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Via Email

Office of the Comptroller of the Currency
(OCC), Docket ID OCC-2011-0008
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
regs.comments@occ.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Docket No. R-1415, RIN 7100 AD74
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

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

Alfred M. Pollard
General Counsel
Attention: Comments / RIN 2590–AA45
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
RegComments@fhfa.gov

Gary K. Van Meter
Acting Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102–5090
reg-comm@fca.gov

Re: Margin and Capital Requirements for Covered Swap Entities RIN 1557-AD43; RIN 7100 AD74; RIN 3064-AD79; RIN 3052-AC69 and RIN 2590-AA45 BCBS / IOSCO Consultative Paper

Ladies and Gentlemen:

On September 25, 2012, the Department of the Treasury, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency (the "Agencies") reopened the comment period seeking specified comments with respect to the proposed rules referenced above. The purpose for which the Agencies reopened the comment period is to supplement the record of their proposed rulemaking concerning margin requirements for uncleared swaps entered into by Swap Dealers and Major Swap Participants (the "Margin NOPR"),[1] in light of the consultative paper published by the Basel Commission on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO'') addressing possible margin requirements for non-centrally cleared derivatives ("BCBS/IOSCO Margin Release").[2]

The Coalition of Physical Energy Companies ("COPE")[3] filed comments in response to the Margin NOPR on July 11, 2011.[4] In those comments, COPE stated as follows:

> COPE believes that the Agencies need to unambiguously clarify in the final rules that as a general matter, the NOPR is not intended to disrupt the *status quo* with respect to the swap relationship between Covered Entities and nonfinancial energy end users.
>
> As nonfinancial end users are a particular and unique subset of the entities addressed by the NOPR, the Agencies should better distinguish them from other counterparties of Covered Entities in the final rules. Nonfinancial end users not only pose less of a systemic risk to the economy, but are also structured differently from financial entities. Their creditworthiness does not stem from their cash or financial holdings, but rather from their balance sheet, assets, and business activities.
>
> Congress recognized the need for nonfinancial end users to be able to access the OTC swaps market and to cost-effectively hedge commercial risk. It is incumbent upon the Agencies to honor both the specific requirements of Dodd-Frank and the intent of Congress.
>
> Accordingly, the Agencies should structure their final rules to address nonfinancial end users separately from financial entities. With such a structure, the Agencies can address and provide clarity concerning the differing characteristics and legislative intent for the treatment of such entities for purposes of margin requirements. Such clarity should include: (1) the propriety of current prudent credit evaluation practices conducted by Covered Entities; (2) the acceptability of lien-based arrangements, LOCs, and unsecured credit; and (3) the ability of Covered Entities and nonfinancial end users to negotiate appropriate documentation that the parties find acceptable.

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[1] *Margin and Capital Requirements for Covered Swap Entities*, 76 Fed. Reg. 27564 (May 11, 2011).

[2] *Margin Requirements for Non-Centrally-Cleared Derivatives*, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, July 2012.

[3] The members of the Coalition of Physical Energy Companies' are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. The members are: Apache Corporation; EP Energy LLC; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

[4] Comments of the Coalition of Physical Energy Companies, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN No. 3038-AC97 (Filed July 11, 2011) ("COPE Margin Comments").

COPE believes that the BCBS/IOSCO Margin Release underscores the points made in COPE's comments; specifically, that physical energy companies and other non-financial end users should be considered separately from financial entities. By its terms, the BCBS/IOSCO Margin Release is not directed towards physical energy companies such as COPE members. Rather, it is directed towards "financial firms and systemically-important non-financial entities."[5] In fact, the BCBS/IOSCO Margin Release states:

> There was broad consensus within the BCBS and IOSCO that the margin requirements need not apply to non-centrally-cleared derivatives to which non-financial entities that are not systemically-important are a party, given that (i) such transactions are viewed as posing little or no systemic risk and (ii) such transactions are exempt from central clearing mandates under most national regimes.[6]

The transactions that Congress envisioned as qualifying for the exemption to the clearing mandate under Dodd-Frank ("the End-User Exception")[7] clearly fall within the boundaries of those excluded from the elements of the BCBS/IOSCO Margin Release. As pointed out in COPE's comments, Swap Dealers and Major Swap Participants have the requisite analytical capabilities to require appropriate credit support from their counterparties. No aspect of the BCBS/IOSCO Margin Release should be adopted by the Commission concerning such entities, since that Release expressly does not apply to non-financial entities such as those eligible for the End-User Exception.

Therefore, as set forth in COPE's initial comments, the agencies should retain the status quo with respect to margin requirements for non-financial end users. No regulatory requirements mandating margin for such entities should be adopted.

Very truly yours,

/s/ David M. Perlman

David M. Perlman
Counsel to
Coalition of Physical Energy Companies

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[5] *See* BCBS/IOSCO Margin Release at 4.

[6] *Id.* at 9.

[7] *See* 17 C.F.R. § 39.6 (2012).