

# Coalition for Derivatives End-Users

---

November 24, 2014

Mr. Robert deV. Frierson  
Secretary  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue, N.W.  
Washington, DC 20551

Mr. Barry F. Mardock  
Deputy Director  
Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, DC 20429

Legislative and Regulatory Activities Division  
Office of the Comptroller of the Currency  
400 7th Street, S.W.  
Suite 3E-218, Mail Stop 9W-11  
Washington, DC 20219

Mr. Alfred M. Pollard  
General Counsel  
Attention: Comments/RIN 2590-AA45  
Federal Housing Finance Agency  
Constitution Center (OGC Eighth Floor)  
400 7th Street, S.W.  
Washington, DC 20024

**Re: *Margin and Capital Requirements for Covered Swap Entities; Proposed Rule / OCC Docket ID OCC-2011-0008 and RIN 1557-AD43; Federal Reserve Docket No. R-1415 and RIN 7100-AD74; FDIC RIN 3064-AE21; RIN 3052-AC69; RIN 2590-AA45***

## **I. Introduction**

The Coalition for Derivatives End-Users (the “Coalition”) is pleased to respond to the request for comments by the Prudential Regulators<sup>1</sup> for the repropoed rule titled *Margin and Capital Requirements for Covered Swap Entities; Proposed Rule* (the “Proposal”).<sup>2</sup> The Coalition represents end-user companies that employ derivatives to manage risks. Hundreds of companies have been active in the Coalition on both legislative and regulatory matters and our message is

---

<sup>1</sup> The “Prudential Regulators” consist of the Department of the Treasury Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency.

<sup>2</sup> 79 Fed. Reg. 57,348 (Sept. 24, 2014).

# Coalition for Derivatives End-Users

---

straightforward: financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on derivatives end-users. Imposing unnecessary regulation on derivatives end-users, who did not contribute to the financial crisis, would fuel economic instability, restrict job growth, decrease productive investment and hamper U.S. competitiveness in the global economy.

As the Coalition has explained in its letters commenting on the Prudential Regulators' previously proposed margin rule<sup>3</sup> issued under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Congress communicated repeatedly throughout the legislative process and in the text of the Dodd-Frank Act that end-users should not be subject to margin requirements.<sup>4</sup> In a recent Coalition survey of chief financial officers and corporate treasurers of nonfinancial end-user companies, released on March 26, 2014,<sup>5</sup> more than two-thirds of respondents indicated that a margin requirement on uncleared swaps would have a moderate or significant impact on capital expenditures, diverting working capital away from acquisitions, business investment, research and development and job creation.<sup>6</sup>

The Coalition is pleased with the Proposal's approach on whether and when margin should be imposed on end-user trades. The Coalition appreciates the Prudential Regulators' consideration of end-user concerns and comments and the changes that were made to allow nonfinancial end-users and their counterparties to continue negotiating with each other as to when and whether margin is required for a particular swap. This approach is consistent with current market practice and well-established internal credit processes and standards of swap entities, which are based on safety and soundness. These processes and standards require covered swap entities to use an integrated approach in evaluating the risk of their counterparties in extending credit and managing the overall credit exposure to the counterparty. This position reflects the fact that end-users do not meaningfully contribute to systemic risk and that imposing margin requirements on end-users would unnecessarily impede their ability to efficiently and effectively hedge their risks. We are

---

<sup>3</sup> See 76 Fed. Reg. 27,564 (May 11, 2011). The Coalition submitted comments during the initial comment period (comments dated July 11, 2011) and during the re-opening of the comment period (comments dated November 26, 2012).

<sup>4</sup> For example, Senators Dodd and Lincoln wrote to Congressmen Frank and Peterson – who agreed – “[t]he legislation does not authorize the regulators to impose margin on end-users.” Letter from Senators Dodd and Lincoln to Congressmen Frank and Peterson (June 30, 2010).

<sup>5</sup> See Coalition for Derivatives End-Users: The Impact of Margin Requirements on Main Street Businesses (issued on March 26, 2014) (the “Coalition Survey”), available at <http://coalitionforderivativesendusers.com/uploads/sites/351/EndUserMarginSurvey3%202014%202.pdf>.

