Congress of the United States
Washington, DC 20515

July 10, 2013

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

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler and Chairman White:

The undersigned Members write to urge the Commodity Futures Trading Commission (CFTC) to finalize its cross-border guidance by July 12, 2013, to protect American taxpayers from risks inherent in the derivatives market, even when those transactions occur beyond our shores. We also urge the Securities and Exchange Commission (SEC) to follow the CFTC's lead in adopting strong cross-border rules for securities-based swaps.

Before addressing the issue of agency coordination on cross-border guidance, we think it is important to recall why the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") gave the CFTC the authority to apply U.S. rules to overseas transactions that have a "direct and significant connection with activities in, or effect on, commerce of the United States."[1] Over the last 15 years, our financial markets have experienced a series of shocks that are directly attributable to the overseas activities of U.S. financial institutions:

- In 1998, Connecticut-based hedge fund Long-Term Capital Management (LTCM) folded after its highly-leveraged derivatives bets blew up. LTCM kept its $1.2 trillion swaps book in its <u>Cayman Islands affiliate</u>.
- In 2007, two hedge funds sponsored by the investment bank Bear Stearns that were heavily invested in subprime mortgage collateral debt obligations (CDOs) failed, eventually leading to the failure of Bear Stearns. These hedge funds were <u>incorporated in the Cayman Islands</u> as well.
- In 2008, insurance giant American International Group (AIG) collapsed under the weight of reckless subprime mortgage derivatives trades. AIG used its Financial Products affiliate to conduct its derivatives activities <u>in London</u>.
- Most recently, a rogue trader in JPMorgan Chase's <u>London office</u> made outsized derivatives bets on a credit index, earning him the nickname the "London whale," that ended up losing the bank $6 billion.

What we learned from these and other examples is that the global swaps market and the participants therein are highly interconnected, and the risks of derivatives transactions conducted outside of the United States can have a serious negative effect on our economy. U.S. derivatives rules should protect American taxpayers from these risks wherever they arise. The CFTC's strong cross-border rules accomplish this goal.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") §722(d), 7 U.S.C. §2(i) (2011).

The financial industry would prefer weak cross-border rules so they can shop for the jurisdiction with the lightest touch regulation. However, rather than explain that reality, Wall Street claims that we need to delay cross-border derivatives rules to compel the CFTC and the SEC time to issue rules jointly and to give U.S. regulators time to coordinate with our international counterparts. Further delay only serves to give the financial industry additional time to lobby for watered down cross-border rules.

We urge you not to be fooled by these misleading arguments. First, the CFTC currently oversees 96.5 percent of the derivatives market while the SEC has jurisdiction over 3.5 percent of the market. The CFTC should not wait for the SEC to finalize rules for its fraction of the market; rather, the SEC should follow the CFTC's lead on cross-border rules. The Dodd-Frank Act explicitly does not require that the CFTC's and SEC's cross-border rules be issued jointly or that they be identical. Second, our international partners are significantly behind the U.S. on financial reform. *American Banker* recently noted the importance of the U.S. putting in place its derivatives reforms as soon as possible and not waiting on the international community, with its different cultures, traditions, and legal frameworks, to put in place uniform rules.[2] U.S. regulators should continue to coordinate with the G-20 nations on international derivatives reforms, but they should not wait indeterminately for other nations to act. America must lead on this issue.

There is no reason the CFTC should not lift its Exemptive Order and go forward with its cross-border rules on July 12. After more than 2 ½ years of work and 300 comment letters from stakeholder on all sides of the issue, the CFTC is ready to implement its thoughtful, reasonable approach to the cross-border application of U.S. derivatives reforms. We also urge the SEC to follow the CFTC's lead in adopting strong cross-border guidance. The time to act is now.

Thank you for your consideration and we look forward to working with you in the future.

Sincerely,

STEPHEN F. LYNCH

JOHN CONYERS, JR.

MICHAEL E. CAPUANO

ALAN GRAYSON

ROSA DELAURO

ELIJAH E. CUMMINGS

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[2] Mayra Rodriguez Valladares, *Waiting for Uniform Derivatives Rules is a Losing Proposition*, AM. BANKER (June 11, 2013), *available at* http://www.americanbanker.com/bankthink/waiting-for-uniform-derivatives-rules-is-a-losing-proposition-1059765-1.html.

GEORGE MILLER

JOHN SARBANES

CHARLES RANGEL

KEITH ELLISON

NIKI TSONGAS

PETE VISCLOSKY

BARBARA LEE

JOHN F. TIERNEY

JAMES P. MCGOVERN

LOUISE M. SLAUGHTER

JACKIE SPEIER

ED MARKEY

TED DEUTCH

JARED HUFFMAN

CHELLIE PINGREE

DAVID CICILLINE

Peter Welch

PETER WELCH

Alan Lowenthal

ALAN LOWENTHAL

Michael H. Michaud

MICHAEL H. MICHAUD

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Secretary of the Treasury Jacob J. Lew