# Congress of the United States
Washington, DC 20515

March 29, 2012

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

Dear Chairman Gensler:

The registration and comprehensive regulation of "swap dealers" is central to the reforms set forth by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"). We appreciate the significant time you and your staff have spent implementing these reforms. We do remain concerned that the breadth of the proposed rule further defining "swap dealer" will result in the registration of many entities that Congress never intended to be regulated as dealers.

Enhancing transparency in the derivatives markets and mitigating systemic risk are critical to ensuring the safety and soundness of our financial system. Accordingly, Title VII requires that all "swaps" be reported, and gives the Commission additional authority to collect data to facilitate its surveillance of and enforcement authority over Large Trader positions. At the same time, most swaps will be mandated for central clearing, a critical component of reducing systemic risk. Further, entities that do not engage in swap dealing, but take positions that are so substantial they pose a threat to the stability of the financial system, must be designated and regulated as major swap participants. Therefore, it is important for the Commission to recognize that the "swap dealer" designation is not its singular means for overseeing entities in the swaps market. The activities of non-swap dealers will be subject to the authority and oversight of regulators and cannot rise to a level of systemic significance without drawing additional regulatory oversight.

Consequently, it is important for the Commission to finalize the swap dealer definition in a manner that is not overly broad, and that will not impose significant new regulations on entities Congress did not intend to be regulated as swap dealers. The Commission's final rule further defining "swap-dealing" should clearly distinguish swap activities that end-users engage in to hedge or mitigate the

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commercial risks associated with their businesses, including swaps entered into by end-users to hedge physical commodity price risk, from swap dealing. In providing an exemption for hedging activities, the Commission should seek to be consistent when defining "hedging" across regulations, such that the definition of hedging in the "swap dealer" definition is consistent with the definition of "hedging or mitigating commercial risk" as proposed in the "major swap participant" definition and in the end-user clearing exception.

Additionally, we would urge the Commission to consider that many commercial end-users, particularly those with inherent physical commodity price risk, actively trade in swaps to facilitate hedging of those risks and to otherwise anticipate changing market prices. These entities do so for their own trading objectives and not for the benefit of others, and the final rule should clarify that these activities do not constitute "swap dealing" and will not require swap dealer registration.

It is also critical that businesses have access to the credit they need to fuel our economic recovery and job growth. Hedging against the risks businesses face, whether rising commodity prices, or interest rates and currency rates, is an important component of their ability to secure credit. In recognition of this, Congress provided an exception for credit institutions that offer swaps in connection with loans from designation as swap dealers. This provision ensures that the flow of credit can continue between businesses and small to mid-size lenders and farm credit institutions.

We appreciate the Commission's efforts to ensure that any exclusion is not abused and believe the loan exclusion can be narrowly defined to reflect the realities of commercial lending. We share concerns expressed by the Comptroller of the Currency in his comments submitted to the Commission on July 1, 2011 that the CFTC's proposed interpretation of the loan exclusion may interfere with risk management practices in connection with commercial credit, and ask that you address these concerns in the final rule.

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

Sincerely,

Debbie Stabenow
Chairwoman
Senate Committee on
Agriculture, Nutrition, and Forestry

Frank D. Lucas
Chairman
House Committee on Agriculture

cc: Honorable Mary Schapiro
Honorable Jill Sommers
Honorable Bart Chilton
Honorable Scott O'Malia
Honorable Mark Wetjen