



November 9, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Colin Peterson
Chairman
House Committee on Agriculture
1300 Longworth House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Lucas
Ranking Member
House Committee on Agriculture
2311 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Frank and Peterson and Ranking Members Bachus and Lucas:

The Commodity Markets Council (CMC) is pleased to provide input as reconciliation begins on two pieces of OTC Derivatives Legislation, "Over-the-Counter Derivatives Markets Act of 2009" passed October 15, 2009 by the House Financial Services Committee and the "Derivative Markets Transparency and Accountability Act of 2009" passed October 21, 2009 by the House Committee on Agriculture. CMC is the leading trade association for the commodity futures and option exchanges and their industry counterparts.

As the organization representing the exchanges and their participants, CMC's objective is to ensure fair and efficient markets that work effectively for everyone – end users, market participants, exchanges, the general public, and regulators. Tested by unprecedented challenges during the past year, regulated exchanges have performed extremely well. Ensuring that exchanges continue to provide transparent and liquid markets is vital to sustaining the slowly emerging economic recovery.

As reflected in the titles of these pieces of legislation, the focus of legislative reform is on enhancing the regulatory framework for the largely unregulated OTC derivatives market. The CMC supports Congress' efforts to appropriately reduce the systemic risk potential in these markets which were highlighted by the economic and financial markets crisis of the last two years.

In contrast to the lack of regulation and significant regulatory gaps in oversight of OTC derivatives markets, however, the regulated exchange-traded futures markets and clearing houses functioned flawlessly, providing liquidity and allowing risks to be hedged and transferred, and ensuring the performance of all financial obligations between and among market participants twice daily as part of the proven zero-debt, mark-to-market system.

Margin Setting Authority: CMC remains concerned that the final legislation could give the Commodity Futures Trading Commission authority to establish margin levels for futures trading. U.S. futures exchanges routinely consult with the CFTC regarding market and regulatory decisions pertaining to adequacy of margin. We do not object to the CFTC overseeing the exchanges' exercise of the responsibility to set margin. Additionally, we note that the CFTC already has the ability to set margin levels pursuant to its emergency authority. Nevertheless, it is imperative that self-regulatory organizations like the Exchanges, which possess the resources, expertise and compelling interest in managing financial risk and maintaining the financial integrity of their clearing houses, retain their existing responsibility to set margin.



It is also critical that the margin setting process not be exposed to political influence. Margins are intended to cover risk and ensure the performance of financial obligations by market participants. They should not be used as a tool to attempt to control market prices or to limit trading activity by certain market participants. For decades, Congress has wisely recognized these risks and vested margin setting authority in regulated clearing houses and exchanges and the record during the recent crisis shows no justification for that policy to change.

Definition of Bonified Hedge Exemptions: Swaps dealers in financials are legitimate hedgers and should be eligible for hedge exemptions. Investment activity by institutional investors and index funds is legitimate “financial hedging” and has contributed to the overall success experienced by the commodity industry over the last decade. CMC urges lawmakers and regulators to avoid measures that could drive these legitimate hedgers from the markets. CMC continues support for CFTC to retain hedge exemptions for financial risk management positions of swap dealers, as well as for physical commercial risk management.

Core Principals: Proposed language would substantially change existing provisions of the Commodity Exchange Act (CEA) that authorize Designated Contract Markets (DCMs) and Derivatives Clearing Organizations (DCOs) to interpret how best to design their business model in order to comply with the applicable CEA Core Principles. Section 5(c) (a) of the CEA currently prohibits CFTC from issuing exclusive interpretations of the Core Principles and allows the registered entities to make business decisions on how to comply with the Core Principles, subject to the CFTC’s review. Final derivatives language should NOT roll back current flexibility given to DCMs and DCOs and allow the CFTC to decide the exclusive means for such registered entities to comply with the Core Principles.

CMC supports the principles-based regime that has allowed U.S. futures exchanges to develop innovative and potentially more effective ways of complying with their core principles and in so doing become the envy of the world financial markets. No problem has been identified with the current CEA provisions that allow DCMs and DCOs to define the type of business model that they believe will meet market needs in keeping with the CEA’s Core Principles. The CFTC should NOT be empowered to select business models for DCMs and DCOs. To do otherwise is to invite making our futures markets less creative, innovative and responsive.

The regulated exchanges have exercised both their self-certification authorities responsibly and without causing any market or regulatory problem that now needs to be corrected. There has been no problem identified to date that would justify counter-productive changes in those CEA provisions. We urge you to ensure that the final legislation retain the effective provisions of the CEA that place the responsibility for margin, innovative product development and responsive rules changes with regulated futures exchanges. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, reading "Tom Erickson". The signature is written in a cursive, flowing style.

Tom Erickson,
Chairman