Occupy the SEC

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July 10, 2013

The Hon. Debbie Stabenow, Chairman
The Hon. Thad Cochran, Ranking Member
Senate Committee on Agriculture, Nutrition and Forestry
328A Russell Senate Office Building
Washington, DC 20510

RE: Bills Under Consideration by the Committee: H.R. 742, H.R. 1038 and H.R. 1256

Dear Members of the Senate Committee on Agriculture, Nutrition and Forestry,

Implementation of Dodd-Frank Act remains incomplete. While the Act has shown a few early signs of effectiveness, episodes such JP Morgan's "London Whale" debacle, which involved risky trading and evasion of regulations, prove that the Act and its implementing regulations must be strengthened. But, unfortunately, efforts are underway which would dismantle some of the regulatory framework designed to prevent future financial meltdowns.

A number of bills currently in the pipeline would roll back Dodd-Frank provisions or impede regulatory rulemaking. Three of these bills have been referred to your committee. One, H.R. 742, is genuinely a technical amendment that we do not object to. However, H.R. 1038 and H.R. 1256 would both roll back important provisions of Dodd-Frank. Accordingly, we oppose both H.R. 1038 and H.R. 1256, for the reasons given below.

I. H.R. 1038: Transparency in Utility Markets

We are concerned that H.R. 1038 would exempt most companies who engage in swaps with natural gas and power utilities from having to register with the Commodity Futures Trading Commission ("CFTC"). The bill exempts a party from registering with the CFTC as a swaps dealer so long as the gross notional value of the swap dealings by that party does not exceed the *de minimis* amount permitted in the past 12 months, which is $3B with a phase in period starting at $8B. While this *de minimis* provision might appear to limit the degree to which the exemption would make swaps markets less transparent, the actual adequacy of this limitation remains sketchy. What complicates this exemption is the fact that the Commission has exempted a series

of swaps-related activities that would fall outside the *de minimis* calculation, which could significantly increase the dollar amount of contracts not under supervision. The end result of these exemptions is alarming because it would greatly reduce transparency in energy and gas swaps markets. Moreover, this decreased transparency could result in the packaging of derivatives contracts that are unfavorable to utilities, which could (1) impact the price discovery mechanism in energy and gas markets and (2) increase volatility in energy prices. Congress should reject this proposal.

II. H.R. 1256: A Superfluous Delegation of Authority Over Swap Jurisdiction

The stated purpose of H.R. 1256 is create certainty in the extraterritorial application of Title VII of the Dodd-Frank Act. While this is certainly a laudable objective, the need for Congress to pass this bill is questionable. At best, H.R. 1256 adds little benefit to the process by which the CFTC and Securities and Exchange Commission ("SEC") delineate the extraterritorial parameters of Title VII. At worst, the bill impedes their ability to do so.

Section 722(d) of the Dodd-Frank Act states that the swap-related provisions of the Dodd-Frank Act shall only apply to overseas activities that have "a direct and significant connection with activities in, or effect on, commerce of the United States." The SEC and the CFTC have envisioned an implementation of this regulatory mandate that allows for overseas regulation to prevail in certain instances. The Commissions presently intend to allow for "substituted compliance" whereby overseas swaps participants that are subject to "comparable" swaps regulatory schemes can avoid duplicative compliance concerns under U.S. law. Both Commissions are also actively involved in further defining the specific contours of Title VII's extraterritoriality provisions. Thus, H.R. 1256 is superfluous to the extent that it compels the initiation of a regulatory process that has already begun.

In fact, H.R. 1256 may actually impede the Commissions' ability to define the global scope of Title VII's applicability. The bill states that a non-U.S. person in compliance with the swaps regulatory requirements of a G20 member nation will be exempt from U.S. swaps requirements if that member nation's swaps regulatory regime is "broadly equivalent" to Title VII. The addition of this new bureaucratic benchmark ("broadly equivalent," in place of the Commission's current preference for the term "comparable") provides little practical clarity, and only muddies the semantic waters of Title VII.

Moreover, it appears that the true purpose behind H.R. 1256 is to browbeat the Commissions into allowing Title VII to be supplanted by foreign regulations as much as possible. This is clear from the bill's imposition of a cumbersome requirement that would force the Commissions to report to Congress before determining that any particular foreign jurisdiction's swaps regime is not "broadly equivalent" to Title VII.

We recommend that, instead of allowing H.R. 1256 to add an unnecessary layer of complexity to the Dodd-Frank regulatory regime, Congress should increase the budgets of the Commissions to enable them to carry out the significant (and much-needed) rulemaking burdens that have already been placed on them.

III. H.R. 742: A Technical Amendment

We believe that one of the proposed bills relating to Title VII of Dodd-Frank, H.R. 742, provides a technical fix for difficulties in international data-sharing and regulatory cooperation that are collateral -- and perhaps unintended -- consequences of the original reform. Provisions of Dodd-Frank require confidentiality and indemnification agreements whenever a covered Swap Data Repository ("SDR") provides information to certain domestic or foreign regulators and whenever the CFTC provides information to certain foreign regulators. There is scant legislative history to explain the purpose and history of these provisions. As Americans for Financial Reform and the Depository Trust and Clearing Corporation have testified before the House Agriculture Committee, current law may impede sharing of data across borders and therefore could threaten international regulatory cooperation and cause data fragmentation that would limit effective review of systematic risk. The law now requires indemnification from overseas agencies that may be incapable of granting it. The CFTC has issued interpretive guidance to exempt foreign regulatory entities from the indemnification and classification requirements where an SDR has operations in the regulator's country. But agencies and commentators alike recognize the need for further reform.

H.R. 742 retains data confidentiality requirements in line with the recent efforts of international organizations such as the OTC Derivatives Regulatory Forum, while eliminating other barriers to data sharing. Occupy the SEC does not have specific objections to this bill, which alone furthers the Dodd-Frank Act's purposes of increasing international cooperation and reducing systemic risk.

Thank you for your attention to these important matters of public concern.

Sincerely,
/s/
Occupy the SEC

Eric Taylor
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Josh Snodgrass
Akshat Tewary
Kristine Ekman
et al