

July 30, 2009

**Congressman Collin Peterson, Chairman, House Agriculture Committee
Congressman Barney Frank, Chairman, House Financial Services Committee**

Description of Principles for OTC Derivatives Legislation

Robust Oversight of Dealers and Markets

Depending on the underlying asset on which a derivative is based, either the SEC or the CFTC, or potentially both, will oversee the regulation of OTC derivative dealers, exchanges and clearinghouses.

- **Clearinghouse Regulation:** Clearinghouses will be robustly regulated. Primary oversight authority of the CDS clearinghouse, ICE Trust, will be shifted from the Federal Reserve to a market regulator after a period not longer than six months from the date of enactment.
- **Trade Reporting:** All OTC derivative trades must be reported to a qualified trade repository.
- **Regulatory Approval:** Requests for approval as a clearinghouse, exchange or electronic trading platform must be acted on by the relative agency within 180 days.
- **Regulatory Harmonization:** The statutory and regulatory powers of the SEC and CFTC shall be harmonized with respect to the OTC derivative market including registration requirements for dealers.

Mandatory Clearing of OTC Derivatives

Derivatives must be cleared by an approved clearinghouse. Exchange trading and trading on electronic trading platforms will be strongly incentivized and encouraged.

Exceptions:

- Appropriate regulator determines the product is not sufficiently standardized to be cleared or no qualified clearing mechanism exists.
- One party in the transaction does not qualify as a “major market participant” as determined by the appropriate regulator in consultation with the Financial Services Oversight Council.

Regulators should have:

- Authority to prohibit or regulate transactions that are not traded on exchange or cleared.

Strengthening Capital and Margin Requirements

Appropriate regulators will develop margin and capital requirements that create a strong incentive for dealers and users of derivatives to trade them on an exchange or electronic trading platform or have them cleared whenever possible.

- Significantly higher capital and margin charges will apply to non-standardized transactions that are not exchange-traded or centrally cleared.
- Regulators can authorize use of non-cash collateral to satisfy margin requirements.

Particular Attention to Speculation

At least two options will be considered:

1. Limitation on Speculation

Prohibition on any purchase of credit protection using a CDS contracts unless:

- The party owns the referenced security or (one or more) of the securities in an index of securities.
- The party has a bona fide economic interest that will be protected by the contract.
- The party is a bona fide market maker.
- Regulators will have authority to monitor market activity and impose position limit where necessary.

2. Enhanced Oversight of Speculative Positions

Require confidential reporting to the appropriate regulator of all short interest in CDS contracts by:

- OTC derivatives dealers;
- Investment advisers that manages in excess of \$100 million;
- Other entities that are deemed “major market participants”.

In order to prevent abuse, the appropriate regulator has authority to:

- Impose position limits on market participants;
- Ban the purchase of credit protection using CDS by any non-dealer that is not hedging a risk.

Protect U.S. Financial Institutions from Lesser Regulatory Standards in Other Countries

- U.S. regulators will coordinate with foreign regulators on harmonizing OTC derivative market regulation including recognized international standards with respect to clearinghouses.
- The Treasury Department will be authorized to restrict access to the U.S. banking system for institutions of any jurisdiction Treasury finds permits capital-related standards that are lower than the United States or that promote reckless market activity.

Role of Financial Services Oversight Council

- Resolve disputes between the SEC and CFTC over authority over new products within 180 days.
- Resolve disputes between the SEC and CFTC over joint regulation of derivative products within 180 days.

Enforcement

- Agencies shall have enforcement authority over products under their jurisdiction.
- Agencies shall hold enforcement authority jointly for any products subject to joint jurisdiction.