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Congress of the United States
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RANKING MEMBER
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

COMMITTEE ON EDUCATION AND THE WORKFORCE

April 25, 2012

Gary Gensler
Chairman, Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street North West
Washington, D.C. 20581-4224

Mary L. Schapiro
Chairwoman
Securities and Exchange Commission
100 F Street North East
Washington, DC 20549-0100

Dear Chairman Gensler and Chairwoman Schapiro:

On April 17, 2012 the President announced a series of measures intended to strengthen the ability of the Commodity Futures Trading Commission (C.F.T.C.) to prevent oil speculators from recklessly pushing oil prices even higher. I was surprised to read that a day later, the C.F.T.C. and the Securities and Exchange Commission (S.E.C.) adopted a threshold rule that will undermine the spirit and intent of the President's initiative and will in fact be a bonanza for some of the largest energy firms. What is going on here?

The Dodd-Frank Wall Street Reform Act of 2010 mandated the S.E.C and C.F.T.C. to create new rules to prevent manipulation of commodities markets. The law very plainly calls for greater oversight and regulation of the $700 trillion derivatives market in the wake of the worst financial disaster since the Great Depression. To be consistent with the intent of the Act, the rule defining "swap dealer" recently announced by your agencies would bring increased regulatory oversight to bear on energy firms, banks and other companies whose behavior led directly to the financial crisis. It would balance the need for firms to mitigate the risk of oil price fluctuation with the need to firmly regulate those firms whose excessive speculation herds markets into positions that increase their profits but are of little value to the economy.

The initial draft of the rule circulated in December, 2010 set a threshold level of $100 million above which a firm would be defined as a "swap dealer" for purposes of the rule. By focusing on the total face value of the swaps contracts entered into instead of size of the firm for the definition, the threshold reflected the widely-varying size of firms that affect the price of oil.

Disappointingly, the final rule sets a significantly higher threshold level that exempts all but the very largest firms from reporting, registration and collateralizing requirements. The higher threshold undermines not only the clear intent of Dodd-Frank, but also the President's attempt to take action to protect the fledgling economic recovery from high gasoline prices. Sadly, there is a long history of market participants of all sizes—energy companies, mid-sized financial institutions, and small trading firms—finding ways to manipulate these markets with disastrous consequences not only for market players but also for everyday Americans. Investigations consistently found that many of those players were exempt from oversight and registration rules that would very well have allowed regulators to step in and avert of the damage. Failure to allow oversight over these firms enables them to quietly place the kind of bets on oil prices which contributes to speculative bubbles like the one in housing that caused the Great Recession.

The final rule weakens oversight by exempting many firms. Left unclear are the types of firms and trades that would have been captured by the initial threshold. Please provide a detailed description of the types and number of firms and trades that will not be subject to the rule because of the change in threshold as of the day the rule goes into effect. Please also include any supporting analysis used by the C.F.T.C. or the S.E.C. to reach these conclusions.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Member of Congress

Cc: The Honorable Jim Jordan
Chairman, Subcommittee on Regulatory Affairs
Committee on Oversight and Government Reform