

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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May 6, 2013

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

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

Dear Chairman Hensarling and Ranking Member Waters:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, is encouraged by the Committee's efforts to improve the regulatory process and protect end users' ability to efficiently manage their business risk. The Chamber writes today to offer our support for the following bills that are before the Committee for markup.

Use of Derivatives by Corporate End Users

H.R. 634, the "Business Risk Mitigation and Price Stabilization Act of 2013," would create a critical exemption for corporate end users that manage their business risk with derivatives. Despite the clear intent of Congress to shield end users from unnecessary cash collateral requirements, the Prudential Banking Regulators believe they do not have the flexibility under Dodd-Frank to provide a regulatory exemption. Chairman Bernanke has noted this problem on a number of occasions and has supported a legislative fix. An identical bill passed the House in 2012 by an overwhelming bipartisan margin – 370-24.

H.R. 677, the "Inter-Affiliate Swap Clarification Act," would exempt transactions between affiliates of a company from clearing and margin requirements that were intended for market-facing derivatives transactions. Internal transactions do not create the systemic risk that derivatives regulations are designed to mitigate. In fact, companies use affiliate transactions as part of a prudent risk management strategy to "net down" exposures from across the company. This bill would also make it clear that non-financial companies that use central treasury units to hedge on behalf of its affiliates can claim the end user clearing exception. A similar bill passed the House last year with overwhelming bipartisan support – 357-36.

H.R. 742, the “Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013,” would eliminate an unworkable indemnification requirement in Dodd-Frank that would lead to a balkanized system for storing and accessing swaps data. Some foreign jurisdictions have laws or regulations that make indemnification impossible, and therefore prevent foreign regulators from accessing swaps information from U.S.-registered SDRs. This bill would repeal the indemnification requirement, but make clear that regulators have an obligation to maintain the confidentiality of the information.

H.R. 992, the “Swaps Regulatory Improvement Act,” would modify section 716 of Dodd-Frank, often referred to as the swaps push-out provision that requires insured depository institutions to spin-off certain derivatives activities into separately capitalized affiliates. By narrowing the scope of the push-out provision, the bill would actually mitigate systemic risk and reduce complexity for market participants.

H.R. 1341, the “Financial Competitive Act of 2013,” would require the Financial Stability Oversight Council (FSOC) to study the inconsistent application of the Basel III Credit Valuation Adjustment (CVA) capital charge and its effects on end users, swaps dealers, and the international derivatives market. FSOC would issue its report to Congress within 90 days. The Chamber has consistently supported efforts both to protect end users and to ensure that policymakers conduct serious economic analysis as part of their work. H.R. 1341 serves both goals.

H.R. 1256, the “Swap Jurisdiction Certainty Act,” would require the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to conduct a joint rulemaking to define the territorial reach of U.S. derivatives regulation, while carefully considering the costs and benefits of regulating transactions between non-U.S. counterparties. The CFTC has proposed guidance, rather than a notice and comment period for proposed rulemaking, while the SEC has more faithfully followed the regulatory process. The lack of interagency coordination on even this basic procedural point is problematic, but more concerning is the CFTC’s substantive approach which could increase end user costs by imposing new burdens on their dealer counterparties that operate globally.

SEC Reform

H.R. 1062, the “SEC Regulatory Accountability Act,” would enhance cost-benefit analysis by combining a pre-adoption cost benefit analysis with a post-adoption look-back requirement which is essential for smart regulation. Under this approach, the SEC would collect data and re-evaluate a rule after a defined period to determine the effectiveness of the rule, the need to keep it on the books, or whether to modify it. Such a periodic check of all rules would also help determine if rules are obsolete. Knowing that rules would be empirically examined will develop internal discipline in the drafting process. Requiring the examination staff to consider these issues at the outset would cause it to be more pro-active in its inspection program, less inclined to focus on after the fact disasters, and provide the SEC with better oversight of the capital markets.

Earlier this year the Chamber issued a report, [The Importance of Cost-Benefit Analysis in Financial Regulation](#), outlining the legal requirements and historic use of cost-benefit analysis by financial service regulators.

Jobs Act Implementation

H.R. 701 would place a deadline of October 31, 2013 for the Securities and Exchange Commission to complete the changes to Regulation A as required under the Jumpstart our Business Startups Act (“JOBS Act”). The bi-partisan JOBS Act mandates the modernization of certain regulations critical to the capital formation of emerging growth companies. The Chamber is concerned that the pace of regulatory implementation is too slow, and H.R. 701 would assist in completing the implementation of this important legislation for new businesses.

These bills would assist companies in mitigating risk, obtaining raw materials, and raising capital, and would improve the regulation of securities markets. The Chamber urges the Committee to report these bills to the full House of Representatives as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" clearly visible.

R. Bruce Josten

cc: The Members of the House Committee on Financial Services