<sup>6</sup> *Id.*

# Coalition for Derivatives End-Users

---

also pleased that the Prudential Regulators have explicitly recognized the legislative history of sections 731 and 764 of the Dodd-Frank Act, which shows that Congress did not intend to impose onerous margin requirements on nonfinancial end-users.<sup>7</sup>

Additionally, we commend the Prudential Regulators for increasing clarity on the types of entities deemed financial for purposes of the “financial end user” definition. Notably, the “predominance” test tied to financial activities in Commodity Exchange Act (“CEA”) Section 2(h)(7)(C)(i)(VIII) was a source of confusion for many end-users and a source of administrative burden inasmuch as it necessitated a granular tracking of activities even for entities that are plainly nonfinancial. The specific enumeration of entities that are “financial end users” reduces this source of confusion and administrative burden.

While we thank the Prudential Regulators for the Proposal, which would allow end-users to continue to negotiate margin requirements with their swap dealer counterparties, we believe that certain areas in the Proposal require clarification and further consideration in order to ensure that the final rule will effectively regulate the derivatives markets without imposing undue burdens on derivatives end-users.

## **II. “Financial End User” Definition Clarifications**

### **A. Clarification that Centralized Treasury Units Are Excluded from the “Financial End User” Definition**

Many nonfinancial end-users centralize their risk mitigation activities by executing a significant portion of their swap transactions through wholly owned centralized treasury units (“CTUs”).<sup>8</sup> CTUs are best practices that allow companies to concentrate swaps expertise and talent in a single entity and execute swaps centrally rather than having each nonfinancial end-user affiliate execute swaps directly with external, unaffiliated counterparties. By way of background, many end-users use CTUs to execute market facing swaps on a “principal” basis to hedge or mitigate commercial risks of their nonfinancial affiliates (*i.e.*, instead of the nonfinancial end-user affiliates entering into swaps directly with third parties, they enter into internal swaps with the CTU and the CTU enters into swaps with the third party as principal to the swap). Employing a CTU structure in

---

<sup>7</sup> See 79 Fed. Reg. at 57,357, n. 59 (“Statements in the legislative history of sections 731 and 764 suggest that at least some members of Congress did not intend, in enacting these sections, to impose margin requirements on nonfinancial end users engaged in hedging activities, even in cases where they entered into swaps with swap entities.”).

<sup>8</sup> Nearly half of respondents to the Coalition Survey reported that they have CTUs. Of those respondents, approximately one-third have CTUs that are separate legal entities. See Coalition Survey.

# Coalition for Derivatives End-Users

---

this manner has several benefits, including eliminating multiple affiliate entities facing the same counterparties, enabling netting of positive and negative exposures, leveraging existing treasury operations' infrastructure, systems and talent and simplifying documentation requirements. This results in fewer external transactions, lowers transaction costs, decreases settlement risk with counterparties and decreases inter-company credit risk within the broader market.

While the Coalition believes that many CTUs will not fall within the definition of “financial end user,” we are concerned by the reference to CEA Section 2(h)(7)(D) in the “financial end user” definition. Specifically, the reference is to language in the Dodd-Frank Act that effectively exempts from the definition of “financial entity” for clearing purposes CTUs that execute swaps on behalf of nonfinancial affiliates “as an agent.” An agency CTU model, in contrast with the principal CTU model discussed above, entails a CTU merely arranging a swap between a nonfinancial end-user affiliate (that itself is exempted from margin and clearing requirements) and a swap dealer counterparty. Under the agency model, the CTU is not a party to the swap; rather, each nonfinancial end-user affiliate would need to enter into a separate swap with a swap dealer, which would require for each nonfinancial affiliate separate swap documentation and a separately negotiated credit line equal to the gross (not net) amount of hedging transactions. This all equates to a lack of efficiency and risk reduction relative to the principal model.

In our experience, the great majority of end-users that employ a CTU structure enter into trades on a principal, rather than agent, basis, thereby making the language in CEA Section 2(h)(7)(D)(i) of little use for end-users that use a CTU structure. That language, which the Proposal references to exclude certain CTUs from the definition of “financial end user,” could, due to negative implication, be misinterpreted as an expression of intent to treat CTUs acting in a principal capacity as “financial end users.”

We are similarly concerned that the CTUs of some nonfinancial end-users may inadvertently be considered “financial end users” because they fall within one of the prongs of the Proposal’s “financial end user” definition and are not excluded from such definition under paragraph (2)(v) because they execute their swaps as “principal” to the swap. For example, some nonfinancial end-user companies may own a foreign financial entity that, based on paragraphs (1)(i), (1)(ii) and/or (1)(xii) of the “financial end user” definition could cause a CTU to become a “financial end user” based on the CTU’s affiliation with such foreign financial entity.

