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Description of document: Commodity Futures Trading Commission (CTFC) submission to the Honorable Tim Johnson, Chairman Senate Committee on Banking, Housing, and Urban Affairs regarding the regulatory approach of the CFTC in implementation of derivatives markets reforms, 2012

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Commodity Futures Trading Commission
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[Online FOIA Request Form](#)

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U.S. COMMODITY FUTURES TRADING COMMISSION

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September 13, 2012

RE: 12-00137-FOIA
Correspondence to Senator Tim
Johnson

This is in response to your request dated August 1, 2012 under the Freedom of Information Act seeking access to the CFTC's response to Senator Tim Johnson. In accordance with the FOIA and agency policy, we have searched our records, as of August 1, 2012, the date we received your request in our FOIA office. We have located and reviewed the responsive records. You are granted full access to the responsive records, which are enclosed.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 21st Street, N.W., Washington, D.C. 20581, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Joan Fina at 202-418-7621.

Sincerely,

Joan E. Fina
Counsel



U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Gary Gensler
Chairman

(202) 418-5050

May 14, 2012

The Honorable Tim Johnson, Chairman
Committee on Banking, Housing, and
Urban Affairs
U.S. Senate
Washington, D. C.

Dear Mr. Chairman:

Thank you for the opportunity to inform you regarding the regulatory approach of the Commodity Futures Trading Commission (CFTC) in implementation of derivatives markets reforms.

In 2008, the financial system and the financial regulatory system failed the American public. Swaps – developed to help manage and lower risk for commercial companies – also concentrated and heightened risk in financial institutions. In response, Congress and the President came together and passed the historic Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Title VII of the Act amended the Commodity Exchange Act (CEA) to establish a comprehensive new regulatory framework for the previously unregulated swaps market. The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system. It does so by providing for the registration and comprehensive regulation of swap dealers and major swap participants; imposing clearing and trade execution requirements for standardized swaps; creating robust recordkeeping and real-time reporting regimes; and enhancing the Commission’s rulemaking and enforcement authorities.

To date, the CFTC has completed 32 reforms to bring oversight to the swaps market. The Commission is on track to complete the approximately 20 remaining reforms this year.

The Commission will continue looking at appropriate timing for compliance, balancing the direction to protect the public with providing adequate time for market participants to comply with new requirements. For instance, in the Commission’s finalized rules, registered clearinghouses will have up to a year to come into compliance with certain provisions.

Two principles have guided the Commission throughout the rule-writing process. First is the statute itself. Second, we are consulting closely with other regulators and taking input from the public. We are working very closely with the Securities and Exchange Commission, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and other prudential regulators, which includes sharing many of our memos, term sheets and draft work product. CFTC staff and Commissioners have had substantial consultation with other regulators on implementation of the Dodd-Frank Act.

In addition to working with our domestic counterparts, we have reached out to and are actively consulting with international regulators to harmonize our approach to swaps oversight. We also share many of our memos, term sheets and draft work product with international regulators. Our discussions have focused on clearing and trading requirements, clearinghouses more generally and swaps data reporting issues, among many other topics.

In order to implement the Dodd-Frank Act, the CFTC established 30 rulemaking teams at the time of enactment. Several additional rulemaking teams have been established as further needs have been identified. The Commission sought to ensure ample opportunities for the public to inform the Commission on rulemakings – even before official public comment periods commenced. For each rulemaking team, a web page was established that allowed for initial input from interested members of the public. Commission staff have also held 16 public roundtables – often jointly with fellow regulators – to hear ideas from the public either prior to or during official comment periods.

Throughout the rulemaking process CFTC Commissioners and staff have held over 1,600 meetings with the public and have received nearly 30,000 comments. This Commission's rulemaking process has greatly benefitted from this public input.

