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The Honorable Debbie Stabenow, Chairwoman
The Honorable Thad Cochran, Ranking Member
U.S. Senate Committee on Agriculture, Nutrition & Forestry
328A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Stabenow and Ranking Member Cochran:

On behalf of The Depository Trust & Clearing Corporation (“DTCC”), thank you for the opportunity to provide input and recommendations with respect to the reauthorization of the Commodity Exchange Act (“CEA”) and the Commodity Futures Trading Commission’s (“CFTC’s”) oversight of the futures, swaps, and options markets.

DTCC serves as the primary financial market infrastructure serving the U.S. capital markets across multiple asset classes, including equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments, mutual funds, insurance, alternative investment products and over-the-counter derivatives. In 2012, thousands of companies issued securities through DTCC and its affiliated companies.

DTCC has operating facilities and data centers around the world and, through its subsidiaries, automates, centralizes, and standardizes the post-trade processing of financial transactions for thousands of institutions worldwide. In addition, DTCC has implemented the global legal entity identifier (“LEI”) program through the assignment of CFTC Interim Compliant Identifiers (“CICI”) since August 2012.

DTCC provides critical infrastructure to serve all participants in the financial industry, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and approximately 500 mutual funds. DTCC operates as a cooperative that is owned collectively by its users and governed by a diverse Board of Directors. DTCC’s governance structure includes 344 shareholders.

DTCC’s subsidiary, the DTCC Data Repository (U.S.) LLC, is provisionally registered as a swap data repository (“SDR”) with the CFTC for credit, equity, interest rate, foreign exchange and commodity derivatives in the U.S. In a joint venture with NYSE Euronext, DTCC launched New York Portfolio Clearing, LLC, a CFTC-registered derivatives clearing organization for U.S. dollar denominated U.S. Treasury and Eurodollar futures contracts.

As the Committee undertakes its comprehensive review of the CEA and the CFTC's role, including implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), DTCC recommends the consideration of the following important issues. These specific matters, if appropriately addressed, could aid in implementing Dodd-Frank and provide clarity and certainty to the CFTC and market participants.

Ensure Global Harmonization

Whether through international regulatory bodies such as the Committee on Payment and Settlement Systems ("CPSS")¹, the International Organization of Securities Commissions ("IOSCO")² or the OTC Derivatives Regulators' Forum³ ("ODRF"), the Committee should encourage U.S. participation in global efforts to promote harmonized rules governing OTC swaps markets. As the Committee is aware, Asian and European regulators are hard at work at their own derivatives regulatory regimes, and the United States should promote international comity to ensure that regulatory arbitrage is not a driving force in market decisions.

We urge this Committee to continue its active oversight of Dodd-Frank implementation, including international coordination efforts, to ensure regulatory harmony among jurisdictions in a manner that promotes competition, transparency, and protects the safety and soundness of these global markets. At the same time, this Committee should remain vigilant that the international framework, including the implementation of a substituted compliance regime, is efficient and does not unfairly disadvantage or concentrate systemic risk in the United States.

¹ The CPSS is a standard setting body for payment, clearing and securities settlement systems. It also serves as a forum for central banks to monitor and analyse developments in domestic payment, clearing and settlement systems as well as in cross-border and multicurrency settlement schemes.

² The International Organization of Securities Commissions (IOSCO), established in 1983, is the acknowledged international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements, and promotes adherence to internationally recognized standards for securities regulation, and is working intensively with the G20 and the Financial Stability Board (FSB) on the global regulatory reform agenda. IOSCO's membership regulates more than 95% of the world's securities markets. Its members include over 120 securities regulators and 80 other securities markets participants (i.e. stock exchanges, financial regional and international organizations etc.). IOSCO is the only international financial regulatory organization which includes all the major emerging markets jurisdictions within its membership.

³ The OTC Derivatives Regulators' Forum is comprised of international financial regulators including central banks, banking supervisors, and market regulators, and other governmental authorities that have direct authority over OTC derivatives market infrastructure providers or major OTC derivatives market participants, or consider OTC derivative market matters more broadly.

Reporting of All Swaps to Registered SDRs

During the CEA reauthorization, this Committee should ensure that the trade reporting requirement for all swaps remains the law of the land. CEA Section 2(a)(13)(G) requires that “[e]ach swap (whether cleared or uncleared) shall be reported to a registered swap data repository.”⁴ The CFTC described this new requirement as necessary “[t]o enhance transparency, promote standardization, and reduce systemic risk.”⁵

We urge the Committee to maintain this important requirement that ensure regulators (and the public, through public dissemination by SDRs) have access to timely, accurate and consolidated information for all transactions within their jurisdiction. The bifurcation of trade reporting between cleared and uncleared swaps threatens only to fragment data between clearing houses and SDRs, making it more difficult for regulators to identify and mitigate systemic risk.

Indemnification

The Agriculture Committee should review Dodd-Frank’s indemnification requirements and adopt a legislative remedy to remove the offensive provision that threatens global information sharing and systemic risk oversight.

Section 21(c) of the CEA requires, prior to sharing information with U.S. prudential regulators, the Financial Stability Oversight Council, the Department of Justice, foreign financial supervisors (including foreign futures authorities), foreign central banks, or foreign ministries, that (i) registered SDRs to receive a written agreement from each entity stating that the entity shall abide by certain confidentiality requirements relating to the information on swap transactions that is provided and (ii) each entity must agree to indemnify the SDR and the CFTC or the Securities and Exchange Commission (as applicable) for any expenses arising from litigation relating to the information provided.

In practice, this provision has proven to be unworkable. This Dodd-Frank requirement runs counter to ODRF policies and procedures to safeguard and share data and the IOSCO Multi-Lateral Memorandum of Understanding, poses a significant barrier to the ability of regulators globally to effectively utilize the transparency offered by trade repositories, and may have the effect of precluding US. regulators from data housed at non-U.S. repositories.

We urge you and your colleagues to consider and pass H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013. This bill has been approved by the House Agriculture Committee with bipartisan support and

⁴ CEA §2(a)(13)(G).

⁵ Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2,136, 2,137 (Jan. 13, 2012).

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has the support of the SEC and three CFTC Commissioners. H.R. 742 would conform U.S. law with existing international standards by removing the indemnification provisions from the CEA. Making this technical amendment would send a clear 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 over-the-counter derivatives.

Leverage Private Sector Data Analytics

During a recent Congressional hearing, Chairman Gensler revealed that the CFTC “won't have the resources for that technology, for analyzing the data, taking the data in and helping the public see the data in relevant aggregate forms.”⁶ During the CEA reauthorization process, the CFTC should be strongly encouraged to leverage existing private infrastructure to assist in its oversight of the futures and swaps markets.

DTCC, and other regulated entities (such as DCOs and SDRs), can provide unique analytics services if requested by the CFTC. The CFTC is receiving a tremendous amount of new information as a result of SDR reporting, but identifying abusive or manipulative trading or other signs of risk will be needles in the haystack unless the data can be converted into useful information. Providers of the data, including DCOs and SDRs, can provide analytic tools in their output to reduce the strain on the Commission and its limited resources.

We urge the Committee, in its oversight of the CFTC and Dodd-Frank implementation, to encourage the CFTC to seek input from private platforms and consider existing infrastructure that can be relied upon to provide the Commission with the technological capabilities to develop and implement systems and platforms for systemic risk oversight, particularly given the depth and breadth of data at the Commission's disposal under Dodd-Frank.

Thank you for your leadership on these very important issues. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,



Larry E. Thompson
General Counsel

⁶ Budget Hearing – Commodity Futures Trading Commission: Hearing before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, 114th Cong. (2013).