Statement of Commissioner Jill E. Sommers
U.S. Commodity Futures Trading Commission
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Committee on Agriculture
Subcommittee on General Farm Commodities and
Risk Management

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Good morning Chairman Conaway, Ranking Member Boswell and members of the Committee. Thank you for inviting me to testify on the challenges facing U.S. and international markets resulting from the Dodd-Frank derivatives reforms. I have worked in the derivatives industry for over fifteen years and have been a Commissioner at the Commodity Futures Trading Commission (CFTC or Commission) since August of 2007. During my time at the Commission I have served as the Chairman and sponsor of the CFTC's Global Markets Advisory Committee (GMAC) and have represented the Commission at meetings of the International Organization of Securities Commissions (IOSCO), one of the principal organizations formed to develop, implement and promote internationally recognized and consistent standards of regulation, oversight and enforcement in the securities and derivatives markets. I am pleased to give you my perspective on the many challenges facing regulators across the globe in their quest to meet the commitments on over-the-counter (OTC) derivatives reform made by the G20 Leaders in 2009 and, in particular, the challenges presented in interpreting the cross-border scope of Dodd-Frank. The views I present today are my own and not those of the Commission.

Section 722(d) of the Dodd-Frank Act, which added Section 2(i) to the Commodity Exchange Act, provides that the Act shall 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 or regulations prescribed by the Commission designed to prevent evasion. In 2011 the Commission acknowledged the growing uncertainty surrounding the extraterritorial reach of Dodd-Frank and in August of that year held a two-day roundtable, followed by a public comment period. In July 2012 the Commission published proposed guidance setting forth an interpretation of how it might construe Section 2(i), followed by another round of public comment. The guidance included a proposed definition of "U.S. person," the types and levels of activities that would require foreign entities to register as U.S. swap dealers or major swap participants (swap entities), and the areas in which such swap entities might be required to comply with U.S. law and those in which the Commission might recognize substituted compliance with the law of an entity's home jurisdiction.

On November 7, 2012 I convened a meeting of the GMAC to further discuss the Commission's proposed interpretive guidance and to identify questions and areas of concern in implementing the CFTC's proposed approach. A number of foreign

jurisdictions were represented, including regulators from Australia, the European Commission, the European Securities and Markets Authority, Hong Kong, Japan, Quebec and Singapore. Representatives of the U.S. Securities and Exchange Commission (SEC) also attended to discuss the SEC's perspective. A common theme that emerged was concern over the breadth of CFTC's proposed definition of "U.S. person," the implications of having to register in the U.S., the uncertainty of the Commission's proposal on substituted compliance, and the need to identify areas where complying with a particular U.S. requirement might conflict with the law of a foreign swap entity's home country regime.

On November 28, 2012 regulatory leaders from Australia, Brazil, the European Union, Hong Kong, Japan, Ontario, Quebec, Singapore, Switzerland and the United States met in New York to continue the dialogue. In a press statement issued after the meeting the leaders supported the adoption and enforcement of robust and consistent standards in and across jurisdictions, and recognized the importance of fostering a level playing field for market participants, intermediaries and infrastructures, while furthering the G20 commitments to mitigating risk and improving transparency. The leaders identified five areas for further exploration, including:

- the need to consult with each other prior to making final determinations regarding which products will be subject to a mandatory clearing requirement and to consider whether the same products should be subject to the same requirements in each jurisdiction, taking into consideration the characteristics of each domestic market and legal regime;

- the need for robust supervisory and cooperative enforcement arrangements to facilitate effective supervision and oversight of cross-border market participants, using IOSCO standards as a guide;

- the need for reasonable, time-limited transition periods for entities in jurisdictions that are implementing comparable regulatory regimes that have not yet been finalized and to establish clear requirements on the cross-border applicability of regulations;

- the need to prevent the application of conflicting rules and to minimize the application of inconsistent and duplicative rules by considering, among other things, recognition or substituted compliance with foreign regulatory regimes where appropriate; and

- the continued development of international standards by IOSCO and other standard setting bodies.

The authorities agreed to meet again in early 2013 to inform each other on the progress made in finalizing reforms in their respective jurisdictions and to consult on possible transition periods. Future meetings will explore options for addressing identified conflicts, inconsistencies, and duplicative rules and ways in which

comparability assessments and appropriate cross-border supervisory and enforcement arrangements may be made.

The Commission has worked for decades to establish relationships with our foreign counterparts, built on respect, trust, and information sharing, which has resulted in a successful history of mutual recognition of foreign regulatory regimes in the futures and options markets spanning 20-plus years. At the Pittsburg summit in 2009 all G20 nations agreed to a comprehensive set of principles for regulating the OTC derivatives markets. We should rely on their regional expertise. While the pace of implementing reforms among the various jurisdictions has been uneven, I have no reason to believe that comparable or equivalent regulation is unachievable. It is obvious that more time is needed to facilitate an orderly transition to a regulated environment. It is important that assessments of comparability be made at a high level, keeping in mind the core policy objectives of the G20 commitments rather than a line-by-line comparison of rulebooks. It is also important to avoid creating an unlevel playing field for U.S. firms just because the U.S. is ahead of the rest of the world in finalizing reforms. U.S. firms should not be disadvantaged by tight compliance deadlines set by the CFTC. Global coordination is key. It is my hope that in the coming days the Commission will issue clear and concise relief from having to comply with various Dodd-Frank requirements, for both domestic and foreign swap entities, until we have a better sense of the direction in which we are all headed.

I am grateful for the opportunity to speak about these important issues and am happy to answer any questions.