STATEMENT OF JILL E. SOMMERS

BEFORE THE

SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND RISK MANAGEMENT

HOUSE COMMITTEE ON AGRICULTURE

May 25, 2011

Good morning Chairman Conaway, Ranking Member Boswell and members of the Subcommittee. Thank you for inviting me to today's hearing on "Harmonizing Global Derivatives Reform: Impact on U.S. Competitiveness and Market Stability." I am Jill Sommers. I have worked in the derivatives industry for over fifteen years and have been a Commissioner at the Commodity Futures Trading Commission since August of 2007. The views I present today are my own and not those of the Commission.

Over the past ten months, the CFTC has been moving at a rapid pace to promulgate swaps rules included in the Dodd-Frank Act. Staff has been working closely with their counterparts at the Securities and Exchange Commission (SEC) and other US regulators, and has been consulting closely and sharing draft rulemaking documents with regulators

in the European Union (EU), United Kingdom, Japan, Canada, and elsewhere. Notably, staff has been communicating daily with the European Commission to narrow differences on derivatives reform between our jurisdictions. This unprecedented level of cooperation has proven effective in aligning regulatory objectives and harmonizing most regulatory requirements.

However, I am concerned that (1) some important substantive differences between derivatives reform in the US and other jurisdictions do exist, (2) other jurisdictions are not as far along in their reform process, which may harm the global competitiveness of US businesses, and (3) our failure to clarify how our rules will apply internationally has created a great deal of uncertainty, both in the US and abroad. I would like to briefly address each of these issues today.

Timing

At the G20 summit convened in Pittsburgh in September 2009, President Obama and other world leaders agreed that "standardized OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end of 2012, at the latest." Other jurisdictions are working to meet this end of 2012 deadline, but we are working to implement reform much sooner. I

believe a material difference in the timing of rule implementation is likely to occur, which may shift business overseas as the cost of doing business in the US increases and create other opportunities for regulatory arbitrage.

In Europe, legislation on clearing and reporting requirements for over-the-counter (OTC) derivatives, called the European Market Infrastructure Regulation, or EMIR, may not be finalized until the end of summer. After adopting legislation, EMIR directs authorities to draft technical standards by June 30, 2012. While the timing differences on these specific reforms between the US and EU will depend in large part on how quickly we are able to finalize and implement rules at the Commission, there is an even greater disparity in timing between the US and EU in implementing other reforms to the OTC derivatives market.

Rules on mandatory trade execution and other provisions that are parallel to provisions in Dodd-Frank are being considered as part of a review of the EU's 2007 Markets in Financial Instruments Directive, or MiFID. However, formal legislation has not been proposed and I am not certain that these reforms will be complete until 2012 at the earliest. In Asia, Japan has passed its legislation and plans to implement reform by the end of 2012. Other jurisdictions such as Singapore, Australia, Hong Kong

and Korea are also either providing or planning to provide clearing services.

At the CFTC, on the other hand, after ten months, eight public roundtables, fourteen open Commission meetings, and more than 50 proposed rules, notices, or other requests seeking public comment, we have nearly completed the proposal stage of our rules and are moving forward with reviewing comments from the public in preparation for drafting and voting on final rules. In order to do so effectively, however, I believe we must work at a more deliberate pace, not simply so that our timing is aligned with other jurisdictions, but so that we can thoughtfully consider proposed rules and ensure we get it right.

Substantive differences

Beyond timing, carefully tailoring these rules to address legitimate concerns from the public, while upholding our statutory obligations, is, I believe, a critical component of rule writing. However, I fear these concerns may be addressed differently across jurisdictions. For example, a provision in the EU's proposed legislation on clearing and reporting of OTC derivatives would explicitly exempt multilateral development banks such as the International Bank for Reconstruction and Development. Such organizations, whose statutory mission is to combat poverty and foster

economic development, are not exempt under any of the Commission's proposed rules, and I believe this should be addressed. As another example, the EU is considering exempting pension funds from mandatory clearing of their swaps transactions, while Dodd-Frank does not contemplate any such exemption.

I am also deeply concerned that differences remain with respect to rules being considered at the Commission and in Europe for the mandatory execution of swaps on a trading platform. The rule the Commission proposed on swap execution facilities, or SEFs, will create an inflexible model whereby all requests for quote must be submitted to, at a minimum, five swap dealers. The more flexible approach being considered in Europe (and also by the SEC) would allow counterparties to submit a request for quote to a single dealer and still satisfy the trade execution requirement. This is another area where there is a potential for regulatory arbitrage.

In other areas, such as capital and margin requirements for uncleared swaps, exemptions from mandatory clearing for inter-affiliate transactions, and ownership limits on market infrastructure, we may not know the extent of regulatory divergence for some time, but staff continues to work closely with our international counterparts as rules develop.

Extraterritoriality

I am also concerned about the uncertainty we are creating in the marketplace by not addressing the application of Dodd-Frank to foreign entities and foreign transactions. Section 722(d) of Dodd-Frank explicitly states that the Act does not apply to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States or contravene rules that the Commission may promulgate to prevent evasion of the Dodd Frank Act. The Commission has not given the public any formal guidance on what this section means in practice. In the past, staff at the Commission has used its authority to rely on the assistance of foreign regulators for the supervision of entities located abroad so long as the foreign jurisdiction is found to have a comparable regulatory structure in place. Unfortunately, we have not proposed a mechanism to do this with respect to any of the rules being put forth under Dodd Frank. This has already created regulatory uncertainty for firms with global operations as they attempt to plan for the future. Not only will our failure to establish clear rules in this area leave firms unable to determine what their compliance obligations may be, but it will most certainly drain critical Commission resources as we attempt to respond to questions on a case-by-case basis. I am hopeful that this is one of the areas in which the CFTC and the SEC will each adopt a

similar approach to prevent market participants from being subjected to multiple interpretations.

I also wanted to briefly mention differences between the US and Europe in our approach to position limits. The Commission has for years imposed position limits in the agriculture commodity markets, and has proposed a rule to impose position limits in the energy and metals markets. Regulators in the EU have historically not used position limits and, even under current proposals, may only mandate position limits in agricultural commodity markets. This is an area in which we need to ensure that our rules are harmonized to the maximum extent possible.

I believe one of the most important components of this new regulatory landscape for swap transactions is to achieve global consistency and cooperation. I believe we must maintain clear sight of our global objectives of improving transparency, mitigating systemic risk and protecting against market abuse in the derivatives markets as we address the challenges in front of us. Thank you. I am grateful for the opportunity to speak about these important issues and am happy to answer any questions.