



February 7, 2012

The Honorable James A. Himes
119 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Himes:

The Securities Industry and Financial Markets Association (SIFMA) strongly supports H.R. 3283, the Swap Jurisdiction Certainty Act, which provides necessary clarity about congressional intent related to the treatment of certain swap contracts.

We believe that this clarification is necessary because the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC) and prudential regulators have not yet clarified the extraterritorial application of their proposed and final Dodd-Frank-related rulemakings. Without this clarity, it will be very difficult for market participants to comply with these rules. H.R. 3283 would ensure consistency with existing Federal policy that registered swaps dealers that are foreign banks or foreign affiliates of U.S. banks are not subject to U.S. capital requirements when already subject to comparable supervision in their home or foreign jurisdiction. H.R. 3283 would also ensure that the entity level regulatory regime of Title VII would continue to apply to all foreign swap activities of registered swap entities which include requirements for sound risk management practices and minimum capital standards.

H.R. 3283 would also ensure a level playing field and protect against duplicative regulations for market participants. The swap market is a truly global market, requiring cooperation by regulators worldwide to avoid duplicative and contradictory regulation. For instance, Japan's Financial Services Agency recently wrote to the CFTC expressing concern about the extraterritorial application of Title VII rules, stating that the proposed framework "will create an undesirable and redundant effect" on Japanese institutions. In addition, a lack of certainty over what activities may trigger regulation by U.S. authorities may cause firms to cease or scale back business with foreign affiliates of U.S. firms. Finally, foreign counterparties may be subject to two distinct sets of regulations for similar contracts that will provide for disparate treatment of similar swaps. Every effort should be made to clearly determine which swaps are subject to U.S. jurisdiction and which swaps are subject to foreign jurisdiction.

Market participants face many operational problems related to the implementation of Dodd-Frank Act. As an example, the CFTC recently approved final rules related to the registration of swap dealers and major swap participants. However, the CFTC has not finalized rules on product or swap entity definitions, nor has it addressed the extraterritorial application of any rules finalized to date. Without clarity on definitions and extraterritorial application, it is impossible for market participations to determine with

certainty who will be subject to registration and other requirements. Market participants will be required to restructure their corporate operations, register these entities, build out new operations and technology, conduct additional training, and modify existing and new client agreements and legal documentation. All of these changes will require significant time and cost and regulators should work to ensure that these final regulations are not in conflict and do not result in unnecessary burdens.

Thank you for your consideration of our views.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Ken Bentsen", with a stylized flourish at the end.

Kenneth E. Bentsen, Jr.
EVP, Public Policy and Advocacy
SIFMA

cc: The Honorable Scott Garrett
The Honorable Gwen Moore
The Honorable Carolyn McCarthy
The Honorable Robert J. Dold

Members of Subcommittee on Capital Markets and Government Sponsored Enterprises