

November 24, 2014

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

Board of Governors  
of the Federal Reserve System  
Attn.: Robert deV.Frierson, Secretary  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

Federal Deposit Insurance Corporation  
Robert E. Feldman, Executive Secretary  
Attn.: Comments  
550 17th Street, NW  
Washington, DC 20429

Federal Housing Finance Agency  
Alfred M. Pollard, General Counsel  
Attn.: Comments/RIN 2590-AA45  
Constitution Center  
400 7th St., SW  
Washington, DC 20024

Farm Credit Administration  
Barry F. Mardock, Deputy Director  
Office of Regulatory Policy  
1501 Farm Credit Drive  
McLean, VA 22102-5090

Re: Margin and Capital Requirements for Covered Swap Entities, RIN 1557-AD43,  
7100-AD74, 3064-AD79, 3052-AC69, 2590-AA45

Dear Ladies and Gentlemen:

On September 24, 2014, the Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Federal Housing Finance Agency; and the Farm Credit Administration (“Prudential Regulators”) published a notice of proposed rulemaking in the Federal Register entitled “Margin and Capital Requirements for Covered Swap Entities” (“Margin NOPR”).<sup>1</sup> This proposal was made to satisfy elements of Swap Dealer (referred to as “Covered Swap Entities” in the proposal) regulation assigned to the Prudential Regulators under the Dodd-Frank Wall Street Reform and

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<sup>1</sup> Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348 (Sep. 24, 2014) (“Margin NOPR”).

Consumer Protection Act (“Dodd-Frank”).<sup>2</sup> The Margin NOPR supersedes and replaces a previous proposed rule made in May 2011.<sup>3</sup>

The Coalition of Physical Energy Companies (“COPE”)<sup>4</sup> is hereby providing comments in support of the Margin NOPR. The members of COPE are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. COPE had provided comment on the prior proposal urging the Prudential Regulators not to require mandatory margin or prescribe the types of security that could be offered by physical energy companies.<sup>5</sup>

In the Margin NOPR, the Prudential Regulators note that “the term ‘commercial end user’ is not defined in the Dodd-Frank Act, [but] it is generally understood to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps.”<sup>6</sup> As used in the Margin NOPR, COPE members are commercial end users.

As explained in the Margin NOPR, the proposed rules contemplate that Covered Swap Entities will treat commercial end users as follows with respect to margin requirements:

The proposal takes a different approach to nonfinancial end users than the 2011 proposal. Like the 2011 proposal, this proposal follows the statutory framework and proposes a risk-based approach to imposing margin requirements. Unlike the 2011 proposal, this proposal does not require that the covered swap entity determine a specific, numerical threshold for each nonfinancial end user counterparty. Rather, the proposed rule does not require a covered swap entity to collect initial margin and variation margin from nonfinancial end users and certain other counterparties as a matter of course, but instead requires it to collect initial and variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines would appropriately address the credit risk posed by swaps entered into with “other counterparties.” The Agencies believe that this approach is consistent with current market practice as well as with well-established internal credit processes and standards of swap entities, based on safety and soundness, that require covered swap entities to use an integrated approach in evaluating the risk of their counterparties in extending credit,

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<sup>2</sup> Public Law No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank”)

<sup>3</sup> Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564 (May 11, 2011).

<sup>4</sup> The members are: Apache Corporation; EP Energy LLC; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

<sup>5</sup> Comments of the Coalition of Physical Energy Companies, Margin and Capital Requirements for Covered Swap Entities, RIN No. 2590-AA45 (July 11, 2011).

<sup>6</sup> Margin NOPR at 57357, fn 58.

including in the form of a swap, and manage the overall credit exposure to the counterparty.<sup>7</sup>

The Margin NOPR proposes to codify the foregoing in the following regulatory text:

*Other counterparties.* A covered swap entity is not required to collect variation margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is neither a financial end user nor a swap entity but shall collect initial/variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps.<sup>8</sup>

In effect, the Prudential Regulators are recognizing that commercial end-users are not the type of entities that require revisions to the use of prudent banking practices currently employed by Covered Swap Entities. That is, they may use their current practices of evaluating creditworthiness, prudently accepting non-cash collateral, and extending credit where proper while requiring security as required.

COPE supports the approach proposed in the Margin NOPR. It will permit commercial end-users to be subject to security requirements consistent with that their individual circumstances. It will not mandate margin obligations that would cause liquidity to be diverted from being employed in the conduct of a physical energy business or potentially cause companies to be forced to consider foregoing the hedging of risk. Instead, it will permit commercial end-users and their Covered Swap Entity counterparties to continue to utilize the techniques that are currently employed under prudent banking practices to permit physical energy companies to hedge their risks without exposing their bank counterparties to imprudent risk that could affect the financial system.

Respectfully Submitted,

/s/ David M. Perlman

David M. Perlman

George D. Fatula

**Counsel to  
Coalition of Physical Energy Companies**

CC: COPE Members

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<sup>7</sup> *Id.* at 57358 (internal citation omitted).

<sup>8</sup> *Id.* at 57392.