As the Commission was approaching the completion of the proposal phase of rulemaking and turning towards final rules, a detailed ordering of such rules for consideration was posted on the Commission's website in order to give guidance to the public. In May 2011, the Commission reopened many of its comment periods that had closed and extended some existing comment periods so that the public could comment in the context of the entire mosaic of proposed rules. This opportunity was available with respect to all relevant proposed rules, giving the public and market participants the opportunity to comment on compliance costs and to make recommendations regarding the schedule of implementation. That extended comment period closed on June 3, 2011. In addition, in May 2011, CFTC and SEC staff held roundtable sessions to obtain views of the public with regard to implementation dates of the various rulemakings. Prior to the roundtable, CFTC staff released a document that set forth concepts that the Commission may consider with regard to the effective dates of final rules for swaps under the Dodd-Frank Act. The Commission also received written comments from the public regarding the consideration of final rules and appropriate phasing of implementation. A CFTC Staff Concepts and Questions document was published for the public to provide additional feedback over a 60-day comment period.

On September 8, 2011, the Commission sought public comment on proposed rules specifically to establish schedules to phase in compliance requirements for the swap clearing and

trade execution requirement provisions of the Dodd-Frank Act. At that meeting, the Commission also approved a proposed rule to phase in compliance with previously proposed requirements, including the swap trading relationship documentation requirement and the margin requirements for uncleared swaps. The proposal is designed to provide greater clarity to swap dealers and major swap participants regarding the timeframe for bringing their swap transactions into compliance with new documentation and margining rules.

Since Section 15(a) was added to the Commodity Exchange Act in 2000, the CFTC has been required to consider the costs and benefits related to any rulemaking in light of: protection of market participants and the public; the efficiency, competitiveness and financial integrity of the markets; price discovery; sound risk management practices; and the public interest.

The CFTC's application of these statutory requirements is informed by its experience overseeing financial markets and examining the operations of exchanges, clearinghouses and financial intermediaries. These considerations of costs and benefits are presented not only in the cost-benefit section of each Dodd-Frank rulemaking release, but throughout other portions of the rule as well. Each proposed rule release specifically sought public comments with regard to the consideration of costs and benefits.

Through meetings with market participants and the public and through the receipt of public comments, the Commission obtained the views of informed parties to improve its understanding of costs and benefits of the CFTC's rulemakings. This has allowed us to mitigate compliance costs, to the extent consistent with the obligation of the CFTC to promote market integrity, reduce risk and increase transparency as directed by Congress in the Dodd-Frank Act.

On June 30, 2011, the CFTC published in the *Federal Register* its Plan for Retrospective Review of Agency Regulations. In undertaking the effort to conform existing rules to the changes required by the Dodd-Frank Act, the Commission had subjected many of its pre-existing rules to scrutiny. The Commission has reviewed and revised regulations interpreting and applying the Core Principles of Derivatives Clearing Organizations. The Commission has also reviewed, sought comment on, and issued new regulations clarifying its anti-manipulation authority while implementing new authorities provided under the Dodd-Frank Act. The Commission also modified substantially its position limits regime in the implementation of new Dodd-Frank Act requirements. The Commission has revised its regulations related to the investment of segregated customer funds, as well.

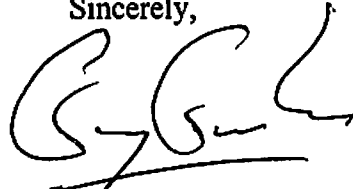
The Commission has also finalized rules updating the application of core principles for Designated Contract Markets, which is consistent with the core principles-based regime of the Commodity Exchange Act. In addition, the CFTC has proposed conforming rules that – when finalized and with the benefit of public comment – will help ensure that the Commission's pre-existing rules are broadly consistent with the rules implementing the Dodd-Frank Act.

Once the Commission has largely completed the Dodd-Frank rules, the CFTC intends to begin the process of the periodic retrospective review of the remainder of its regulations.

Enclosed with this letter is a list summarizing the status of the Dodd-Frank Act rulemaking process at the CFTC.

