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BEFORE THE
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GENERAL FARM COMMODITIES AND RISK MANAGEMENT SUBCOMMITTEE
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Good morning Chairman Conaway, Ranking Member Boswell and Members of the Subcommittee. Thank you for the opportunity to be with you today regarding the harmonization of global derivatives market regulatory reform. The Subcommittee's oversight of the CFTC is critical to the work we do and I appreciate your attention to this and other matters. It is a pleasure, as it was last year, to testify alongside Commissioner Sommers, the Chair of our global Markets Advisory Committee (GMAC). She does a superb job.

Today, I'm pleased to discuss the progress we've made, as well as some of the challenges we've encountered in implementing the Wall Street Reform and Consumer Protection Act of 2010—otherwise known as Dodd-Frank. We are always guided by the law and in this case we also have been considering the 2009 Pittsburgh G-20 Communiqué (reaffirmed this year at the G-20 Mexico summit), which set forth key directives for December 2012 implementation of clearing, trading, reporting, and prudential rules for G-20 member countries. The recent statement issued by international financial regulators is a welcome signal that we've made significant progress in this area.

Dodd-Frank is a good and needed law. While it is our law—a U.S. law—these are global, interrelated financial markets and financial firms. They are connected and correlated and rules and regulations need to be attentive to that fact. Dodd-Frank can, if we implement it correctly, avoid systemic risk to our economy and make markets more efficient and effective and devoid of fraud, abuse and manipulation. But, I said "if" we implement it correctly.

We've known since passage of Dodd-Frank that, unless we strike the right balance and provide appropriate guidance and relief on cross-border issues, we risk significant market disruption and migration, as well as regulatory arbitrage, due to an imbalance in global regulatory scope and content. As Chairman Conaway cautioned in an August letter, "Absent consistent regulatory standards proposed by our own domestic regulators, effective coordination between the U.S. and foreign regulators would seem virtually impossible." With the leadership of our Chairman and Commissioner Sommers, we have engaged in an international dialogue to move forward on a balanced approach to these regulations.

In that regard, the entire regulatory process has taken longer than Dodd-Frank deadlines. Most regulations were to be completed by July of 2011. The European Union appeared perhaps two years behind the U.S. at the time of Dodd-Frank's passage. It appeared that if the U.S. went first, and by two years so, the impact could create havoc for markets and market participants. Since the law passed, there have been those (including some on this Subcommittee) who have urged regulators to go slow. Particularly as to the impact of the new law on the international front, they were right. The regulatory reform rulemaking process has shown us that we needed much more information about the over-the-counter (OTC) space in order to promulgate appropriate and reasonable rules. We've proposed and re-proposed and extended comment periods and amended our rules, provided comprehensive guidance, and where needed, appropriate relief. It has not always been a graceful exercise, but by and large, I believe we have gotten things right. If we haven't, we'll hear about it. And we've shown that we can be flexible in implementation content and timing. The result is that during these delays, the rest of the world, and particularly the European Union, has caught up to us. It now appears that E.U. regulations will be implemented in a matter of months after U.S. rules may be finalized, as opposed to the two years originally envisioned.

In June, we proposed interpretive guidance and exemptive relief on extraterritoriality issues. We are now poised to provide final guidance in this area, to give clarity as to the application of Dodd-Frank on those operating outside our territorial borders. We need to ensure that we strike that correct balance in carrying out the mandates of the law, and at the same time confirm that appropriate substituted compliance is available to market participants.

Given that global financial reform regulations can be completed on a more similar time horizon, it's clear to me that we need to provide for phased-in compliance and appropriate relief from rules for an interim period—perhaps five or six months. We do not want to repeat the process we—and the markets—underwent in October. In that instance, market participants were unclear what things would truly be required on the October 12th compliance date. We ended up working it all out, but it should have, and could have, been done in a more open and streamlined fashion. We need to avoid that now as we approach January 1, 2013 implementation of certain rules and regulations. This would give markets and participants time to comply with the new regulatory environment and also would provide assurance to global markets and regulators that we are not causing unnecessary market disruptions. I've made specific recommendations which are:

1. Extend the narrower, territorial definition of U.S. Person used in the CFTC's October 2012 staff no-action letter.
2. U.S. and foreign SD and MSP registrants would have interim relief from compliance with external business conduct standards, and during the interim period, should operate under a "good faith" compliance standard.
3. Allow non-U.S. dealers to not register when facing registered U.S. swaps dealers. (i.e., their obligation to register would be based on swaps with U.S. end users. This is intended to reduce the incentive for non-U.S. G20 dealers to conduct their swaps with foreign branches and affiliates of U.S. SDs and MSPs as opposed to trading with regulated U.S. SDs and MSPs.)
4. Provide relief as to the swaps dealing aggregation standard (i.e., swap dealing counting toward the de minimis level would happen on an individual entity, not enterprise level).

These seem to be common-sense measures that can be taken which would ease the transition to compliance, and reduce incentives for regulatory arbitrage, or a race to the thinnest rulebook.

Finally, we need to immediately respond to those who have requested relief from the Agency. I'm not suggesting we will grant exemptions, but at the least we need to respond . . . and now. Furthermore, in the limited meantime prior to requiring compliance, it would not be appropriate, reasonable, or responsible for the Commission to proceed against entities for non-compliance with Dodd-Frank rules unless and until they have received a response from the Agency to an existing request. And, importantly, I cannot envision the Commission moving forward with such an action.

Separate from these issues of international harmonization, I look forward to working with the Subcommittee on the CFTC reauthorization this next year. In that regard, I believe we should do at least three things: First, increase penalties for those that violate our financial laws; second, create a futures insurance fund; and third, we need to develop a meaningful oversight regime for high frequency traders. I have a one-pager on each of these matters for Members and I will leave it to the Chairman if these three pages should be included in the hearing record.

Thank you for the opportunity to present this testimony today.