Association for Financial Professionals®

June 21, 2011

Ms. Jennifer L. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
comments@fdic.gov

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street SW, Mail Stop 2-3
Washington, DC 20219
regs.comments@occ.treas.gov

RE: Margin and Capital Requirements for Covered Swap Entities
Docket No. R-1415 and RIN No. 7100-AD74 (Fed)
RIN No. 3064-AD79 (FDIC)
Docket ID OCC-2011-0008 (OCC)

The Association for Financial Professionals (AFP) welcomes the opportunity to respond to the Federal Reserve Board, as part of a larger group of federal agencies including the Farm Credit Administration (FCA), the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), and the Office of the Comptroller of the Currency (OCC). AFP's response is a result of the request for comment on a proposal to establish minimum margin and capital requirements for certain swap entities. As the global daily resource and advocate for over 16,000 finance and treasury professionals in the United States, AFP maintains that derivative products are essential risk management tools that financial professionals rely on to help stabilize prices and mitigate risk. Throughout the legislative and regulatory process, we have been extremely supportive of rules and regulations that encourage secure and transparent markets.

AFP serves a network of treasury and finance professionals who manage, control, and safeguard the financial assets of more than 5,000 U.S. organizations. AFP members represent a broad spectrum of financial disciplines and their organizations in a wide variety of industries, including manufacturing, retail, energy, financial services, and technology. Many of our members are responsible for issuing short- and long-term debt, and for managing the corporate cash, 401(k) plans, and pension assets of their organizations. AFP members use various derivatives products in their daily business to mitigate risk for their organizations.

We appreciate the continued deliberation and action of the agencies as you implement new rules that will govern the regulation of the over-the-counter (OTC) derivatives market as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). AFP and our members have fully supported improvement in regulations surrounding derivatives, while facilitating the ability of financial professionals and their organizations to manage normal business risks. We are concerned that imposing margin requirements on nonfinancial end-users will negatively impact our members' ability to manage risk. Forcing margin could potentially mean that companies would have to set aside large cash reserves to meet margin rules, thereby starving off new investments in infrastructure or even increasing debt levels. Corporate finance professionals have voiced concerns that the imposition of margin might also mean having to halt hiring and possibly capital investments and as a result, the company may choose not to manage those specific risks that the derivatives products attempt to mitigate. The result from our perspective would be the opposite effect of Dodd-Frank's intention to regulate systemic risk and would inadvertently place additional strain on the capital markets, reduce liquidity, and add additional stress to an already troubled job market.

The Dodd-Frank law effectively addressed these concerns by including a broad nonfinancial end-user exemption that is intended to allow most businesses to continue to use these important risk management tools, while concurrently improving the safety of the derivatives market. AFP emphatically supports enhanced transparency and reduction of systemic risk. However, we maintain that the intent of Congress was crystal clear when they implemented the broad nonfinancial end-user exemption – nonfinancial end-users should not be required to post margin as your proposal suggests.

AFP is aware that the agencies have requested comments to address 92 specific questions regarding the exemption of end users. To that end, we offer the following responses to some of these specific questions:

<u>Question 1(a). Does the nonfinancial end user exemption from the mandatory clearing requirement suggest or require that swaps and security-based swaps involving a nonfinancial end user should or must be exempt from initial margin and variation margin requirements for non-cleared swaps and security-based swaps?</u>

The intent of Congress is explicitly stated. The non-financial end-user exemption from the mandatory clearing requirement asserts and requires that swaps and security-based swaps involving a non-financial end-user should and must be exempt from initial margin and variation margin requirements for non-cleared swaps and security-based swaps.

<u>Question 1(b). If so, upon what statutory basis would such an exemption rely?</u>

Title VII of Dodd-Frank exempts non-financial end-users from initial margin and variation margin requirements for non-cleared and security-based swaps.

<u>Question 6(a). Should nonfinancial end users also be separated into high-risk and low-risk categories for purposes of the margin requirements?</u>

There is no need to separate non-financial end-users into high-risk and low-risk categories for the purposes of margin requirements, since it is clear from Title VII of Dodd-Frank that all non-financial end-users are exempted from margin requirements.

Question 9. Is it appropriate to distinguish between financial and non-financial counterparties for the purpose of this risk-based approach?

It is appropriate to distinguish between financial and non-financial counterparties for the purpose of the risk-based approach. Title VII is unambiguous in its purpose to differentiate between financial and non-financial counterparties.

Question 23(b). Should threshold amounts for nonfinancial end users be subject to a similar limit?

A maximum initial margin threshold should not be applied to non-financial end-users, since the law is clear that non-financial end-users are exempt from initial margin requirements.

Question 23(d). Do the derivatives activities and exposures of nonfinancial end users have the potential to create systemic risk, either individually or in aggregate?

The derivatives activities and exposures of non-financial end-users do not have the potential to create systemic risk, either individually or in aggregate.

In conclusion, we must protect the inherent intent of Congress that is clearly written into the Dodd=Frank law - the ability of non-financial commercial end-users to implement the use of sound risk management tools. The capacity to mitigate the risks they encounter during the normal course of their business must be protected against margin requirements that could have further reaching detrimental effects.

We appreciate the opportunity to provide our thoughts on the Federal Reserve Board's request for comments on the proposal to establish minimum margin and capital requirements for covered swap entities. Please do not hesitate to contact AFP's Director, Finance Practice Lead, Brian Kalish, at 301.961.6564 or bkalish@afponline.org, if you have further questions on AFP or our members' concerns.

Sincerely,

Joseph C. Meek

Joseph C. Meek, CTP
Vice President & Treasurer
Health Management Associates, Inc.
Chairman
AFP Government Relations Committee

Denise Laussade

Denise Laussade, CTP
Director, Office of Treasury Operations
Purdue University
Chairman
Financial Markets Task Force
AFP Government Relations Committee