

Congress of the United States
Washington, DC 20515

July 18, 2011

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st St NW
Washington, DC 20036

Dear Chairman Gensler:

We appreciate the enormous challenge that implementing Dodd-Frank poses to the Commission and the enormous time constraints you are under to implement these important rules and regulations. One specific issue that has repeatedly been brought to our attention is the overly broad interpretation of the “swap dealer” definition proposed by the Commodity Futures Trading Commission (CFTC). We write today to ask for the reconciliation of several points made throughout the Administration’s proposal of financial regulatory reform to Congress and the broad proposed interpretation of the definition the Commission has released for public comment. As such, we have included a list of questions at the conclusion of this letter that we request you respond to within ten business days.

During a speech to the International Swaps and Derivatives Association on September 16, 2010, you stated that “*Initial estimates are that there could be in excess of 200 entities that will seek to register as swap dealers.*” We are concerned that the proposed rule would capture commercial energy companies, agricultural companies, agricultural and electric cooperatives, and community banks, and Farm Credit System institutions as swap dealers. We view this as going well beyond Congressional intent.

Congress included two exceptions from the “swap dealer” definition in Dodd-Frank that were intended to exclude these various commercial and smaller entities and narrow the overall scope of those that ultimately fall into this new regulatory category. The proposed rule put forth by the CFTC would impose huge costs on these businesses and divert capital that could otherwise be invested in creating new jobs and helping jumpstart the economy.

The first exception included by Congress from registering as a swap dealer relates to the entity’s transacting in a dealing capacity “*as a part of a regular business.*” In other words, if an entity’s main or usual business is entering into swaps it is classified as a swap dealer. If an entity’s main or usual business is not entering into swaps, it is exempt from the definition of swap dealer. Congressional intent is clear that this is meant to exempt those who may engage in swap activity that is ancillary to their main business. The proposed rule makes no such distinction, and essentially makes this exception null and void.

The second exception included in Dodd-Frank is the *de minimis* exception, which gives the CFTC broad discretion in determining which entities are exempt. Our understanding is that

very few entities would qualify for the very low threshold set forth in the proposal, which only exempts entities that engage in fewer than twenty swaps in a year.

In our view this definition and the various requirements that go along with the designation as a swap dealer threaten a further concentration of the swaps markets onto the balance sheets of a handful of the largest financial institutions. We are concerned that this will drive up the costs of risk management and borrowing for commercial firms across this country and stunt economic growth.

We request responses to the following questions in ten business days and appreciate your attention to these issues.

Questions:

1. You stated in your testimony in 2009 that the number of dealers was “about 15 or 20 around the globe that make up 99 percent of the market for over-the-counter derivatives.” How do you reconcile the number of dealers you proposed to Congress be regulated with the number that will ultimately be forced to register under the rule proposed by the Commission?
2. How did you decide on the specific factors for determining the de minimis exception?
3. What data do you have suggesting that the thresholds set for these factors are appropriate in determining a de minimis amount of swap dealing?
4. How many entities do you estimate will ultimately fall out of the swap dealer category under the regular business exception that would have otherwise been captured under the definition? What about under the de minimis exception?
5. Why is the Commission not adhering to the SEC’s dealer/trader distinction with respect to swap dealers, even though the statutory definition of a swap dealer so closely mirrors the current definition of a securities dealer? The SEC has stated their intention to adopt this distinction for security-based swap dealers. Why should the distinction between dealers and traders be ignored for the purpose of determining who is a swap dealer?

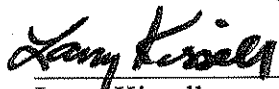
Sincerely,



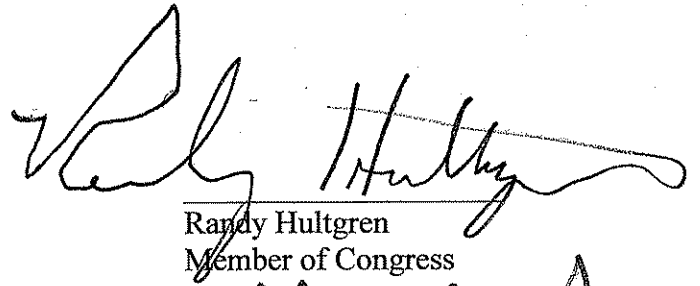
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Member of Congress



