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Hearing before the Subcommittee on General Farm Commodities and Risk Management – Committee on Agriculture

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"Harmonizing Global Derivatives Reform: Impact on U.S. Competitiveness and Market Stability"

Testimony of Thomas C. Deas, Jr. – Vice President & Treasurer, FMC Corporation

May 25, 2011

Good morning, I am Tom Deas, Vice President and Treasurer of FMC Corporation and also President of the National Association of Corporate Treasurers ("NACT"), an organization of treasury professionals from several hundred of the largest public and private companies in the country. FMC, NACT, and another organization of which FMC is also a member, the Agricultural Retailers Association, are part of the Coalition for Derivatives End-Users (the "Coalition"). Our Coalition represents thousands of companies across the United States that employ derivatives to manage business risks they face every day. Thank you very much for giving me the opportunity to speak with you today about derivatives regulation.

I am particularly gratified to appear before this committee because support of American agriculture was the very reason for my company's founding almost 130 years ago. FMC Corporation began operations in the 1880s as a manufacturer of agricultural spray equipment to aid farmers combating infestations in their fields and orchards. Today in addition to making agricultural chemicals farmers apply to protect their crops, our 5,000 employees work hard to ensure that FMC continues to be a world-leading manufacturer and marketer of agricultural, specialty and industrial chemicals.

Along with many other U.S. manufacturers and agricultural producers, FMC uses over-the-counter ("OTC") derivatives to hedge business risks in a cost-effective way. We are very concerned that several of the proposed derivatives regulations and the aggressive schedule for rulemaking could hamper our use of this important tool and adversely affect our global competitiveness. I had the valuable experience of negotiating and executing some of the very first OTC derivatives – currency swaps – back in 1984. The OTC derivatives market has grown from its inception at that time to its current size by offering end-users a degree of customization not available in exchange-traded derivatives. FMC and other end-users enter into OTC derivatives customized to match the amount, timing, and where necessary, the currency, of their underlying business exposures. By matching derivatives to our business exposures, we create an effective economic hedge. The value of the derivative moves in an equal, but opposite, way in relation to the value of the underlying risk we are hedging. Let me give you a specific example of how proposed derivatives regulation could hamper my company's ability to compete against foreign producers.

FMC competes very effectively against foreign companies in several markets for our crop protection chemicals. For example in Brazil, we have leading positions in sugar cane and cotton. To enhance our product offering to Brazilian soybean farmers and profitably grow our business there, we offer to sell our agricultural chemicals for use at planting time in exchange for an agreed quantity of soybeans at harvest time. We can do this because we simultaneously enter into a custom OTC derivative that offsets the amount and timing of the future delivery of soybeans by our customers. In a developing economy like Brazil, farmers do not have FMC's degree of access to the worldwide financial markets. We provide our products to Brazilian farmers on terms that insulate them from the risk of changes in future commodity prices and foreign exchange movements in the price of the Brazilian real against the U.S. dollar. In the Brazilian soybean market, we compete against international producers based in Germany, Switzerland, and Australia, as well as local Brazilian companies. Because of significant differences in the way derivatives regulation is being implemented in Europe and elsewhere outside the United States, FMC and other U.S. companies could be put at a competitive disadvantage. Our competitors in the Brazilian market will not be subject to margining by E.U., Swiss, Australian, or Brazilian regulators. We understand E.U. regulation is moving toward legislative enactment sometime this autumn with regulations not fully effective before the end of 2012. Few of our large developing-economy trading partners, Brazil included, have announced any plans for local derivatives regulation.

In January I met with economic development authorities in Singapore. I can tell you that they are making a vigorous effort to attract treasury centers from multinational corporations through targeted incentives and a predictable regulatory framework. They do not propose to require cash margining of derivative positions for companies operating there.

