

**Testimony before the U.S. Senate Committee  
on Banking, Housing, and Urban Affairs**

**Hearing on International Harmonization of Wall Street Reform:  
Orderly Liquidation, Derivatives, and the Volcker Rule  
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**Jacqueline H. Mesa  
Director, Office of International Affairs  
Commodity Futures Trading Commission**

Good morning Chairman Johnson, Ranking Member Shelby, and members of the Committee. I am Jacqueline Mesa, the Director of the Office of International Affairs at the Commodity Futures Trading Commission. Thank you for the opportunity to testify today regarding international aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). This morning, I will provide an overview of global commitments for over-the-counter (“OTC”) derivatives reform, an update on Dodd-Frank Act implementation efforts at the Commodity Futures Trading Commission (“CFTC” or “Commission”), global initiatives to bring financial reform to OTC derivatives, and coordination with international regulators in regulating the swaps market.

**G-20 Commitment for OTC Derivatives Reform**

The financial crisis generated international consensus on the need to strengthen financial regulation by improving transparency, mitigating systemic risk, and protecting against market abuse. As a result of the widespread recognition that transactions in the OTC derivatives market increased risk and uncertainty in the economy and became a significant contributor to the financial crisis, a series of policy initiatives were undertaken to better regulate the financial markets.

In September 2009, leaders of the Group of 20 (“G-20”) – whose membership includes the European Union (“EU”), the United States, and 18 other countries – agreed that: (1) OTC derivatives contracts should be reported to trade repositories; (2) all standardized OTC derivatives contracts should be cleared through central counterparties and traded on exchanges or electronic trading platforms, where appropriate, by the end of 2012; and (3) non-centrally cleared contracts should be subject to higher capital requirements. In addition, the Financial Stability Board (“FSB”) issued a report in October 2010 that set forth a detailed set of assignments to financial standard-setting bodies in order to meet the G-20 directives, and the FSB continues to publish semi-annual reports concerning progress by major market jurisdictions to meet the G-20 mandates by the end-2012 deadline.

### **Dodd-Frank Act Implementation**

In 2010, less than one year following the G-20 commitment to lower risk and increase transparency in the OTC derivatives market, Congress broadened the CFTC’s jurisdiction to include oversight of the previously unregulated swaps marketplace and also broadened the jurisdiction of the Securities and Exchange Commission (“SEC”) to cover security-based swaps. With respect to the CFTC, Title VII of the Dodd-Frank Act: (1) provides for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposes clearing and trade execution requirements on standardized swaps, subject to certain exceptions; (3) creates recordkeeping and real-time reporting regimes; and (4) enhances the CFTC’s rulemaking and enforcement authorities with respect to certain products, entities, and intermediaries subject to the Commission’s oversight.

The CFTC is developing regulations to implement the Dodd-Frank Act and to establish a regulatory framework for overseeing the swaps market, which is seven times the size of the

futures market and far more complex. Last summer, the CFTC moved forward from the proposal phase for rulemaking to finalizing its regulations. The Commission has completed 29 final rulemakings, with approximately 20 regulations remaining.

Section 712 of the Dodd-Frank Act calls on the CFTC to consult and coordinate with the SEC and the prudential regulators for purposes of assuring regulatory consistency and comparability of rulemakings under the legislation. The SEC has jurisdiction over security-based swaps, and the CFTC is working closely with the SEC in developing regulations. In certain areas, the CFTC and SEC are issuing joint regulations. The Commission also is working closely with the prudential regulators, which are charged with developing capital, margin, and other requirements for banking entities.

One example where we are coordinating with our sister agencies is the procedure to implement the Volcker Rule, where there is a specific requirement in the Dodd-Frank Act mandating consultation and coordination between the banking regulators and the CFTC and the SEC. Section 619 of the Dodd-Frank Act prohibits certain banking entities from engaging in proprietary trading, yet also permits certain activities such as market making and risk-mitigating hedging. The Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and SEC published proposed regulations last November to implement this statutory provision. The CFTC is charged with promulgating rules to implement Volcker Rule requirements for CFTC-registered affiliates and subsidiaries of banking entities. The Commission issued proposed regulations in January, with a comment period that closes on April 16th. U.S. regulators are working together to coordinate their approaches.

As CFTC rulemakings have progressed, one issue that has arisen is how Dodd-Frank Act requirements might apply to swaps activities occurring on a cross-border basis. In connection with the CFTC's and SEC's joint proposed regulation to further define the term "swap dealer,"

for example, public input has been received in connection with a range of concerns related to the application of Title VII and the Commission's regulations to transactions in which a foreign swap dealer is transacting with U.S. persons or to certain activities of a U.S. swap dealer operating from a foreign location.

The CFTC recognizes that swaps business currently flows across national borders, with agreements negotiated and executed between counterparties in different jurisdictions and individual transactions often booked and risk-managed in other jurisdictions. CFTC and SEC staff held a public roundtable last August to discuss international issues related to implementation of Title VII. The roundtable agenda included cross-border transactions, global entities, and market infrastructure. As required by Section 719(c) of the Dodd-Frank Act, CFTC and SEC staff conducted a study and released a report in January that examined international swap regulation and set forth several issues for further monitoring across jurisdictions.

In addressing cross-border issues, the CFTC is charged with implementing Section 722(d) of the Dodd-Frank Act, which amended the Commodity Exchange Act ("CEA") to provide that Title VII provisions "shall not apply to activities outside the United States unless those activities: (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of [the CEA] that was enacted by the [Dodd-Frank Act]". The CFTC plans to provide guidance regarding the application of Title VII and the Commission's regulations to non-U.S. entities and to swaps activities occurring on a cross-border basis, seeking public input on that guidance.

