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June 20, 2012

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

Dear Chairman Gensler:

We are writing today regarding the Commodity Futures Trading Commission's (CFTC) forthcoming interpretive guidance on the cross-border application of Title VII, reportedly to be released at the CFTC's open meeting scheduled for tomorrow. According to recent press reports and some of your own public comments, including a recent *Bloomberg* news article, it appears that the format of the release will be an informal guidance rather than a formal rule proposal.

We have serious concerns about the use of informal guidance when addressing such a significant matter of public policy. As you are aware, whatever the United States chooses to do with regard to the extraterritorial application of its laws will greatly influence how foreign countries treat US persons doing business in their respective jurisdictions. For that reason alone it seems that the prudent approach would to allow notice and comment and adhere to the traditional rule-making process when establishing such a far-reaching policy.

In addition, because the ramifications to US companies and our economy are so sweeping, the need for a final rule firmly establishing the legal obligations of US persons as well as others doing business in the US seems self-evident. Opting for informal guidance as opposed to a final rule adds to the uncertainty, which has hamstrung American businesses and slowed economic recovery over the last several years.

In light of recent rulemakings, we remain significantly concerned about the adequacy and legitimacy of the cost-benefit analysis being performed with respect to the CFTC's activities -- formal or not. According to the *Bloomberg* article, "The CFTC, already fighting lawsuits challenging the economic basis for two rules, may release a proposal for cross-border derivatives oversight that won't require analysis of its costs. The CFTC is preparing so-called interpretive guidance...Releasing guidelines rather than proposing rules...would mean the agency doesn't have to do cost-benefit analysis..."

In this light the use of informal guidance appears to be a conscious attempt to circumvent the rulemaking process and the economic analysis it requires. This approach is clearly at odds with legislation regarding regulatory cost-benefit analysis now moving through the House of

Representatives, and stands in sharp contrast to Congress' intent, clearly established in Section 15 of the Commodity Exchange Act, which directs "Before promulgating a regulation under this Act or issuing an order. . . the Commission shall consider the costs and benefits of the action of the Commission."

Also, we do realize that a number of your recent rule proposals are currently being challenged in court on a number of grounds, including on the CFTC's failure to conduct proper economic analysis on them before moving forward. We suggest that the best way to avoid having your proposed rules challenged in court is to do the appropriate economic analysis required by law before finalizing them.

As you know, because of the current economic climate, examining the costs and benefits imposed by new regulations and determining an appropriate balance is critical to our ongoing economic recovery. The American taxpayers have a right to see how their government calculates the burdens it intends to impose upon them, and to understand what benefits the government thinks will accrue from that burden. It is only then that an informed citizenry can assess whether they believe those costs are justified, and exercise their democratic prerogative to change the country's direction if they disagree.

Robust cost-benefit analysis is one of the few mechanisms that regulators have to ensure that their rules are closely tailored to address specific issues without causing unintended consequences and deleterious impact on our capital markets. In this instance, issuing informal guidance will not allow either American businesses or the American people to adequately assess the impact of the Commission's actions.

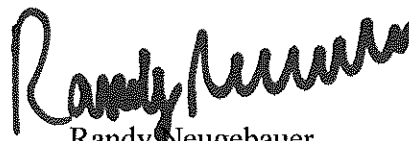
Therefore, we respectfully request that you do not move forward with the non-binding "guidance" and instead proceed through a formal rule-making process and conduct the appropriate cost-benefit analysis that the law requires. These important issues deserve thorough public scrutiny and debate.

Thank you for your attention to this matter, and please know that we are available at any time to discuss these important issues further.

Sincerely,



Scott Garrett
Chairman
Subcommittee on Capital Markets and
Government Sponsored Enterprises



Randy Neugebauer
Chairman
Subcommittee on Oversight
and Investigations