<u>Competitive Consequences of End-User Margining</u>

At the time of passage of the Dodd-Frank Act, we understood from the legislative language as well as from letters and colloquies by the principal drafters, that end-users would be exempted from any requirement to post cash margin. However, rules proposed last month would give the prudential regulators the authority to impose a framework with many complicated parameters, each of which is subject to future adjustment, which could result in many end-users – regardless of their size – having to post cash margin for their derivatives transactions. This proposal and the uncertainties it creates represent a real challenge to making business decisions about the future. As previously mentioned, the European Union regulators have taken a much slower track to derivatives regulation, but we know their approach thus far with regard to non-financial end-users is to provide them with a clear exemption from margining. They have accepted the argument that end-users, whose derivatives activity comprises less than 10 percent of the total OTC derivatives market, are not significantly contributing to systemic risk and should be exempt from regulations designed for swap dealers. At this point, just weeks away from the mid-July implementation deadline, U.S. end-users still do not know with certainty what their future cash margin requirements will be. The U.S. regulators have taken a pair of offsetting transactions that match completely, and settle with offsetting cash payments at maturity, as does FMC's soybean sale and hedge, and created a new and unwelcome uncertainty – that of funding a daily fluctuating cash margin call. While this may be appropriate for swap dealers making a market in derivatives or those using derivatives for speculative purposes, its application to end-users hedging underlying business exposures creates an imbalance that is economically burdensome to end-users. We have been encouraged by comments of regulators signaling they may phase implementation over an extended period. We believe it essential that such phasing account for the limited resources end-users have to comply with new requirements. We also believe it essential that regulators clearly communicate the implementation schedule so that market participants can have certainty as to the timing of new requirements.

I had the privilege of representing the United States at the most recent meeting of the International Group of Treasury Associations. I can tell you that treasurers from more than thirty other countries from all over the world were sympathetic that we, not they, would be the first to implement derivatives regulations. Their expectation was that for a market so large and complex there would be many areas that would have to be adjusted based on U.S. experience. Unfortunately for American business, we will be at a relative competitive disadvantage until such time in the future when the rules might converge. We will also bear higher absolute costs than we did before the new rules and will also be subject to the risk of regulatory arbitrage from competitors in countries not pursuing a stringent new regulatory framework for end-users.

Cost of End-User Margining

FMC's derivatives are executed with several banks, all of which are also supporting our company through their provision of credit lines. None of these banks require FMC to post any form of collateral to secure their credit support. Our banks also do not require FMC to post cash margin as collateral to secure mark-to-market fluctuations in the value of derivatives. Instead they price the overall transactions to take this risk into account. This structure gives us certainty so that we never have to post cash margin while the derivative is outstanding. However, if we are required by the regulators to post margin, we will have to hold aside cash and readily available credit to meet those margin calls.

Depending on the extent of price movements, margin might have to be posted within the trading day as well as at the close of trading. Because failure to meet a margin call would be like bouncing a check, and would constitute a default, our corporate treasury would act very conservatively in holding cash or immediately available funds under our bank lines of credit to assure we could meet any future margin call in a timely fashion and with a comfortable cushion.

Adopting more conservative cash management practices might sound like an appropriate response in the wake of the financial crisis. However, end-users did not cause the financial crisis. End-users do not contribute meaningfully to systemic risk because their use of derivatives constitutes prudent, risk mitigating hedging of their underlying business. Forcing end-users to put up cash for fluctuating derivatives valuations means less funding is available to grow their businesses and expand employment. The reality treasurers face is that the money to margin derivatives has to come from somewhere and inevitably less funding will be available to operate their businesses.

FMC and other members of the Business Roundtable estimated that BRT-member companies would have to hold aside on average $269 million of cash or immediately available bank credit to meet a 3 percent initial margin requirement. Though the rule proposed by regulators is not specific as to the precise amount of collateral, in our world of finite limits and financial constraints, any cash margin requirements represent a direct dollar-for-dollar subtraction from funds that we would otherwise use to expand our plants, build inventory to support higher sales, undertake research and development activities, and ultimately sustain and grow jobs. In fact, the study extrapolated the effects across the S&P 500, of which FMC is also a member, to predict the consequent loss of 100,000 to 120,000 jobs. The effect on the many thousands of end-users beyond the S&P 500 would be proportionately greater. We would also have to make a considerable investment in information systems that would replicate much of the technology in a bank's trading room for marking to market and settling derivatives transactions.