Thank you for the opportunity to address these matters and for your support of the work of the CFTC.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Gensler', written over a horizontal line.

Gary Gensler
Chairman

CFTC Dodd-Frank Update

Final Rules & Guidance

- Agricultural Commodity Definition
- Agricultural Swaps
- Anti-Manipulation
- Business Affiliate Marketing and Disposal of Consumer Information
- Client Clearing Documentation, Straight Through Processing, Clearing Member Risk Management
- Commodity Options
- Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations
- Derivatives Clearing Organization - General Provisions and Core Principles
- Designated Contract Markets – Core Principles
- External Business Conduct Standards
- Foreign Boards of Trade - Registration
- Internal Business Conduct Standards (Risk Management, Recordkeeping, & CCOs)
- Investment Advisor Reporting on Form PF (Jt. with SEC)
- Investment of Customer Funds (Regulation 1.25)
- Large Trader Reporting for Physical Commodity Swaps
- Position Limits for Futures and Swaps
- Privacy of Consumer Financial Information
- Process for Review of Swaps for Mandatory Clearing
- Process for Rule Certifications for Registered Entities (Part 40)
- Real-Time Reporting for Swaps
- Removal of References to or Reliance on Credit Ratings
- Reporting Certain Post-Enactment Swap Transactions (IFR)
- Reporting Pre-Enactment Swap Transactions (IFR)
- Retail Commodity Transactions – Interpretive Guidance on “Actual Delivery”
- Retail Foreign Exchange Intermediaries – Regulations & Registration
- Retail Foreign Exchange Transactions – Conforming Amendments
- Segregation for Cleared Swaps
- Swap Data Recordkeeping and Reporting Requirements
- Swap Data Repositories – Core Principles, Duties & Registration
- Swap Dealers and Major Swap Participants - Registration
- Swap Dealers, Major Swap Participants, and Eligible Contract Participants - Further Definitions (Jt. with SEC)
- Whistleblowers

Proposed Rules & Guidance

- Block Rule
- Capital for Swap Dealers & Major Swap Participants

- Conforming Rules
- DCMs – Core Principle 9
- Disruptive Trade Practices
- End-User Exception
- Exemptive Order – Effective Date for Swaps Regulation
- Governance and Conflict of Interest (DCM, DCO, & SEF)
- Harmonization of CPO/CTA Reporting
- Identify Theft (Jt. with SEC)
- Implementation Phasing for Clearing & Trading Mandates
- Internal Business Conduct (Documentation, Confirmation, & Portfolio Reconciliation)
- Margin for Uncleared Swaps
- Process for “Made Available to Trade” Determinations
- Product Further Definitions (Jt. with SEC)
- Reporting of Historical Swaps
- Segregation for Uncleared Swaps
- Swap Data Repository Indemnification Interpretation
- Swap Execution Facilities – Core Principles & Registration
- Systemically Important Clearing Organizations – Additional Provisions
- Volcker Rule

Yet to be Proposed Rules & Guidance

- Cross-Border Application
- Inter-Affiliate Clearing
- Qualified Financial Contract Recordkeeping (Jt. With Prudential Regulators and SEC)
- Stress Testing under Section 165

Final Orders

- Delegation to National Futures Association (NFA) – Certain exemptions for Commodity Pool Operators
- Delegation to NFA - Foreign Exchange Intermediary Registration function
- Delegation to NFA - Swap Dealer & MSP Registration function
- Exemptive orders – Effective Date for Swaps Regulation
- Treatment of Grandfather Relief Petitions - Exempt Boards of Trade & Exempt Commercial Markets
- Treatment of Grandfather Relief Petitions – Transactions done in Reliance on 2(h)

Studies & Reports

- Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives (Jt. with SEC)
- International Swap Regulation (Jt. with SEC)
- Risk Management Supervision of Designated Clearing Entities (Jt. With Board of Governors of the Federal Reserve System and the SEC)
- Study on Oversight of Carbon Markets (Jt. with various other Agencies)