United States Senate
WASHINGTON, DC 20510

February 8, 2011

The Honorable Timothy Geithner
Secretary
The Department of Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Ben Bernanke
Chairman
The Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Secretary Geithner and Chairmen Bernanke, Gensler, and Schapiro:

As Congress embarks on its first legislative session of the 112th Congress, one of its most critical missions will be to help ensure careful and thoughtful implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), particularly the derivatives title ("Title VII"). We would like to share some of our thoughts concerning the scope and direction of some of the rulemakings that will implement this title.

It is critical that the commercial end-user exemption provided both in Section 723 and Section 763 of Title VII is implemented in a manner consistent with Congressional intent. During consideration of the Dodd-Frank Act, Members from both chambers made clear that margin requirements should not be applied to the end-users of over-the-counter (OTC) derivatives.

Imposing margin requirements on those who engage in the hedging of legitimate business risks would not only blatantly disregard the end-user exemption and Congressional intent, but it could also have the effect of draining scarce working capital from the balance sheets of mainstream American companies. Regulators must be cautious to prevent such a result, as it could stunt needed economic growth and produce higher costs for consumers. Furthermore, mandatory clearing for end-users might also lead some of these companies to forego the benefit of these important risk management tools.

Regulators must also preserve the sanctity of existing derivatives contracts by not applying new margin requirements retroactively as doing so would upset the expectations of countless end-users and call into question years of contract law. Additionally, regulators must avoid creating a prohibitively expensive and rigid structure for the trading of derivatives to

prevent the shifting of this market overseas. An overly prescriptive derivatives market in the U.S. would no doubt encourage market participants to take advantage of less punitive derivatives marketplaces abroad. Instead, regulators should be working to implement Title VII in a way that is consistent with international standards to avoid putting the U.S. market at a competitive disadvantage.

Overall, we hope that your agencies will take the time to implement Title VII thoughtfully and to pay particularly close attention to the array of unintended consequences that may arise. If the major overhaul of our derivatives market is implemented hastily, agency rulemakings could have negative effects on our economy at a time when we can least afford it. Overly prescriptive regulations on these needed risk mitigation tools could cause American companies to go without or look in search of these products abroad—further threatening our economic growth. As such, we encourage you to move forward with implementation of Title VII cautiously so that the overhaul of our derivatives market is completed properly and without unintended consequences.

We appreciate your attention to these issues and we look forward to working with you to ensure implementation of the Dodd-Frank Act results in a more transparent and viable U.S. derivatives market.

Sincerely,

Mike Johanns
Pat Roberts
Saxby Chambliss
Jim Inhofe
Roy Blunt
John Boozman
David Vitter
Herb Kohl
Mike Crapo
Kay Bailey Hutchison
Roger F. Wicker
Jerry Moran
Max Baucus