Committee on Agriculture
Subcommittee on General Farm Commodities and Risk Management

Harmonizing Global Derivatives Reform: Impact on U.S. Competitiveness and Market Stability

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Thank you for the opportunity to testify before you today. I share your concern about the extraterritorial impact of the Dodd-Frank Act and the importance of international regulatory harmonization. In my testimony today I will discuss two specific rulemakings that exemplify these issues. But first I'd like to take a moment to put these issues into a broader context.

It was not so long ago that derivatives markets in general and futures markets in particular were viewed as secondary to other aspects of modern finance such as the trading of stocks and bonds. That is clearly no longer the case. Derivatives markets will be as important to the financial markets of the 21st century as the stock exchanges were in the 20th century. Preserving our ability to compete in the global derivatives marketplace is therefore critical to our economic standing in the world.

As the president of the FIA, I can assure you that the global derivatives marketplace is becoming more and more competitive every year. Our statistics on trading volume show that last year North America was outstripped by the Asia-Pacific region in terms of the number of futures and options that trade on their exchanges. At the moment the largest futures exchanges in that region draw most of their volume from domestic customers. But it is only a matter of time before they open to the outside world, and when they do, our markets will be challenged like never before.

In our industry, liquidity is the key to success. Anything that adds to the cost of doing business on our markets creates an economic incentive to use an alternative. No matter how well intended, Dodd-Frank punishes the U.S. futures industry, an industry that had absolutely no responsibility for the financial crisis and indeed worked flawlessly throughout the entire period. If Dodd-Frank makes our markets less efficient and more expensive, we run the risk of pushing another industry offshore.

Let me give you two examples of specific rulemakings with adverse extraterritorial impact.

The first example relates to the cross-border clearing of swaps. Under Dodd-Frank, any non-U.S. clearinghouse that clears swaps for participants in the U.S. must be registered with the CFTC as a "derivatives clearing organization." In addition, any firm that is a member of that foreign clearinghouse must register with the CFTC as an FCM if it clears swaps on behalf of U.S. customers.

Let's think about the practical implications of that position. Adding these clearing organizations to the Commission's oversight responsibilities will severely strain the agency's resources and put a substantial and unnecessary financial and operational burden on FCMs. Some firms and clearing organizations could well decide that it just isn't worth the trouble. The net effect will be fewer choices for U.S. customers who need access to clearinghouses

for their swaps. There is also the risk that foreign regulators will follow our lead and impose burdensome requirements on our firms, an outcome that none of us would like to see.

In our view, the logical solution is to rely on the successful model now in place in the futures markets. The CFTC's Part 30 rules, which govern the offer and sale of foreign futures to U.S. participants, do not require either a foreign clearing organization or its clearing members to be registered with the CFTC if they are subject to "comparable" regulation in their home country. This approach has worked extremely well and has facilitated the ability of U.S. FCMs and their customers to participate in international markets.

The second example is the CFTC's proposed rules for position limits. I want to emphasize that the FIA strongly supports robust large trader reporting requirements, which assure that the CFTC and other regulators have complete visibility into the activities of the more active traders. Our concern is that the lack of international harmonization on position limits threatens to place U.S. markets and market participants at a severe competitive disadvantage. Furthermore, the proposed rules do not satisfy the statutory prerequisites for establishing position limits. No evidence has been cited by the CFTC to justify position limits as necessary to "diminish, eliminate or prevent" excessive speculation. Unsupported claims about the effects of speculation should not be allowed to undermine the price discovery and risk-shifting functions of the U.S. derivatives markets or cause these functions to shift to foreign boards of trade.

Just today the FIA filed a comment letter requesting that the CFTC republish the position limit rules with information on how the agency intends to apply the rule governing the aggregation of positions. If applied as written, this rule will stifle legitimate use of the markets by investors and end-users. We urge the CFTC to republish this proposal so that the public will have appropriate notice and the opportunity to file comments on position aggregation.

In closing, I would like to raise a procedural concern. Chairman Gensler has correctly observed that the proposed rules fit together in a mosaic. Mosaics, however, are nothing more than chips of colored stone until they have been pieced together into a work of art. The Commission has shown us the individual chips, but it hasn't shared its vision of how they fit together in a comprehensive regulatory regime. The industry and the public deserve an opportunity to analyze and comment on this regulatory mosaic before it is set in concrete and takes its final form. We therefore recommend that the Commission provide an additional 60-day comment period after it has determined how the proposed rules fit together and before it promulgates the final rules. We think a 60-day comment period would be well within the timetable set by the G-20.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.