



COUNCIL OF EUROPE DEVELOPMENT BANK  
BANQUE DE DEVELOPPEMENT DU CONSEIL DE L'EUROPE

Office of the General Counsel  
Financial Directorate

Paris, September 24, 2012

Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
Attention: David A. Stawick, Secretary

Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 2-3  
Washington, DC 20219

Federal Housing Finance Agency  
Fourth Floor, 1700 G Street, NW  
Washington, DC 20552  
Attention: Alfred M. Pollard, General Counsel

Board of Governors of the Federal  
Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Jennifer J. Johnson, Secretary

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

Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102  
Attention: Gary K. Van Meter, Acting Director

Re: Proposed Rules Regarding Swap Margin

Ladies and Gentlemen:

We are submitting this comment letter in response to the April 28, 2011 Notice of Proposed Rulemaking on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23,732 (April 28, 2011), issued by the Commodity Futures Trading Commission (the "CFTC"), and the CFTC's extension of the comment period on that release, 77 Fed. Reg. 41,109 (July 12, 2012), as well as in response to the prior request for comment<sup>1</sup> by the Prudential Regulators<sup>2</sup>, comprising several bank regulatory agencies on margin and capital requirements for covered swap entities. We appreciate the opportunity to comment on the proposed requirements set forth in the Notices of Proposed Rulemaking, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

This comment letter is submitted on behalf of the Council of Europe Development Bank (the "CEB") and the views expressed herein are those of the CEB only; however, we believe the positions discussed below apply to all multilateral development banks ("MDBs"). The CEB is a supranational organization formed and owned by its European sovereign member states. At its core, the mission of the CEB is to promote social development and social cohesion within Europe. Specifically, the CEB seeks to achieve these goals by financing social projects and responding to emergency situations, thereby contributing to the improvement of living conditions in the least

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<sup>1</sup> Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, *Notice of Proposed Rulemaking on Margin and Capital Requirements for Covered Swap Entities*, 76 Fed. Reg. 27,564 (May 11, 2011).

<sup>2</sup> The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency (collectively, the "Prudential Regulators").

advantaged regions of Europe. The CEB is a key financial instrument of the Council of Europe's<sup>3</sup> solidarity policy in Europe and an integral part of post-World War II European social development.

For the reasons described herein, we are writing to express our concern regarding the application of the CFTC's proposed rules requiring the posting of initial and variation margin on swaps that are not cleared through a derivatives clearing organization and the Prudential Regulators' proposed rules regarding margin and capital requirements for covered swap entities (together, the "Margin Rules") as they apply to MDBs, and respectfully request that the Margin Rules not be extended to institutions such as the CEB. Additionally, we wish to express support for the views put forward by the International Bank for Reconstruction and Development and the International Finance Corporation, KfW Bankengruppe, and the European Investment Bank, in their respective comment letters to the CFTC and the Prudential Regulators on the Margin Rules. We respectfully request that the CFTC and the Prudential Regulators extend the analysis put forward by the above institutions, as it applies to the CEB and other MDBs, and exclude the CEB and other MDBs from the application of the Margin Rules, irrespective of whether the United States is a member of the relevant MDB.

### ***I. The Council of Europe Development Bank***

The CEB is an MDB of which forty European states are currently members (the "Member States"). Established in 1956 by certain member states of the Council of Europe to finance social programs related to the resettlement of refugees migrating to and between European countries in the aftermath of World War II, the CEB has since expanded the scope of its activities to provide aid to victims of natural or ecological disasters, education and vocational training, health services, social housing, creation and preservation of viable jobs in small and medium-sized enterprises, improvement of living conditions in urban and rural areas, protection of the environment, preservation of historic and cultural heritage, and infrastructure for administrative and judicial public services.<sup>4</sup> The CEB is governed by a Governing Board and an Administrative Council, each of which is comprised of representatives appointed by each Member State.