We request that the Prudential Regulators amend paragraph (2)(v) of the “financial end user” definition to make clear that CTUs that execute swaps on behalf of nonfinancial end-users as principal are excluded from the definition of “financial end user.” Specifically, we would recommend the Prudential Regulators consider the following language to replace the Proposal’s paragraph (2)(v) of the “financial end user” definition:

*An affiliate of a person that qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) or section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge*

# Coalition for Derivatives End-Users

---

*or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, provided that if the hedge or mitigation of such commercial risk is addressed by entering into a swap with a swap dealer or major swap participant, an appropriate credit support measure<sup>9</sup> or other mechanism must be utilized.*

Without such a clarification, nonfinancial end-users that utilize a CTU structure to hedge or mitigate the commercial risks of their nonfinancial affiliates could be treated as “financial end users” and denied the exclusion from margin requirements. The need for clarity becomes even more striking when one considers that each nonfinancial affiliate on whose behalf the CTU is hedging would itself be excluded from margin requirements since each nonfinancial affiliate would be considered an “other counterparty.”<sup>10</sup>

B. The Prudential Regulators’ Determination that “Any Other Entity” Could Be Treated as a “Financial End User” Should Be Subject to Notice and Comment

The Coalition is supportive of the Proposal’s approach, which provides a list of entities that will be considered “financial end users.” We do note, however, that the last item in this list provides the Prudential Regulators with the authority to include in the definition “any other entity that [Agency] has determined should be treated as a financial end user.”<sup>11</sup> In order to promote certainty regarding the definition of “financial end user,” the Coalition requests that the Prudential Regulators clarify the process for making a determination in the future that an entity or class of entities should be treated as a “financial end user.”

The Coalition further requests that if the Prudential Regulators consider an entity or class of entities to be treated as a “financial end user” and therefore subject to the margin requirements, the Prudential Regulators allow the public an opportunity for notice and comment with respect to such determination. The Coalition also requests that the Prudential Regulators establish a process for

---

<sup>9</sup> For example, a guarantee or letter of credit supporting a CTU’s external swap obligations would be an “appropriate credit support measure.”

<sup>10</sup> The Commodity Futures Trading Commission (“CFTC”) has recognized the benefits of CTUs and the issues surrounding CTUs qualifying for relief under CEA Section 2(h)(7)(D)(i). Accordingly, the CFTC staff issued no-action relief from mandatory clearing requirements for qualifying CTUs in June 2013. *See* CFTC Letter 13-22 “No-Action Relief from the Clearing Requirement for Swaps Entered Into by Eligible Treasury Affiliates.” However, a CTU that qualifies for such relief would not fall within the exclusion in paragraph (2)(v) of the “financial end user” definition since such CFTC no-action relief would not be considered “implementing regulations.”

<sup>11</sup> 79 Fed. Reg. at 57,361.

# Coalition for Derivatives End-Users

---

entities to use when seeking removal from the enumerated list, either as individual entities or as an entity class.

C. Special Purpose Vehicles that Are Subsidiaries of Captive Finance Companies that Are Exempt from Clearing Requirements Should Be Exempt from the Margin Requirements

The Proposal properly excludes “captive finance companies exempt from clearing pursuant to the Dodd-Frank Act” from the margin requirements and recognizes that such exclusion “is appropriate in light of the lower risks that these types of counterparties generally pose to the safety and soundness of covered swap entities and U.S. financial stability.”<sup>12</sup> However, many captive finance companies establish special purpose vehicle (“SPV”) subsidiaries in order to securitize the loans of the captive finance company parent. Captive finance companies rely on these securitization SPV subsidiaries to provide financing to them so that they can make loans to customers who purchase their products. Subjecting the SPV subsidiaries that are securitizing the loans of captive finance entities to margin requirements would increase costs, significantly impacting the ability of a captive finance company to finance its products with customers.

We are concerned that the plain language of CEA Section 2(h)(7)(C)(iii) would not include such SPVs, although the CFTC has indicated that this language should be interpreted broadly.<sup>13</sup> The Coalition believes that SPVs that are wholly owned by and consolidated with captive finance companies should qualify themselves as captive finance companies. Wholly owned, consolidated, SPVs are included in a captive finance company’s calculation as to whether it satisfies the 90/90 requirements to qualify for the captive finance company exception set forth in CEA Section 2(h)(7)(C)(iii).

