**From:** no-reply@erulemaking.net
**Sent:** Monday, September 20, 2010 3:48 PM
**To:** secretary <secretary@CFTC.gov>
**Subject:** Public Submission for 2010-20567
**Attach:** Public Submission for 2010-20567.zip

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Please refer to the attached file.

September 20, 2010

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

Ms. Elizabeth Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

*Re: Advanced Notice of Proposed Rulemaking, File No. S7-16-10, Release No. 34-62717, Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act*

Dear Secretaries Stawick and Murphy:

As representatives of the commercial and multifamily real estate industry, an economic sector that was and continues to be heavily impacted by the market downturn starting in 2008, the undersigned organizations appreciate your work to promote transparency and stability in the financial markets through comprehensive financial regulatory reform. However, we have concerns about the potential impact that new derivatives regulations may have on owners, operators and developers of commercial and multifamily real estate that utilize these financial tools to manage risk.

Many commercial and multifamily real estate companies rely on interest rate and currency derivatives to manage financial risks associated with their building, development, financing and operations activities. These activities include interest rate swaps and hedging for variable-rate private activity bonds used to finance mixed-income and affordable workforce housing developments. Without access to the low-rate variable-rate bonds, many affordable multifamily housing projects are not feasible.

While real estate companies are often able to access these derivatives on an unsecured basis, they also frequently use their physical assets as collateral. These transactions allow commercial and multifamily real estate companies to better match their financial obligations to their cash flows and are often a central component of a comprehensive risk management strategy.

Throughout the debate on financial regulatory reform, we have supported efforts to provide transparency for 100% of derivative transactions and to require clearing and margin requirements for all trades that occur between dealers and other systemically significant institutions. However, additional certainty is needed to ensure that commercial and multifamily real estate companies are appropriately treated as derivatives end users and are protected from costly cash margin requirements that would further constrain liquidity and credit in our industry and hamper efforts to de-leverage, re-equitize, and otherwise create jobs in, and bring stability to, real estate markets.

As such, we welcome the opportunity to offer these brief comments in response to your Advance Joint Notice of proposed Rulemaking related to the definition of "key terms" in title VII Dodd-Frank Wall Street Reform and Consumer Protection Act.

For real estate companies, the most important definition for which you request comment in your Advance Notice of Proposed Rulemaking is the term "Major Swap Participant" (MSP). This term is central to the treatment of end users under forthcoming regulations. It is appropriate that the Dodd-Frank Act focuses the definition of this term primarily on the size and potential systemic risk posed by an entity's position in swaps. It is essential that this remain the focus of the joint rulemaking undertaken by your agencies to establish the criteria by which market participants are determined to be MSPs.

As you know, the Dodd-Frank Act excludes "positions held for hedging or mitigating commercial risk," from an entity's position in swaps for the purpose of determining whether it is an MSP. The manner in which "commercial risk" is defined is of significant importance to real estate companies. Interest rate risk is often a real estate company's single greatest expense. Therefore, regulators should be careful to ensure that the strategies such companies use to mitigate interest rate risk are clearly contemplated in the definition of commercial risk. When real estate companies hedge their interest rate risk, they do so by entering into interest rate swaps and other similar products that hedge debt. Because debt is a liability on the balance sheet, real estate companies believe it important to clarify that commercial risk does not exclude the hedging of balance sheet items such as debt.

We also believe that the Dodd-Frank Act correctly directs the SEC and CFTC to define the term "substantial position," in such a way that provides, "for the effective monitoring, management, and oversight of entities that are systemically important or significantly impact the financial system of the United States." While we do not anticipate that any single real estate company will be viewed as systemically significant, we encourage you to craft rules that will apply this "substantial" standard on a net basis to reflect the true risk of an entity's positions in uncleared or uncollateralized positions.

Thank you for this opportunity to provide comments on this important component of financial regulatory reform. Please do not hesitate to contact us if you need additional information.

Sincerely,

American Seniors Housing Association
Building Owners and Managers Association International
International Council of Shopping Centers
NAIOP, the Commercial Real Estate Development Association
National Apartment Association
National Association of Real Estate Investment Trusts
National Multi Housing Council
The Real Estate Roundtable