Michael Conaway
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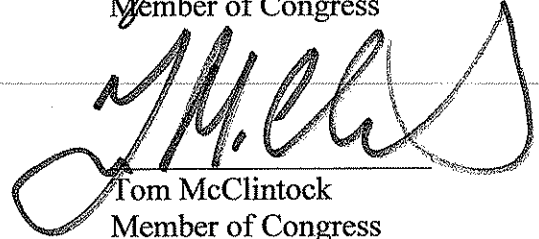
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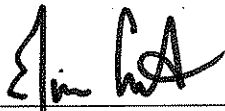
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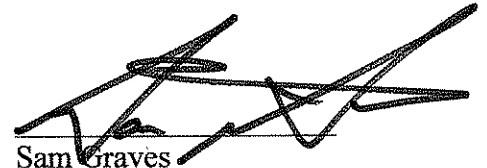
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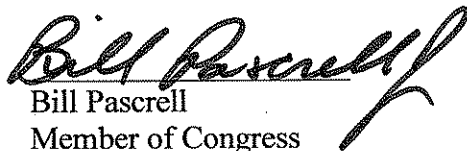
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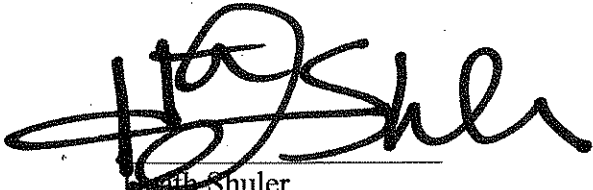
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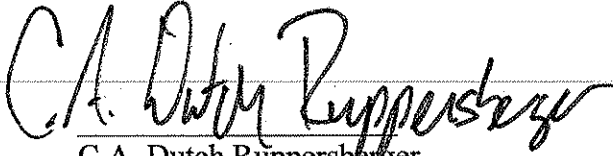
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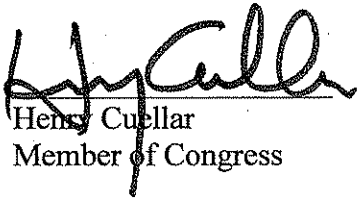
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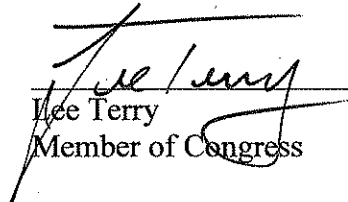
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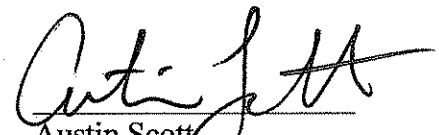
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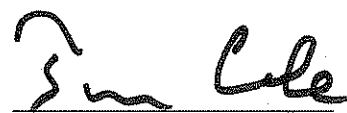



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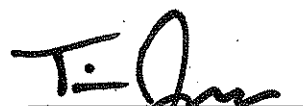

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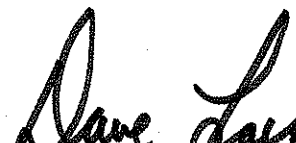

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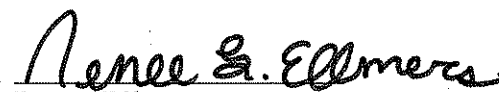

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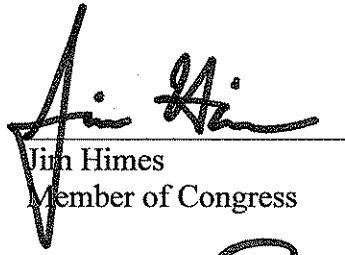

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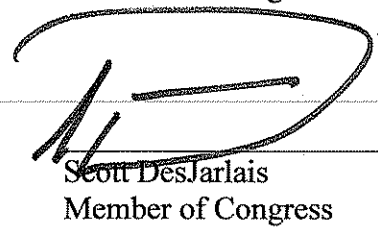

Russ Carnahan
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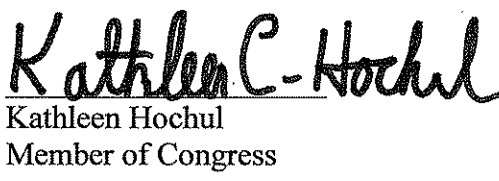