Accordingly, we ask that the language of the Proposal be clarified to ensure that such securitization SPV subsidiaries fall within the language of CEA Section 2(h)(7)(C)(iii) as they provide financing through the captive finance company and should be viewed on a consolidated basis with the captive finance entity. To interpret otherwise would create an anomalous result where the captive finance companies would be exempt from margin requirements pursuant to paragraph (2)(iv) of the “financial end user” definition and the securitization SPV subsidiaries that finance the excluded captive finance companies would not be eligible for such exclusion and would be considered “financial end users.”<sup>14</sup> Yet these are two sides of the same coin and, logically,

---

<sup>12</sup> *Id.* at 57,358.

<sup>13</sup> *See* End-User Exception to Clearing Requirements for Swaps, 77 Fed. Reg. 42,559, 42,564 (July 19, 2012).

<sup>14</sup> In an exchange between Senator Stabenow and Senator Lincoln, Senator Stabenow specifically addresses securitization and requested confirmation that the captive finance company exception

# Coalition for Derivatives End-Users

---

should be treated the same for purposes of margin requirements. Captive finance companies are subsidiaries of nonfinancial companies that help consumers to afford products manufactured by such companies. Subjecting these companies to costly margin requirements could reduce a captive finance company's ability to finance its products thereby reducing the ability for the American consumer to obtain such products.<sup>15</sup>

## D. Clarification of the Scope of the "Financial End User" Definition

We believe that the list of excluded entities set forth in paragraph (2) of the definition of "financial end user" is meant to exclude such paragraph (2) entities from the "financial end user" definition regardless of whether they fall within the enumerated categories in paragraph (1) of the definition. Additional clarity would be helpful to market participants to provide certainty that entities described in paragraph (2) of the definition would be considered "other counterparties." To achieve this result, we would recommend the following addition to paragraph (2) of the definition of "financial end user":

*(2) Notwithstanding subsection (1) above, the term "financial end user" does not include any counterparty that is:*

...

## III. Importance of Consistency Among Regulators

Consistency among domestic regulators is important because many end-users will transact with swap entities regulated by the Prudential Regulators, the CFTC and the Securities and Exchange Commission ("SEC"). Consistency across regulators on margin requirements will reduce complexity and lessen compliance burdens. The Coalition appreciates the Prudential Regulators' coordination with the CFTC and the SEC in developing the Proposal<sup>16</sup> and requests that such coordination continue throughout the rulemaking process and implementation. We note the importance of regulators remaining consistent with respect to the rule text and interpreting and enforcing margin requirements consistently.

---

[Footnote continued from previous page]

cover both the captive finance company and its securitization affiliates. Senator Lincoln responds to this question affirmatively and confirms this intent. 156 CONG. REC. S5905 (July 15, 2010).

<sup>15</sup> We note that under the European Market Infrastructure Regulation, securitization SPVs will most often be defined as "nonfinancial counterparties" that fall below the relevant thresholds thereby exempting them from mandatory clearing and margin requirements.

<sup>16</sup> See 79 Fed. Reg. at 57,350, n. 7 ("Staff of the Agencies have consulted with staff of the CFTC and SEC in developing the proposed rule.").

The Coalition would also like to stress the importance of coordination between the Prudential Regulators and international regulators when implementing margin requirements. Inconsistencies in margin requirements between global regulators could lead to significant costs and operational burdens on derivatives end-users, and could impact liquidity and fragment the global markets, making it difficult for end-users to hedge their risks. For example, the Coalition is particularly concerned that the disparity between the Proposal's \$3 billion threshold for determining whether a "financial end user" must exchange initial margin and the €8 billion threshold recommended by the Basel Committee on Banking Supervision ("BCBS") and Board of the International Organization of Securities Commissions ("IOSCO") Consultative Document (the "International Standards")<sup>17</sup> would disincentivize non-U.S. affiliates of multinational end-user companies from engaging in swaps with U.S. "financial end users," which also could contribute to market fragmentation.

#### **IV. The Material Swaps Exposure Calculation Should Be Modified**

The Proposal provides a threshold such that only those "financial end users" that have "material swaps exposure" are subject to initial margin requirements for swaps with covered swap entities. The Proposal explains that "material swaps exposure for an entity means that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds \$3 billion, where such amount is calculated only for business days."<sup>18</sup>

Some nonfinancial end-users may have affiliates that are "financial end users" under the Proposal. For example, "financial end user" affiliates might include pension and retirement plans. The inclusion of "all affiliates" in the "material swaps exposure" calculation does not accurately reflect the risk exposure of an entity and would effectively require market participants, including multinational end-users, to establish new and costly compliance regimes so that all affiliates can report their swaps for global tabulation.

