Congress of the United States
Washington, DC 20515

October 4, 2011

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Ben S. Bernanke
Chairman of the Board of Governors
Federal Reserve System
2001 C Street, NW
Washington, DC 20001

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairmen Gensler, Schapiro, Bernanke and Acting Chairman Gruenberg:

As authors of the Wall Street Reform and Consumer Protection Act (P.L. 111-203) (Wall Street Reform Act), we commend your work implementing Title VII of this important new law. We have an enormous opportunity to set a new global standard for the operation of an efficient, transparent and well-regulated derivatives market. It is in a spirit of support for your efforts that we write with suggestions for how to avoid some unintended consequences that could undermine this objective.

As you know, the existing $600 trillion derivatives market operates as an integrated global market, despite the jurisdictional determinations made in Title VII between the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC). It is our hope that the two agencies will work closely and collaboratively together and that the new swap regulations can be sequenced and implemented in a logical, coordinated manner that encourages compliance and market competition.

Given the global nature of this market, U.S. regulators should avoid creating opportunities for international regulatory arbitrage that could increase systemic risk and reduce the competitiveness of U.S. firms abroad. Congress generally limited the territorial scope of Title VII to activities within the United States. This general rule should not be swallowed by the law's exceptions, which call for extraterritorial application only when particular international activities of U.S. firms have a direct and significant connection with or effect on U.S. commerce, or are designed to evade U.S. rules. We are concerned that the proposed imposition of margin requirements, in addition to provisions related to clearing, trading, registration, and the treatment of foreign subsidiaries of U.S. institutions, all raise questions about consistency with Congressional intent regarding Title VII.

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Moreover, U.S. regulators should work with other international regulators to seek broad harmonization of appropriately tough and effective standards. This can be accomplished by an appropriate staging of the adoption or implementation of our rules abroad. Should current harmonization efforts ultimately fail or prove a race to the bottom that would undermine effective regulation, the U.S. would of course reserve the right to proceed to extend the application of its standards to overseas operations.

In addition, as you proceed through the rule-making process, we urge you to respect Congress' intent to protect the ability of end users and pension plans to use swaps in a cost-effective manner. In particular, Congress recognized the need to allow pension funds, states, municipalities and other "special entities" to continue to use swaps by expressly rejecting the imposition of a fiduciary duty for swap dealers that is legally incompatible with their legitimate role as market-makers. The withdrawal of the Department of Labor's rules on a fiduciary duty under ERISA gives the agencies an opportunity to work together to prevent such adverse results. We urge you to work to revise the proposed rules in a way that avoids unintended consequences.

As one of the first countries to propose new financial rules following the 2008 crisis, the world is closely watching what we do. As you revise and finalize the proposed rules, we look forward to working together to support your important work in a way that keeps our financial markets the envy of the world.

Sincerely,

Senator Tim Johnson
Chairman
U.S. Senate Committee on
Banking, Housing, and Urban Affairs

Congressman Barney Frank
Ranking Member
U.S. House Committee on
Financial Services

cc: The Hon. Timothy Geithner, Secretary, U.S. Department of the Treasury
The Hon. Hilda Solis, Secretary, U.S. Department of Labor
The Hon. John Walsh, Acting Comptroller of the Currency
The Hon. Edward DeMarco, Acting Director, Federal Housing Finance Agency
The Hon. Leland A. Strom, Chairman and CEO, Farm Credit Administration