



United States Senate
WASHINGTON, DC 20510-4705

October 16, 2009

The Honorable Timothy Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

I write to express my considerable disappointment in the Department of Treasury's support for provisions in the House Financial Services Committee passed legislation to regulate the Over-the-Counter (OTC) derivatives market that would result in large loopholes and allow financial firms to continue unregulated derivatives trading that was at the heart of last year's economic collapse.

Earlier this year, I applauded the Department of the Treasury for supporting historic and sweeping reform of the volatile and unregulated \$600 trillion derivatives market. On June 17, 2009, the Department of Treasury released a White Paper that established the Administration policy of requiring all standardized derivatives be cleared through regulated clearinghouses and traded on regulated exchanges. Specifically, the White Paper stated that current law should be amended to "require clearing of all standardized OTC derivatives through regulated central counterparties" and require that "the standardized part of these markets [be moved] onto regulated exchanges."

On August 11, 2009, the Department of Treasury submitted its legislative proposal for regulating derivatives to Congress. The Proposed OTC Act provided for mandatory clearing and exchange trading of standardized swaps, however it also created a large exception from the mandatory clearing and trading requirements when one of the counterparties is not a swap dealer or major swap participant (and does not meet the eligibility requirements of any clearinghouse that clears the swaps).

As Commodities Futures Trading Commission Chairman Gary Gensler wrote in an August 17, 2009, letter to the Senate Agriculture Committee, this loophole excludes a significant class of end users from the clearing and mandatory trading requirement. Chairman Gensler pointed out that this major exception could undermine the Administration's policy objective of lowering risk through bringing all standardized OTC derivatives into centralized clearing and regulated exchanges.

I was disappointed in the Department of Treasury's August 11, 2009, proposed OTC Act that included this major loophole that reflected a step back from the June 17, 2009 White Paper. I was even more disappointed to learn yesterday that the Treasury Department signaled its support for pending derivatives reform legislation that included even larger loopholes and would fail to

bring full transparency and oversight to the entire OTC derivatives market, a policy that the Administration initially supported.

Accordingly, I respectfully request that you provide answers to whether the Department of Treasury now supports the following major loopholes:

1. An exception from the mandatory clearing and exchange trading requirements for standardized swaps when one of the counterparties is not a swap dealer or “major swap participant”;
2. A definition of “major swap participant” that is so broad as to include a large universe of corporations and financial firms and thus also extend to these corporations and financial firms the exemption from the mandatory clearing and exchange trading requirement;
3. Empowering clearing organizations rather than their regulators to determine which transactions should be cleared – and thus which transactions should be executed on regulated exchanges – when many of the clearing organizations have substantial financial backing from swaps dealers with an economic interest in transactions not being cleared;
4. An exemption from regulation for foreign-exchange trades as well as dealings on overseas exchanges by American counterparties.

Treasury can play a key role in ensuring that important regulatory reform is implemented. But that will require leadership in articulating why complex exotic financial tools can be so toxic. I look forward to working with you to ensure that Treasury’s positions are clear and that there are no loopholes in OTC derivatives regulatory reform.

Sincerely,



Maria Cantwell