As a threshold matter, we do not believe that the "material swaps exposure" calculation should include the swaps activities of "all affiliates" of that "financial end user." In particular, we believe the following affiliate transactions should be excluded from the "material swaps exposure" calculation:

---

<sup>17</sup> See BCBS-IOSCO Consultative Document, Margin requirements for non-centrally cleared derivatives (Sept. 2013).

<sup>18</sup> 79 Fed. Reg. at 57,391.

# Coalition for Derivatives End-Users

---

(1) **Affiliate Swaps with No Recourse:** Swaps entered into by affiliates with respect to which the affiliate has no recourse to the “financial end user” (e.g., a pension or retirement plan) should be excluded from the calculation. The CFTC and SEC have recognized that swaps between affiliates for which there is no recourse are not appropriate to include when calculating risk exposure to determine an entity’s status with respect to the major participant definitions.<sup>19</sup> The agencies explained that “... an entity’s swap or security-based swap positions in general would be attributed to a parent, other affiliate or guarantor for purposes of the major participant analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position. Positions would not be attributed in the absence of recourse.”<sup>20</sup> We therefore request that the Prudential Regulators clarify that the calculation in the “material swaps exposure” definition excludes the swaps activities of affiliates for which there is no recourse to the “financial end user.” The inclusion of all swaps activities of “all affiliates” does not reflect the risk posed by the “financial end user,” as the CFTC and SEC recognized with respect to the risk-based calculation in the major participant determinations.

(2) **Non-U.S. Affiliate Swaps Not Subject to Transaction-Level Requirements:** We also note that, as proposed, the inclusion of the swaps activities of all affiliates in the calculation of “material swaps exposure” would require the counting of swaps activities of non-U.S. affiliates whose swaps activities are not subject to transaction-level oversight under the CFTC’s regulation because such swaps do not meet the statutory threshold requiring “a direct and significant connection with activities in, or effect on, commerce of the United States.”<sup>21</sup> We therefore request that the Prudential Regulators clarify that the activity of non-U.S. affiliates with respect to which U.S. transaction level requirements do not apply be excluded from the “material swaps exposure” calculation.

(3) **Swaps Executed by Nonfinancial Affiliates:** The Coalition is also concerned that the definition of “material swaps exposure” would appear to encompass the swaps activities of even a nonfinancial affiliate that is not subject to margin or clearing requirements. For a large multinational company with a robust risk management program, the \$3 billion level could easily be exceeded, thereby subjecting “financial end user” affiliates to initial margin requirements based on the swaps activities of its nonfinancial affiliates. Further, requiring a nonfinancial end-user that has one or more “financial end user” affiliates to monitor the gross notional amount for all of its derivatives (including foreign exchange forwards and foreign exchange swaps) could be an onerous

---

<sup>19</sup> See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596, 30,689 (May 23, 2012).

<sup>20</sup> 77 Fed. Reg. at 30,689.

<sup>21</sup> CEA Section 2(i), 7 U.S.C. § 2(i); see, Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013).

# Coalition for Derivatives End-Users

---

and costly undertaking for many end-users. We therefore request that the Prudential Regulators clarify that the swaps activities of nonfinancial affiliates that are treated as “other counterparties” under the Proposal and are otherwise excluded from mandatory margin requirements be excluded from the material swaps exposure calculation.

(4) **Inter-affiliate Swaps:** As noted, end-users relying on CTUs often use inter-affiliate swaps to convey the benefits of a swap transaction from one entity to another within a corporate group. Such transactions do not create outward-facing exposure from the corporate group to a swap dealer. This practice conveys numerous benefits to the corporate group without exposing the company to appreciable risk. We believe that when a “financial end user” within a corporate group transacts with an affiliate, such transactions should be excluded from the calculations of “material swaps exposure.” We therefore request that the Prudential Regulators clarify that such inter-affiliate transactions are excluded from the “material swaps exposure” calculation.

## V. The Substantial Indirect Effects on End-Users

### A. The Costs of Posting Initial Margin Incurred By Swap Entities Will Ultimately Be Passed On to End-Users and Other Customers

Derivatives end-users remain concerned about the indirect costs that the proposed margin requirements will impose on their transactions, even if nonfinancial end-users are appropriately exempt from direct margin requirements for transactions with covered swap entities. When an end-user’s covered swap entity counterparty enters into transactions with other covered swap entities or “financial end users” to hedge its exposure to such end-user, the margin costs associated with those hedging transactions are ultimately passed on to the end-user. As a result, while the Coalition commends the Prudential Regulators for excluding nonfinancial end-users from the margin requirements, we ask that the final rule refrain from an overly broad application of initial margin requirements and limitations on eligible collateral, that inconsistencies across jurisdictions be minimized and that an implementation timeframe be adopted that will minimize indirect costs on derivatives end-users.