Another issue that has arisen involves the indemnification requirement for registered swap data repositories in Section 21(d) of the CEA. Some foreign regulators have raised

concerns regarding their ability to directly access information maintained in such repositories due to the indemnification requirement. The CFTC is working to ensure that both domestic and international regulators have access to swap data to support their regulatory mandates, and the Commission continues to review the indemnification provisions of the CEA. Recently, the Chairman directed Commission staff to draft, for the Commission's consideration, proposed interpretative guidance stating the Commission's view that access to swap data reported to a trade repository that is registered with the CFTC will not be subject to the CEA's indemnification provisions if such trade repository is regulated pursuant to foreign law and the applicable requested data is reported to the trade repository pursuant to foreign law. Subject to the Commission's approval, this proposed interpretative guidance would be published for public comment.

### **Global Reform in the OTC Derivatives Market**

In line with the G-20 commitment, efforts to regulate OTC derivatives are under way not only in the United States but also abroad. Japan has passed reform legislation, and the EU is finalizing the European Market Infrastructure Regulation ("EMIR") that includes mandatory clearing, reporting, and risk mitigation for OTC derivatives. Last October, the European Commission published two draft proposals, the Markets in Financial Instruments Directive ("MiFID") and the Markets in Financial Instruments Regulation ("MiFIR"), that provide for additional requirements for swaps that will further align U.S. and EU swaps reform. Others, such as Canada, Hong Kong, and Singapore, have published consultation documents to gather public comment on the appropriate regulation of OTC derivatives. CFTC staff will continue to monitor international developments and to work with the foreign regulators to establish consistent standards for OTC derivatives regulation.

## **International Coordination**

The global and interconnected nature of the swaps market makes it imperative that the United States consult and coordinate with foreign regulators. Market participants domiciled both inside and outside of the United States regularly enter into swaps transactions with one another and engage in cross-border swap activities that could be subject to U.S. and non-U.S. regulatory oversight.

The fact that all major market jurisdictions are developing their OTC requirements at the same time and in a coordinated fashion pursuant to the G-20 directives also provides an opportunity to create a consistent framework. Congress directed the CFTC, SEC, and prudential regulators in Section 752(a) of the Dodd-Frank Act to “as appropriate . . . consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation . . . of swaps, security-based swaps, swap entities, and security-based swap entities” in order to “promote effective and consistent global regulation of swaps and security-based swaps”. The CFTC is fulfilling this statutory mandate by reaching out internationally – in a comprehensive approach and on an ongoing basis – to promote robust and consistent standards and to avoid conflicting requirements wherever possible.

The CFTC has considered international standards and principles in developing regulations, and staff has consulted and coordinated with international counterparts throughout the rulemaking process. Commission staff has shared comment summaries and drafts of proposed and final regulations with the international community, and has carefully considered the constructive feedback we have received. As the Commission moves forward in finalizing regulations, we will continue to do so.

CFTC Chairman Gary Gensler and Commissioners have met with foreign regulators to discuss financial reform in the United States and abroad. Commissioner Jill Sommers, as Chair of the CFTC's Global Markets Advisory Committee and the Commission's representative to the International Organization of Securities Commissions ("IOSCO"), has organized advisory meetings to discuss international coordination of financial reform. In addition, Chairman Gensler, SEC Chairman Mary Schapiro, and senior representatives of the CFTC and SEC met with regulators from Canada, the EU, Hong Kong, Japan, and Singapore last December to discuss cross-border issues related to OTC derivatives, and an even broader group of regulators will meet again in May. Last week, the CFTC hosted a meeting with 28 foreign regulators on access to swaps trade repository data, regulation of the OTC derivatives market and participants, and customer fund protection.

At the staff level, ongoing bilateral discussions and technical dialogues with foreign regulators are designed to increase the understanding of our respective regulatory approaches and to coordinate regulatory proposals to the greatest extent possible. CFTC and SEC staffs have been holding an unprecedented number of dialogues with counterparts in Canada, the EU, Hong Kong, Japan, and Singapore. These staff discussions will continue as Dodd-Frank Act implementation progresses and as other jurisdictions develop their own regulatory requirements for OTC derivatives.

CFTC staff is participating in the FSB OTC Derivatives Working Group, which monitors progress being made in implementing OTC derivatives market reforms. The CFTC also co-chairs the IOSCO Task Force on OTC Derivatives, which recently completed work on three reports and currently is developing a report relating to the oversight of OTC derivatives market intermediaries. The published reports address mandatory clearing, exchange and electronic platform trading, and reporting to trade repositories.

CFTC staff also is engaged in several other international projects related to OTC derivatives. For example, the Committee on Payment and Settlement Systems and IOSCO are developing principles for financial market infrastructures, including derivatives central counterparties and trade repositories, which are expected to be published next month. In addition, IOSCO and others have established a working group on international standards regarding margin requirements for non-centrally cleared derivatives, with a consultative report expected in June.

Regulators also are coordinating internationally with regard to limits on speculative positions. Last September, IOSCO adopted a commodity markets report that embraces a position management regime. The report also includes recommendations for more transparency, similar to aggregated position reports (Commitments of Traders) that are published weekly by the CFTC, and enhanced enforcement authority to pursue attempted manipulation.

### **Conclusion**

The CFTC is working with foreign regulators in an effective way to coordinate regulatory approaches and requirements to the greatest extent possible. On a number of different issues, the CFTC already has used the process of international consultation to highlight possible differences and to work out a solution that addresses the concerns of each jurisdiction involved in the discussion. We are committed to working closely with our international counterparts in this effort.

Thank you, and I would be happy to answer questions.