To advance its objectives, the CEB grants or guarantees long-term loans to its Member States or to institutions approved by them. The CEB's loans and guarantees typically cover only part of the cost of any project, supplementing each borrower's own funds and credit from other sources. As of December 31, 2011, the CEB had the equivalent of approximately €12.1 billion (approximately \$15.7 billion)<sup>5</sup> of loans outstanding.

The CEB funds its operations primarily through debt offerings in the international capital markets. As of December 31, 2011, the CEB had total outstanding funded debt (long-term debt securities, including interest payable thereon and value adjustments of debt securities hedged by derivative instruments) of €20.6 billion (approximately \$26.7 billion). To protect itself from the interest rate risk and currency risk inherent in its borrowing, lending and treasury operations, the CEB uses swaps solely as an end user for hedging purposes. For further information on the CEB, we refer to the comment letter previously submitted by the CEB to the CFTC<sup>6</sup>, dated July 22, 2011, on the proposed swap definition rules issued by the CFTC and the Securities and Exchange Commission.

<sup>3</sup> Founded in 1949, the Council of Europe is a 47-member international organization that works to protect human rights, pluralist democracy and the rule of law; to promote awareness and encourage the development of Europe's cultural identity and diversity; to find common solutions to the challenges facing European society; and to consolidate democratic stability in Europe by backing political, legislative and constitutional reform. Most countries in Europe are members of the Council of Europe. Only two of the 27 member states of the European Union – Austria and the United Kingdom – are members of the Council of Europe but not of the CEB.

<sup>4</sup> The CEB was established by eight Council of Europe member states pursuant to a Partial Agreement between those states, and its operations, acts and contracts are governed by the Third Protocol dated March 6, 1959 to the General Agreement on Privileges and Immunities of the Council of Europe of September 2, 1949, by its Articles of Agreement (the "Articles") as amended and by regulations issued pursuant to the Articles. The CEB falls under the supreme authority of the Council of Europe but is legally separate and financially autonomous from it.

<sup>5</sup> All EUR/USD conversions in this document are based on exchange rates as of 12/31/2011.

<sup>6</sup> Attached hereto as an annex.

## **II. The CEB and other MDBs Should Be Exempt From the Margin Requirements on Uncleared Swaps**

The CEB enters into swaps only for the purposes described above in Section I. If the Margin Rules were adopted as proposed, however, the CEB, along with other MDBs, would nevertheless be required to post margin on swaps entered into with counterparties registered as swap dealers or major swap participants. Such a result would reduce the efficiency, while increasing the cost, of the CEB's lending, and consequently undermine the CEB's ability to fulfill its mandate of promotion of European social programs and responding to emergency situations. The use of swaps is essential to reducing the risk and lowering the cost of CEB's borrowing and lending activities. CEB would not be able to provide its current level of financing to support its mandate without its existing hedging strategy. If the Margin Rules came into effect as proposed, they would significantly affect CEB's ability to hedge in a cost-effective manner.

We do not believe this result was the intended consequence of the Margin Rules nor that the application of the Margin Rules to the CEB or other MDBs would serve to reduce systemic risk or protect market participants. The CEB is a highly creditworthy institution that holds the highest possible credit rating from each of Standard & Poor's, Moody's and Fitch Ratings and poses no systemic risk to the U.S. financial system as a result of its uncleared swaps. As an indication of the CEB's creditworthiness, the regulatory authorities responsible for the establishment of bank capital requirements for exposure to transactions with MDBs, namely the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, have assigned the CEB and other MDBs the safest possible 0% risk-weighting, indicating the lowest possible risk of a default by the CEB.<sup>7</sup>

Moreover, the CEB enters into swaps solely to hedge interest rate and currency risks associated with its borrowing, lending and treasury operations—not for speculative or proprietary trading purposes. The impetus for the Margin Rules, and the reforms instituted by Dodd-Frank more generally, was the failure of commercial institutions which sought to maximize their profits through the speculative use of derivatives. The CEB, as a not-for-profit MDB serving the needs of the least advantaged Europeans, does not pose the type of risks to the financial system that the Margin Rules seek to ameliorate and its swap transactions are not the types that were believed to have contributed to the recent financial crisis or that were sought to be addressed by the resulting legislation and regulation.

