



55 WATER STREET
NEW YORK, NY 10041-0099

TEL: 212-855-3240
lthompson@dtcc.com

June 9, 2015

The Honorable Michael Conaway
Chairman, House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

The Honorable Collin Peterson
Ranking Member, House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

Dear Chairman Conaway, Ranking Member Peterson, and Members of the Committee,

On behalf of The Depository Trust & Clearing Corporation (“DTCC”), I applaud the House Agriculture Committee’s recent passage of H.R. 2289, the *Commodity End-User Relief Act*, in addition to consideration of the legislation today by the House of Representatives.

In particular, DTCC strongly supports Section 302, commonly known as the *Swap Data Repository and Clearinghouse Indemnification Correction Act*. As the House considers H.R. 2289, your continued leadership on this important issue is critical.

The *Swap Data Repository and Clearinghouse Indemnification Correction Act* is a bipartisan, noncontroversial piece of legislation that would eliminate the Dodd-Frank Wall Street Reform and Consumer Protection Act’s (“Dodd-Frank”) requirement for swap data repositories (“SDRs”) to obtain indemnification agreements before sharing information with regulators. A legislative remedy is the only way to remove these provisions that threaten global information sharing and systemic risk oversight.

The indemnification requirements in Section 21(d) of the Commodity Exchange Act and Section 13(n)(5)(H) of the Securities Exchange Act of 1934, as amended by Dodd-Frank, require—prior to sharing information with various regulatory authorities¹—that (i) registered SDRs receive a written agreement from each entity stating that the entity shall abide by certain confidentiality requirements relating to the information on swap transactions that is provided, and (ii) each entity must agree to indemnify the SDR and the Commodity Futures Trading Commission (“CFTC”) or Securities and Exchange Commission (“SEC”), respectively, for any expenses arising from litigation relating to the information provided.

¹ Such regulatory authorities include U.S. prudential regulators, the Financial Stability Oversight Council, the Department of Justice, foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

In practice, these provisions have proven to be unworkable. These requirements run counter to policies and procedures adopted by regulatory bodies globally to safeguard and share information, pose a significant barrier to the ability of regulators globally and within the U.S. to effectively utilize the transparency offered by SDRs, and may have the effect of precluding U.S. regulators from seeing data housed at non-U.S. repositories. It is important to note that these provisions also limit access to and sharing of data among U.S. authorities such as the CFTC, SEC, the Federal Reserve Bank, and the Office of Financial Research.

Concerns regarding global information sharing have been echoed by regulatory officials and policymakers globally. In an August 2013 report, the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions highlighted that legal obstacles may preclude trade repositories from providing critical market data and encouraged the removal of legal obstacles or restrictions to enable effective and practical access to data.² During a February hearing this year before the Committee, CFTC Chairman Timothy Massad stated that removal of the indemnification provisions would facilitate the sharing of information and collaboration among regulators to monitor risk.³ CFTC Commissioner J. Christopher Giancarlo and Commissioner Mark Wetjen also identified indemnification as a priority issue and expressed support for a legislative fix during an April hearing before the Subcommittee on Commodity Exchanges, Energy and Credit.⁴ In addition, SEC Commissioner Michael Piwowar recently voiced his concern and called for removal of the indemnification provisions.⁵

As you know, in June 2014 the House passed the *Customer Protection and End-User Relief Act* (H.R. 4413) to reauthorize the CFTC and amend certain CFTC provisions included in Dodd-Frank. A key component of H.R. 4413 was the addition of legislation, including the *Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013* (H.R. 742), which passed the Committee and the House of Representatives with overwhelming bipartisan support.

DTCC strongly supports legislation that would address the unintended consequences of the indemnification provisions and encourages the House to support the *Swap Data Repository and*

² See CPSS-IOSCO, Authorities' access to trade repository data (Aug. 2013).

³ For example, Chairman Massad stated that if legislation "did remove [the indemnification] provision, then it would facilitate . . . the sharing of information." See 2015 Agenda for CFTC: Hearing Before the H. Comm. On Ag., 114th Cong. (2015) (colloquy between Chairman Massad and Congressman Eric Crawford).

⁴ See Testimony of CFTC Commissioner J. Christopher Giancarlo Before the U.S. House of Representatives, Committee on Agriculture, Subcommittee on Commodity Exchanges, Energy, and Credit (April 14, 2015); available at <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/images/Giancarlo%20Testimony.pdf>; see also Testimony of Mark Wetjen, Commissioner, CFTC, Before the U.S. House Committee on Agriculture, Subcommittee on Commodity Exchanges, Energy, and Credit (April 14, 2015); available at <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/images/Wetjen%20Testimony.pdf>.

⁵ Commissioner Michael Piwowar, Secs. and Exch. Comm'n, Remarks at the International Swaps and Derivatives Association 30th Annual General Meeting (Apr. 22, 2015).

Clearinghouse Indemnification Act. This non-controversial, technical amendment would help to ensure regulators obtain a consolidated and accurate view of the global over-the-counter (“OTC”) derivatives marketplace.

DTCC encourages swift passage of H.R. 2289, and looks forward to continuing work with the House of Representatives on strengthening the global financial marketplace.

About DTCC

DTCC is a user-owned cooperative that serves as the primary financial market infrastructure serving the U.S. capital markets across multiple asset classes, including equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments, mutual funds, insurance, alternative investment products and OTC derivatives.

DTCC has operating facilities and data centers around the world and, through its subsidiaries, automates, centralizes, and standardizes the post-trade processing of financial transactions enabling thousands of institutions worldwide to issue securities and raise capital to build businesses. DTCC provides critical infrastructure to serve the financial marketplace and its constituents, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds.

DTCC has extensive experience operating repositories to support derivatives trade reporting and enhance market transparency. Through regulated DTCC subsidiaries, DTCC supports regulatory reporting regimes in the U.S., Europe, Japan, Australia, Singapore, Hong Kong, and Canada.

DTCC’s subsidiary, the DTCC Data Repository (U.S.) LLC (“DDR”), is provisionally registered as an SDR with the CFTC for credit, equity, interest rate, foreign exchange, and commodity derivatives in the U.S. DDR began accepting trade data from market participants on October 12, 2012 – the first day that financial institutions began trade reporting under Dodd-Frank. DTCC – through its Trade Information Warehouse – has been providing public aggregate information for the credit default swap market on a weekly basis, including both open positions and turnover data, since January 2009. This information is available, free of charge, on www.dtcc.com.

Additionally, DTCC – in collaboration with SWIFT – operates the Global Markets Entity Identifier (“GMEI”) utility to assign legal entity identifiers (“LEIs”). The GMEI utility has assigned LEIs to and maintains reference data corresponding to more than 175,000 legal entities across more than 140 jurisdictions, representing approximately 50 percent of all global LEIs that have been assigned.

Sincerely,

A handwritten signature in black ink that reads "Larry E. Thompson". The signature is written in a cursive style with a clear, legible font.

Larry E. Thompson
Vice Chairman and General Counsel

Cc:

Honorable Austin Scott
Chairman, House Agriculture Subcommittee on Commodity Exchanges, Energy, and Credit

Honorable David Scott
Ranking Member, House Agriculture Subcommittee on Commodity Exchanges, Energy, and Credit