to use swaps by expressly rejecting the imposition of a fiduciary duty for swap dealers that is legally incompatible with their legitimate role as market-makers. The withdrawal of the Department of Labor's rules on a fiduciary duty under ERISA gives the agencies an opportunity to work together to prevent such adverse results. We urge you to work to revise the proposed rules in a way that avoids unintended consequences.

As one of the first countries to propose new financial rules following the 2008 crisis, the world is closely watching what we do. As you revise and finalize the proposed rules, we look forward to working together to support your important work in a way that keeps our financial markets the envy of the world.

Sincerely,

Tim Johnson

Senator Tim Johnson
Chairman
U.S. Senate Committee on
Banking, Housing, and Urban Affairs

Barney Frank

Congressman Barney Frank
Ranking Member
U.S. House Committee on
Financial Services

cc: The Hon. Timothy Geithner, Secretary, U.S. Department of the Treasury
The Hon. Hilda Solis, Secretary, U.S. Department of Labor
The Hon. John Walsh, Acting Comptroller of the Currency
The Hon. Edward DeMarco, Acting Director, Federal Housing Finance Agency
The Hon. Leland A. Strom, Chairman and CEO, Farm Credit Administration

United States Senate
WASHINGTON, DC 20510

October 17, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the
Federal Reserve System
Twentieth and Constitution Avenue, NW
Washington, DC 20551

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bernanke, Chairman Gensler, Chairman Schapiro, Acting Comptroller Walsh, and Acting Chairman Gruenberg:

We are writing regarding potential implications of extending the application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank") to jurisdictions outside the United States. We are concerned that your recent proposals do not realistically address potential issues this could raise for the global swaps markets.

The swaps market has developed with a recognition by regulators that individual countries have regulatory jurisdiction over the activities within their borders. Given recent statements and actions by U.S. regulatory agencies, we are concerned about proposals that could create uncertainty as to how the additional regulations could apply across borders and alter regulatory precedent. Nor do the proposals take into account the emerging regulation of swaps in Europe and other countries in response to the G-20 agreement to strengthen the regulation of swaps globally.

Problems for global swaps arise in many contexts under the proposals. Requiring swap dealer registration of off-shore swap dealers would subject these swap dealers to capital and margin regulation for their worldwide businesses, which give no credit to requirements in their home jurisdictions and in fact may be inconsistent with these developing requirements. U.S. clearing and exchange trading requirements apparently would apply to cross-border transactions, which may directly conflict with requirements in other countries. In addition, the proposals on their face would regulate swaps between global affiliates and cross-border guarantees, which are key means of reducing risk and raise few regulatory issues.

The potential ramifications of rules being applied extraterritorially are of key importance to institutions when determining how and where to conduct business. Even Chairman Bernanke at a recent Senate Banking Committee appearance observed, with respect to the prudential supervisors' proposed margin rule, that if other jurisdictions don't follow the U.S. margin rule, then it could place U.S. headquartered firms at a "significant competitive disadvantage."

Clearly, the final rules should limit their scope and take into account the developing regulation of derivatives in other countries, pursuant to G-20 commitments. The fluid nature of the derivatives markets underscores the need for the international framework for derivatives rules to be as consistent as possible between major financial jurisdictions. Harmonized rules will decrease the risk of regulatory arbitrage and help ensure that America's capital markets remain vibrant and competitive in the new global framework.

Given these concerns, we ask the regulators to clearly address cross-border issues in their rules and to avoid unnecessarily impeding global swaps operations by harmonizing the substance and timing of your proposals with your international_counterparts. To this end, the prudential regulators should reconsider the proposed margin rule referenced above and its application to non-U.S. based affiliates of U.S. institutions.

In addition, we request that each of you respond in writing to this letter by November 15th explaining in detail how you will apply your rules to transactions across borders and to non-U.S. swap market participants that register in the U.S., including regulation of these entities, and treatment of interaffiliate swaps and guaranties. As part of that response, please indicate in detail what requests for comment you will publish on extraterritorial issues, including the approaches to regulating cross-border activities on which you will request comment.

We look forward to working with you as you continue with your implementation efforts under Dodd-Frank.

Sincerely,

Mike Johanns
United States Senator

Mike Crapo
United States Senator

David Vitter
United States Senator

Pat Toomey
United States Senator