

# Congress of the United States

Washington, DC 20510

May 17, 2011

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

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

The Honorable Sheila Bair  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> 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-

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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 Sch

Kirsten E. Gillibrand

Gary J. Ackema

[Signature]

Gregory W. Meeks

Carolyn M. Maloney

Carolyn McCarty

Stuefer

Joseph Crowley

Na Hayworth

Michael A. Maiman

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Flours

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