The CEB is a non-U.S. entity trading primarily outside the U.S. To the extent that it trades with any U.S. persons, it does so as a customer of dealers, which will likely be registered as swap dealers, and does not itself function as a dealer. Furthermore, the CFTC has previously recognized the unique position and role of international MDBs, and given special consideration to such MDBs as "international financial institutions" when concluding that Congress did not intend to regulate such institutions as swap dealers or major swap participants or subject them to the clearing requirement.<sup>8</sup>

Additionally, the European Market Infrastructure Regulation ("EMIR") excludes the CEB and other MDBs from the clearing obligations required for transactions in standardized derivatives, including the posting and collecting of margin. In formulating the final Margin Rules, we respectfully request that the CFTC and the Prudential Regulators adhere to the principles of reciprocity and international comity, in addition to furthering the international harmonization of derivative regulation

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<sup>7</sup> See Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation, *Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements* (June 12, 2012) (proposing to apply a 0% risk weight to exposures to MDBs, including specifically the CEB, and emphasizing the high-credit quality of MDBs). See also Directive 2006/48/EC of the European Parliament and Council of the European Union, *Capital Requirements Directive*, Annex IV, Section 4.2 (June 30, 2006) (listing the CEB as requiring a 0% risk-weighting).

<sup>8</sup> See CFTC and Securities and Exchange Commission, *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, 30,692, n. 1180 (May 23, 2012); CFTC, *End-User Exception to the Clearing Requirement for Swaps,* 77 Fed. Reg. 42,560, 42,561, n.14 (July 19, 2012).

as called for by Section 752(a) of Dodd-Frank<sup>9</sup>, and similarly exclude the CEB and other MDBs from the application of the Margin Rules. In light of the foregoing, we believe that the considerations previously granted to MDBs in the implementation of Dodd-Frank, in light of their unique status and purpose, together with the CEB's creditworthiness, the purpose of their trading activity and the interests of international comity and regulatory harmonization, should lead to a similar consideration with respect to the Margin Rules.

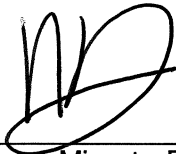
The CEB respectfully submits that it, along with other MDBs that seek to finance economic development and social programs, for the policy reasons stated above, should be excluded from application of the Margin Rules on uncleared swaps. We also wish to call attention to, and express support for, the positions set forth by the International Bank for Reconstruction and Development and the International Finance Corporation, KfW Bankengruppe, and the European Investment Bank in their respective comment letters to the CFTC and the Prudential Regulators on the proposed Margin Rules. We respectfully request that the CFTC and the Prudential Regulators extend the analysis contained in those letters to the CEB and other MDBs, to the extent relevant, and accord applicable relief.

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Thank you for your consideration of our comments and please do not hesitate to contact us at [jacques.mirantepere@coebank.org](mailto:jacques.mirantepere@coebank.org) or [jan.debel@coebank.org](mailto:jan.debel@coebank.org) or David J. Gilberg of Sullivan & Cromwell LLP at 212-558-4000 or [gilbergd@sullcrom.com](mailto:gilbergd@sullcrom.com) if you have any questions or would find further background helpful.

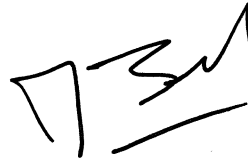
Sincerely,

Council of Europe Development Bank



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Name: Jacques Mirante-Péré  
Title: Chief Financial Officer



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Name: Jan De Bel  
Title: General Counsel

<sup>9</sup> Dodd-Frank Section 752(a) states: "the [CFTC] [. . .] shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of [. . .] swaps [. . .]."