

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

September 29, 2014

The Honorable Janet Yellen  
Chairman  
Federal Reserve Board of Governors  
20th Street and Constitution Avenue N.W.  
Washington, D.C. 20551

The Honorable Martin Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, D.C. 20429

Dear Chair Yellen and Chairman Gruenberg,

At a September 9, 2014 hearing before the Senate Banking Committee, Chairman Gruenberg and Governor Tarullo testified that the Federal Reserve and the FDIC are working with their international counterparts to effectuate changes to the International Swaps and Derivatives Association ("ISDA") Master Agreement designed to limit the early termination rights of derivatives counterparties. Both officials further indicated their intention to require that regulated banks use the new ISDA protocols in swap agreements.

A recent New York Times Dealbook article confirms that an upcoming meeting of the G-20 may serve as a forum in which your agencies will sidestep the Administrative Procedures Act and enter into an international agreement regarding these early termination rights in swaps contracts.<sup>1</sup>

The International Swaps and Derivatives Association, representing banks and investors, is negotiating with global regulators to try to reach an agreement by the time the Group of 20 nations meets in Australia in November. By that time, international financial regulators hope to have worked out how the change would apply to large banks that have subsidiaries in different countries.... The regulators have leaned on the International Swaps and Derivatives Association to change, or add to, derivatives contracts so that they provide for a stay even in instances not envisioned under current laws. In the talks with the trade group, the American regulators have even suggested that any changes or additions would affect existing trades, not just new ones. And the Fed and the F.D.I.C. have an advantage that gives them added power to get the adjustments they want. Under United States regulations, banks have to prepare plans called living wills that lay out how they could go into bankruptcy in an orderly way.

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<sup>1</sup> See Peter Eavis, Fight Brews on Changes that Affect Derivatives, August 14, 2014, New York Times Dealbook, available at [http://dealbook.nytimes.com/2014/08/14/fight-brews-on-changes-that-affect-derivatives/?\\_php=true&\\_type=blogs&\\_r=0](http://dealbook.nytimes.com/2014/08/14/fight-brews-on-changes-that-affect-derivatives/?_php=true&_type=blogs&_r=0).

I expect that regulatory action of this magnitude would occur by way of a deliberative and transparent regulatory process, which would include placing a notice in the Unified Agenda of Federal Regulatory and Deregulatory Actions maintained by the Office of Information and Regulatory Affairs of the U.S. White House Office of Management and Budget and subsequently releasing a proposal for notice and comment as part of a formal agency rule proposal governed by the Administrative Procedures Act.

I recognize that balancing the early termination rights of counterparties to financial contracts with issues unique to the resolution of large financial institutions is an issue that has long been debated in bankruptcy reform. I am nevertheless concerned about the threat to the rule of law posed by the approach you appear to have undertaken to address this issue in an unaccountable international forum that will evade both Congressional deliberation and agency notice and comment.

Accordingly, please provide a written response to the following questions no later than October 7, 2014.

- 1) Will you commit to put any regulatory changes regarding early termination rights for contracts to which the banks you regulate are a party through a formal notice-and-comment rulemaking process?
- 2) If you do pursue changes to the rules governing early termination rights in contracts entered into by regulated banks, will you conduct a formal cost-benefit analysis of any changes to those early termination rights?
- 3) If you do pursue changes to the rules governing early termination rights in contracts entered into by regulated banks, will you ensure that any limitations on early termination rights do not cede the jurisdiction of U.S. regulators and courts to foreign governments?

Please contact J.W. Verret of Committee staff at (202) 225-7502 with any questions regarding this matter.

Sincerely,

  
JEB HENSARLING  
Chairman

Cc: The Honorable Maxine Waters  
Ranking Member