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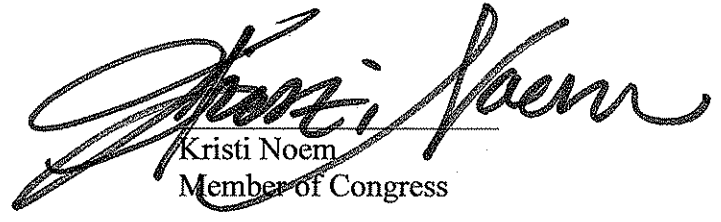

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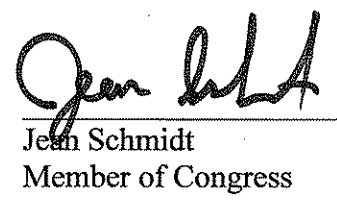

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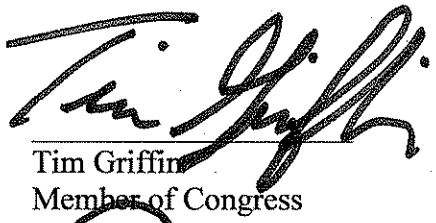

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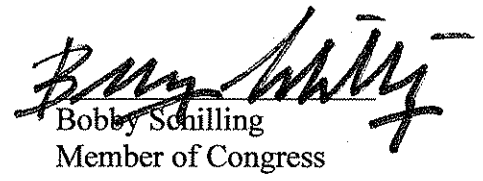

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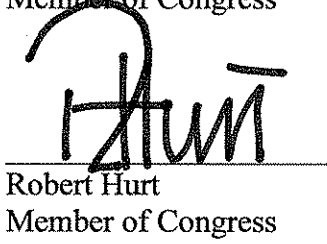

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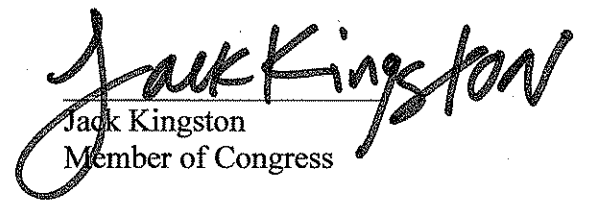

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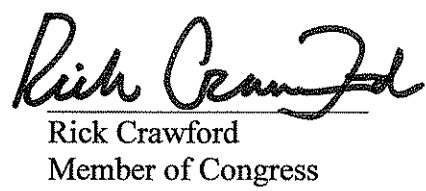

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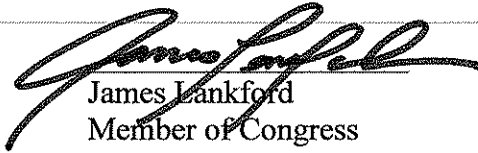

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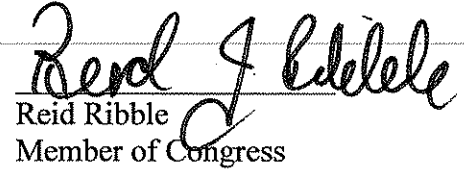
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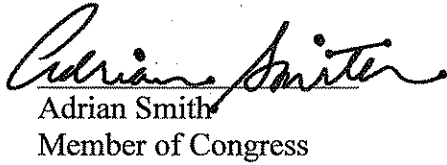
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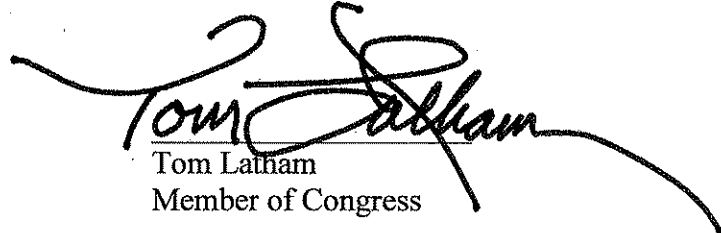
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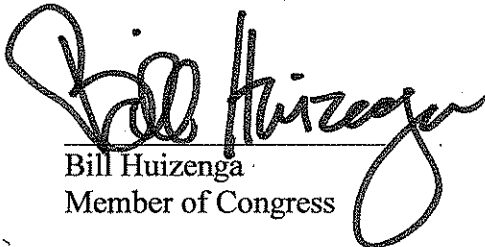
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