### B. Restrictions on Eligible Collateral May Lead to Increased Costs or an Inability to Hedge

Many end-users post non-cash collateral, including physical assets, to their counterparties as collateral. While we recognize that these types of arrangements would still be permissible under the Proposal with respect to swaps with “other counterparties,” we are concerned that covered swap entities will increase costs on end-users that post non-cash collateral or may not, in some cases, permit end-users to use such collateral in the first place because of the strict requirements on eligible collateral under the Proposal.

# Coalition for Derivatives End-Users

---

For example, the Proposal unnecessarily restricts eligible collateral for variation margin “to cash only.”<sup>22</sup> The requirement to limit variation margin to cash only is more narrow than the parallel requirement in the International Standards, which provides that non-cash collateral may be used for variation margin.<sup>23</sup> Such flexibility to use non-cash collateral will help to reduce costs that are passed along to end-users.

The Coalition also has members that sponsor defined benefit plans to provide retirement benefits for their employees. Derivatives are used within these plans to hedge interest rate risk associated with assets. Accordingly, the Coalition is concerned that the Proposal’s cash-only limitation on eligible collateral for variation margin could affect the returns for retirement plans and increase costs as performing assets would need to be liquidated to raise cash. Such an impact could ultimately reduce the retirement benefits of thousands of employees.

Accordingly, we ask that the Prudential Regulators consider the indirect costs on end-users and the potential effects on retirement plans and relax the restrictions on non-cash collateral.<sup>24</sup>

## C. December 2015 Compliance Deadline for Variation Margin May Disrupt the Markets

The Proposal, as written, requires that, “[f]or variation margin, the compliance date is December 1, 2015 for all covered swap entities with respect to covered swaps with any counterparty.”<sup>25</sup> While the Coalition recognizes that the Prudential Regulators have chosen this deadline in order to remain consistent with the International Standards, the Coalition is concerned that the December 1, 2015 deadline is fast approaching and final rules will not be promulgated until some time in 2015. We are concerned that many financial end-users may have significant problems complying with these requirements on that date. Further, we are concerned that a “big bang” approach to the variation margin requirements could lead to market disruption. Accordingly, we would ask the Prudential Regulators to consider phasing in the variation margin requirements to avoid any such market disruptions

---

<sup>22</sup> 79 Fed. Reg. at 57,355.

<sup>23</sup> See International Standards at 19.

<sup>24</sup> CEA Section 4s(e)(3)(C) provides that “[i]n prescribing margin requirements ... the prudential regulator with respect to swap dealers and major swap participants ... shall permit the use of noncash collateral ....”

<sup>25</sup> 79 Fed. Reg. at 57,358.

# Coalition for Derivatives End-Users

---

## D. Capital Requirements Relief on End-User Transactions

Rather than establishing new capital requirements, the Proposal appropriately defers to capital requirements established through other rulemakings. However, we note that such capital requirements are inconsistent in their treatment of nonfinancial end-users when compared to comparable requirements in the European Union (the “EU”). The EU’s CRD IV capital requirements framework permits reduced capital requirements when a bank faces an end-user that enters into derivatives transactions for hedging purposes. The EU’s capital requirements framework appropriately acknowledges the risk-reducing benefits of end-user hedging for the economy and seeks to ensure such transactions are not subject to disincentives that might deter end-users from prudently managing their risks. We urge the Prudential Regulators to modify their capital requirements frameworks to similarly acknowledge the risk-reducing benefits of end-user hedging.

## VI. Conclusion

We thank the Prudential Regulators for the opportunity to comment on this important Proposal. The Coalition appreciates the regulators’ efforts to implement margin requirements that serve to strengthen the derivatives markets without unduly burdening end-users and the economy at large. We are available to meet with the Prudential Regulators to discuss these issues in more detail.

Thank you for your consideration of these very important issues to derivatives end-users. Please contact Michael Bopp at 202-955-8256 or [mbopp@gibsondunn.com](mailto:mbopp@gibsondunn.com) if you have any questions or concerns.

Yours sincerely,

Agricultural Retailers Association  
Business Roundtable  
Commodity Markets Council  
Financial Executives International  
National Association of Corporate Treasurers  
National Association of Manufacturers  
U.S. Chamber of Commerce