Senate Agriculture Committee
"One Year Later - The Wall Street Reform and Consumer Protection Act - Implementation of Title VII"

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Chairwoman Stabenow, Ranking Member Roberts, members of the Committee, I am John Damgard, president of the Futures Industry Association. On behalf of FIA, I want to thank you for the opportunity to appear before you today as we approach the one-year anniversary of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

FIA is the leading trade organization for the futures, options and over-the-counter cleared derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. We take justifiable pride that throughout the financial crisis, the futures markets continued to function extremely well. The futures regulatory system passed the test with flying colors.

One of our greatest concerns with the Dodd-Frank Act is the potentially adverse effect on competition. As the president of the FIA, I can assure you that the global derivatives marketplace is becoming more and more competitive every year. Just last week I was in London for our annual International Derivatives Expo and I heard a lot of discussion about the potential impact of these new regulations. Our competitors in London and in other financial centers around the world are watching what we do here very closely indeed. While our regulators are making a strong and sustained effort to consult with their counterparts abroad, there are some significant differences emerging in our respective approaches to derivatives regulation, and we need to do our utmost to preserve a level playing field.

In my written testimony, I have attached a six-page summary of more than two dozen comment letters that the FIA has filed on various Dodd-Frank rulemakings. I doubt that any of us realized a year ago just how complicated it would be to build a new regulatory framework for the swaps markets. Yes, the futures regulatory system provided Congress with an excellent model for regulating swaps, but cleared swaps are not the same as futures. One size does not fit all. To get this right, the new regulatory framework must be carefully designed and sensibly implemented. I commend the leadership of the Commodity Futures Trading Commission and the Securities and Exchange Commission for their determination to carry out the monumental rulemaking mandate assigned to them by the Dodd-Frank Act. But through no fault of their own, it has become obvious to everyone that the July 16 deadline was simply too ambitious.

Just yesterday the CFTC issued a proposed order providing temporary regulatory relief for several important provisions of the Dodd-Frank Act that are due to take effect on July 16, with or without action by the agency. As Chairman Gensler explained, this proposed order is designed as a transitional measure to allow the derivatives industry to continue relying on certain provisions in the Commodity Exchange Act while the CFTC finalizes the new regulatory framework mandated by the Dodd-Frank Act. I commend Chairman Gensler and his fellow CFTC Commissioners for taking this action, which will address an important concern about the timetable for Dodd-Frank implementation.

This is only a temporary measure, however. Of far more importance is the substance of the many rulemakings now under consideration and the overall impact of the proposed regulations as a whole. The CFTC has not yet made decisions on a host of critical issues that will have a important influence on the structure of this industry and the costs that my members must bear. The CFTC confirmed yesterday that the final definitions of "swap," "swap dealer" and "major swap participant" will be among the last rules adopted. Yet many of the new regulatory requirements will hinge on these core definitions, and until they are finalized, it is very hard to know for sure who and what will be covered.

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.

In conclusion, I would like to circle back to one of my opening themes, namely, the international dimension of Dodd-Frank. When Congress was considering the legislation, many in the financial services industry and in Congress cautioned that the extraterritorial reach of the regulatory structure being established here would inhibit the ability of U.S. market participants to compete internationally. Today there is increasing evidence that last year's fears will be this year's reality.

We were pleased to learn that the chairman and ranking member of this committee recently wrote to their colleagues in the European Parliament expressing their concern about the legal and jurisdictional reach of U.S. regulation. As the Senators emphasized, a key objective of Dodd-Frank was to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulation of derivatives transactions." The FIA welcomes your pledge to work with your European colleagues to harmonize these rules, and stands ready to provide whatever assistance may be needed.

In our experience, the CFTC's Part 30 rules provide a successful model for limiting the extraterritorial impact of Dodd-Frank. The Part 30 rules, which govern the offer and sale of foreign futures and options to U.S. participants, were promulgated in 1987 and have promoted international trade for nearly 24 years without sacrificing customer protections. The CFTC's Part 30 rules recognize that we cannot expect other countries to implement regulations identical to our own. Instead it provides a mechanism for providing exemptions to exchanges and clearinghouses that are subject to "comparable" regulation in their home countries.

The swaps markets, even more than the futures markets, are international in scope. This is in part because swaps have been traded as bilateral transactions and there have been no trading platforms or clearing organizations that would focus trading in certain locations. As regulators around the world develop rules, it is essential that they be coordinated and comparable, both with respect to substance and timing. This is important not only for the entities that must comply with these rules but also for regulators so that they can appropriately focus their efforts and resources.

Thirty years ago the CFTC determined that "given this agency's limited resources, it is appropriate at this time to focus [the Commission's] customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets." The CFTC also determined that "the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such areas."

This same policy should govern the regulation of swaps. In particular, we urge the CFTC to use its authority under Dodd-Frank to provide an exemption for swaps clearinghouses located outside the U.S. that clear swaps for U.S. participants, provided that they are subject to "comparable" regulation in their home country. Such an exemption would facilitate international competition, provide more choice in clearing for U.S. entities, and free the CFTC staff to focus on transactions that more directly affect U.S. market participants.

Thank you for this opportunity to testify and I look forward to your questions.