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April 22, 2013

The Honorable Steve Stivers
United States House of Representatives
1022 Longworth House Office Building
Washington, DC 20515

Dear Congressman Stivers,

I very much appreciated having the opportunity to present the views of end-users on the complex topic of derivatives reform at the hearing of the Committee on Financial Services' Capital Markets Subcommittee on April 11, 2013. I would also like to thank you for your efforts on behalf of end-users as we join with you to regulate derivatives in a sensible way.

I am glad to respond to the questions in your letter of April 15th.

1) Do derivatives trades between affiliated companies pose any systemic risk?

   End-users have maintained throughout the debate leading to the passage of the Dodd-Frank Act and the subsequent period up to the present in which regulations are being implemented that our derivatives trades are not systemically risky. In fact we estimate that end-users' derivatives activity comprises less than 10 percent of the market. These represent transactions end-users enter into with their banks and other swap dealers to reduce business risks they face every day. End-user companies use derivatives to hedge exposures to movements in currency values and interest rates as well as energy and commodity costs. Corporate treasury centers serve to reduce risk by aggregating exposures on the books of a special-purpose subsidiary within their corporate group or with the parent company, netting the inter-affiliate exposures, and then entering into smaller derivatives with a bank or other swap dealer for the net amounts. The European regulators, in recognition that these inter-affiliate transactions reduce risk rather than create additional systemic risk have provided exemptions from clearing and collateral for transactions between companies that are part of the same consolidated group when basic conditions are met.

2) In light of the CFTC's final rule on inter-affiliate swaps, do you believe this would place a burdensome requirement on the capital reserves of institutions who engage in these transactions? If so, what would be the impact on investment and business expansion?

   Listed below are several aspects of the CFTC's rule on inter-affiliate swaps that leave end-users with concern about the costs and burdens of the final regulations.

   - Financial entity designation – Many central treasury or hedging units, even those that are part of a corporate group headed by a parent company that is clearly a non-financial entity, run the risk of themselves being categorized as financial entities subject to mandatory central clearing and margining requirements beginning on June 10, 2013.

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Such a result could effectively deny such non-financial end-users the benefits of the clearing exception simply because they employ an efficient internal structure.

- Certain internal swaps with majority-owned affiliates in the European Union, Japan, or Singapore would still be subject to mandatory clearing unless certain external clearing or margining conditions are met.
- Certain internal swaps with majority-owned affiliates located in jurisdictions outside the U.S., European Union, Japan, or Singapore would have to be cleared unless the related market-facing swaps were cleared, even if the foreign jurisdiction does not require such swaps to be cleared or have clearing available for the particular type of swap.

If the regulatory risks to end-users are not addressed, then our derivatives counterparties – predominately banks – will have to hold additional capital as a result of derivatives transactions. The Prudential Banking Regulators have proposed rules entitled "Advanced Approaches; Risk-Based Capital Rule; Market Risk Capital Rule" (the "Capital Proposal"). The Capital Proposal implements a new Credit Valuation Adjustment ("CVA") that would increase the current capital bank counterparties would have to hold against derivatives in anticipation of a possible future deterioration in the financial markets such as that experienced in 2008. Our analysis shows the cost for my company to enter into a 7-year cross-currency swap could increase by a factor of three compared to current rules. Less financially strong companies will see significantly larger increases.

European policy makers are poised to enact capital charges on derivatives positions significantly more favorable to end-users than the Capital Proposal of the U.S. Prudential Banking Regulators. Their approach is to recognize that end-users' hedging activities are in fact reducing risks and so, should require less capital than activities of financial entities keeping open positions or making markets in derivatives. They propose to exempt non-financial end-users from the additional capital requirements for CVA risk. The absence of a U.S. exemption will put American companies at a meaningful competitive disadvantage compared to our European competitors.

3) If regulators apply margin requirements to inter-affiliate swaps, do you believe this would place a burdensome requirement on the capital reserves of institutions who engage in these transactions? If so, what would be the impact on investment and business expansion?

While we are appreciative of the CFTC's final rule entitled "Clearing Exemption for Swaps Between Certain Affiliated Entities", H.R. 677 is still very much needed. The CFTC rule does not address the issues associated with end-user centralized treasury units or swaps between financial affiliates. Plus, a legislative solution would create a degree of certainty that is very important to end-user companies and their financial planning. If companies have to post margin as a result of clearing requirements on inter-affiliate derivative transactions, the costs would be significant. FMC and other members of the Business Roundtable estimated that, as a result of margin requirements on uncleared trades, BRT non-financial member companies would have to hold aside on average $269 million of cash or immediately available bank credit to meet margin calls, assuming a 3 percent initial margin and no variation margin on their external-facing trades. In our world of finite limits and financial constraints, this is a direct dollar-for-dollar subtraction from funds that we would otherwise use to expand our plants, build inventory to support higher sales, undertake research and development activities, and ultimately sustain and grow jobs. In fact, the study extrapolated the effects across the S&P 500, of which FMC is also a member, to predict the consequent loss of 100,000 to 120,000 jobs. The effect on the many thousands of end-users beyond the S&P 500 would be proportionately greater. We would also have to make a considerable investment in information systems that would replicate much of the technology in a bank's trading room for marking to market and settling derivatives transactions.

4) What economic impacts would margin requirements on inter-affiliate trades have on end-users and their businesses? Would there be an increase in the cost of doing business?

   End-users arrange inter-affiliate derivatives transactions to bring together similar activity for the risk-reducing purpose of netting trades that naturally cancel each other. This enables the end-user to enter into a smaller transaction with a bank or other swap dealer. The alternative would be to retain more risk, if, as we fear, hedging would no longer be cost effective as I've described above.

In summary, the companies and organizations which came together to form the Coalition for Derivatives End-Users, including FMC Corporation and the National Association of Corporate Treasurers, strongly support H.R. 677, the *"Inter-Affiliate Swap Clarification Act"*, which we believe would address the remaining uncertainty and impermanence of the regulations affecting this important risk-mitigating activity.

Sincerely,

Thomas C. Deas, Jr.
Vice President & Treasurer