Larry E. Thompson
General Counsel

Tel: *212-855-3240*
Fax:*212-855-3279*
lthompson @dtcc.com

DTCC

The Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041-0099

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

Dear Chairman Gensler:

Thank you for taking the time to initiate a discussion on an issue of concern for The Depository Trust & Clearing Corporation (DTCC). The Commodity Futures Trading Commission's (CFTC) recognition of DTCC's concerns regarding the indemnification provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] as well as the agency's ongoing efforts to find an effective solution to the provisions' inherent complications is greatly appreciated.

Particularly, the CFTC's efforts to address concerns with the Indemnification Provisions by issuing interpretive guidance designed to provide a "work around" to minimize the negative reaction from non-US regulators is significant.

Over the past two years, DTCC has worked with Congress, as well as the CFTC and the Securities and Exchange Commission (SEC) to ensure that the reforms enacted by the Dodd-Frank Act function, as intended by the statute, to increase transparency in the over-the-counter derivatives market.

DTCC consistently has expressed serious concerns that the Indemnification Provisions, as adopted, seek to solve problems that do not exist and, in doing so, have created several

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[1] The provisions are implemented in Commodity Exchange Act Section 21(d) and Securities Exchange Act of 1934 Section 13(n)(5)(H), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 728 and 763 (2010) (hereinafter referred to as the Indemnification Provisions).

new problems that threaten to undermine global data sharing among regulators and negatively impact their ability to mitigate systemic risk in the derivatives market.

DTCC has reviewed and considered the concepts relayed on our call and, while it is difficult to comment specifically on draft guidance that is not yet available in detailed, written form, if the intent of the regulatory guidance is as an "interim" measure to provide comfort to foreign regulators and operators of global trade repositories, that regulatory guidance would be welcome.

As an interim measure designed to help third-party regulators promote transparency and avoid activities that lead toward the fragmentation of derivative trade data during the process of Congressional consideration of legislative remedies, the discussed guidance is a useful step. However, because the current statute remains unambiguous about the indemnification requirement, DTCC maintains the belief that a legislative "technical correction" is the only viable solution to avoid the unintended negative consequences of the Indemnification Provisions.

Global regulators share the belief that a legislative resolution is needed for the Indemnification Provisions. European policymakers have already specifically considered and rejected an identical indemnification provision in the recently adopted European Market Infrastructure Regulation (EMIR), and key Asian policymakers have aligned their regulatory framework with the Europeans.

In its testimony to the House Financial Services Committee in support of legislation to remove the Indemnification provisions from the Dodd-Frank Act, the SEC indicated that it "is seriously troubled by the statements of certain foreign regulators about their intention to adopt reciprocal indemnification requirements, such that U.S. regulators would have to provide written indemnification agreements to foreign trade repositories as a precondition for accessing data, or otherwise block access by U.S. regulators to foreign trade repositories…..[t]he SEC would be legally unable to meet any such indemnification requirement and has argued vigorously against similar requirements in other contexts." Additionally, the SEC explicitly recommended that "Congress consider removing the indemnification requirement added by the Dodd-Frank Act."[2]

For all of these reasons, DTCC hopes the CFTC will join the SEC in supporting a legislative technical correction to the Indemnification Provisions in the Dodd-Frank Act.

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[2] Written Testimony of Ethiopis Tafara, House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises (Mar. 21, 2012), *available at* http://financialservices.house.gov/UploadedFiles/HHRG-112-BA-WState-ETafara-20120321.pdf.

I look forward to having additional discussions with you and your colleagues at the CFTC on the Indemnification Provisions. Should you wish to discuss these comments further, please contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,

Larry E. Thompson

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