Exemption from Margining for Foreign Exchange Transactions

End-users welcomed the determination last month by the Secretary of the Treasury that most foreign exchange ("FX") forward transactions would not be considered derivatives subject to regulation under Title VII of the Dodd-Frank Act. However a common type foreign exchange hedge, technically known as a "non-deliverable forward" was not included in this exemption. This type of transaction is typically used to hedge currencies that are not freely traded such as the currencies of Brazil, China, India and those of other rapidly developing economies that have imposed exchange controls. It is used in the same way as those FX forwards that were exempted.

The cumulative effect of these regulations could mean that U.S.-based exporters would be subject to higher risks based on an inability to hedge efficiently their foreign exchange risk with derivatives. As a result they could be forced to move production offshore to match their costs directly with the currencies of their customers.

Summary of End-User Concerns

Let me take a moment to summarize some of our principal concerns with the implementation of derivatives regulation:

- First, we are concerned that the regulations have imposed an uncertain framework for cash margin on end-user trades, potentially diverting billions of dollars from productive investment and employment into an idle regulatory levy.
- Second, even if the final regulations clearly exempt end-users from margin requirements, we still have the risk that the regulators will require swap dealers to hold excessive capital in reserve against uncleared over-the-counter derivatives – with the cost passed on to end-users as they manage their business risks. We believe that swap dealers' capital requirements should be appropriate to the actual loss experience of the specific type of derivative. The unintended consequence of punitive capital requirements could be for some end-users to cease hedging risks and for others to use foreign markets.
- Finally, we are concerned that regulators will make customized derivatives prohibitively expensive through margin and increased capital requirements, with the effect of forcing us into standardized derivatives from common trading facilities that will not provide the exact match we seek with our underlying business exposures. It is the customization available with OTC derivatives that is so valuable to us and makes the derivatives effective in hedging our exposures.

I know many people who suffered through the financial turmoil of 2008 are tempted to label all derivatives as risky bets that should be curtailed. However, I hope these examples of prudent use of derivatives by my company and other end-users who form the backbone of our country's economy have demonstrated the wisdom of the end-user exemptions that we believe to have been the legislative intent.

I will note that in general those charged with the responsibility of drafting derivatives regulations have been very forthcoming and open in soliciting input from end-users. We appreciate being involved, but we have only weeks until the deadline for finalizing these rules. The end-user exemption we thought was clear is now uncertain and several important rules required by July have not been finalized. Inadequate time has been allowed for us to understand and comment on how the rules will operate together. We support fully efforts to extend the statutory date by which rules must be promulgated until the remaining uncertainties can be clarified and we can be assured the rules will operate effectively in this very complicated cross-border market. We also support legislation to create a true exemption from margin requirements that would apply to all end-users. The consequences of getting derivatives regulation wrong will be borne by American business and ultimately our fellow citizens.

Thank you for your time. I would be happy to respond to any questions you may have.

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Thomas C. Deas, Jr. has served as Vice President and Treasurer of FMC since 2001, with responsibility for the worldwide treasury function, including financing, treasury operations, pension investments and funding, and insurance and risk management. Prior to joining FMC, he served as Vice President, Treasurer and CFO of Applied Tech Products Corp., of Airgas, Inc. (NYSE: ARG) and of Maritrans Inc. (NYSE: TUG). From 1978 to 1996 Mr. Deas was employed at Scott Paper Company (NYSE: SPP), where he served in various capacities including Vice President—Treasury and Assistant Treasurer. Mr. Deas received a BS in Physics from the University of South Carolina. Following service as a destroyer officer in the U.S. Navy, he received an MBA from the Wharton School of the University of Pennsylvania. He is President of the National Association of Corporate Treasurers, co-chairs the Conference Board's Council of Corporate Treasurers, and is a director of the University of South Carolina Educational Foundation. Mr. Deas is a frequent speaker at investor conferences and professional forums.

Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2008.

Name: Thomas C. Deas, Jr

Organization you represent (if any): FMC Corporation

1. **Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2008, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source: ______ **Amount:** ______

Source: ______ **Amount:** ______

2. **If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2008, as well as the source and the amount of each grant or contract:**

Source: DOE - Golden Field Office **Amount:** $294,767.00

Source: DOE - NETL **Amount:** $2,999,424.00

Please check here if this form is NOT applicable to you: ______

Signature: TC Deas

Thomas C. Deas, Jr.
Vice President & Treasurer

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

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