December 2, 2014

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: ***Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; RIN 3038-AC97***

I. Introduction

The Coalition for Derivatives End-Users (the "Coalition") is pleased to respond to the request for comments by the Commodity Futures Trading Commission ("CFTC" or the "Commission") for the reproposed rule titled *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants* (the "Proposal").[1] The Coalition represents end-user companies that employ derivatives to manage risks. Hundreds of companies have been active in the Coalition on both legislative and regulatory matters and our message is straightforward: financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on derivatives end-users. Imposing unnecessary regulation on derivatives end-users, who did not contribute to the financial crisis, would fuel economic instability, restrict job growth, decrease productive investment and hamper U.S. competitiveness in the global economy.

As the Coalition has explained in its letters commenting on the CFTC's previously proposed margin rule[2] issued under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Congress communicated repeatedly throughout the legislative process and in the text of the Dodd-Frank Act that end-users should not be subject to margin requirements.[3] In a recent Coalition survey of chief financial officers and corporate

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[1] 79 Fed. Reg. 59,898 (Oct. 3, 2014).

[2] *See* 76 Fed. Reg. 23,732 (Apr. 28, 2011). The Coalition submitted comments during the initial comment period (comments dated July 11, 2011) and during the reopening of the comment period (comments dated Sept. 14, 2012).

[3] For example, Senators Dodd and Lincoln wrote to Congressmen Frank and Peterson – who agreed – "[t]he legislation does not authorize the regulators to impose margin on end-users." Letter from Senators Dodd and Lincoln to Congressmen Frank and Peterson (June 30, 2010).

treasurers of nonfinancial end-user companies, released on March 26, 2014,[4] more than two-thirds of respondents indicated that a margin requirement on uncleared swaps would have a moderate or significant impact on capital expenditures, diverting working capital away from acquisitions, business investment, research and development and job creation.[5]

The Coalition is pleased with the Proposal's approach on whether and when margin should be imposed on end-user trades. The Coalition appreciates the CFTC's consideration of end-user concerns and comments and its continued position to allow nonfinancial end-users and their counterparties to continue negotiating with each other as to when and whether margin is required for a particular swap. This approach is consistent with current market practice and well-established internal credit processes and standards of swap entities, which are based on safety and soundness. These processes and standards require covered swap entities to use an integrated approach in evaluating the risk of their counterparties in extending credit and managing the overall credit exposure to the counterparty. This position reflects the fact that end-users do not meaningfully contribute to systemic risk and that imposing margin requirements on end-users would unnecessarily impede their ability to efficiently and effectively hedge their risks. We are also pleased that the CFTC has explicitly recognized the legislative history of section 731 of the Dodd-Frank Act, which shows that Congress did not intend to impose onerous margin requirements on nonfinancial end-users.[6]

Additionally, we commend the CFTC for increasing clarity on the types of entities deemed financial for purposes of the "financial end user" definition. Notably, the "predominance" test tied to financial activities in Commodity Exchange Act ("CEA") Section 2(h)(7)(C)(i)(VIII) was a source of confusion for many end-users and a source of administrative burden insomuch as it necessitated a granular tracking of activities even for entities that are plainly nonfinancial. The specific enumeration of entities that are "financial end users" reduces this source of confusion and administrative burden.

While we thank the CFTC for the Proposal, which would allow end-users to continue to negotiate margin requirements with their swap dealer counterparties, we believe that certain areas in the Proposal require clarification and further consideration in order to ensure that the final rule will effectively regulate the derivatives markets without imposing undue burdens on derivatives end-users.

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[4] *See* Coalition for Derivatives End-Users: The Impact of Margin Requirements on Main Street Businesses (issued on March 26, 2014) (the "Coalition Survey"), *available at* http://coalitionforderivativesendusers.com/uploads/sites/351/EndUserMarginSurvey3%202014%202.pdf.

[5] *Id.*

[6] *See* 79 Fed. Reg. at 59,906, n.40.

II. "Financial End User" Definition Clarifications

A. Clarification that Centralized Treasury Units Are Excluded from the "Financial End User" Definition

Many nonfinancial end-users centralize their risk mitigation activities by executing a significant portion of their swap transactions through wholly owned centralized treasury units ("CTUs").[7] CTUs are best practices that allow companies to concentrate swaps expertise and talent in a single entity and execute swaps centrally rather than having each nonfinancial end-user affiliate execute swaps directly with external, unaffiliated counterparties. By way of background, many end-users use CTUs to execute market-facing swaps on a "principal" basis to hedge or mitigate commercial risks of their nonfinancial affiliates (*i.e.*, instead of the nonfinancial end-user affiliates entering into swaps directly with third parties, they enter into internal swaps with the CTU and the CTU enters into swaps with the third party as principal to the swap). Employing a CTU structure in this manner has several benefits, including eliminating multiple affiliate entities facing the same counterparties, enabling netting of positive and negative exposures, leveraging existing treasury operations' infrastructure, systems and talent and simplifying documentation requirements. This results in fewer external transactions, lowers transaction costs, decreases settlement risk with counterparties and decreases intercompany credit risk within the broader market.

While the Coalition believes that many CTUs will not fall within the definition of "financial end user," we are concerned by the reference to CEA Section 2(h)(7)(D) in the "financial end user" definition. Specifically, the reference is to language in the Dodd-Frank Act that effectively exempts from the definition of "financial entity" for clearing purposes CTUs that execute swaps on behalf of nonfinancial affiliates "as an agent." An agency CTU model, in contrast with the principal CTU model discussed above, entails a CTU merely arranging a swap between a nonfinancial end-user affiliate (that itself is exempted from margin and clearing requirements) and a swap dealer counterparty. Under the agency model, the CTU is not a party to the swap; rather, each nonfinancial end-user affiliate would need to enter into a separate swap with a swap dealer, which would require for each nonfinancial affiliate separate swap documentation and a separately negotiated credit line equal to the gross (not net) amount of hedging transactions. This all equates to a lack of efficiency and risk reduction relative to the principal model.

In our experience, the great majority of end-users that employ a CTU structure enter into trades on a principal, rather than agent, basis, thereby making the language in CEA Section 2(h)(7)(D)(i) of little use for end-users that use a CTU structure. That language, which the Proposal references to exclude certain CTUs from the definition of "financial end user," could, due to

[7] Nearly half of respondents to the Coalition Survey reported that they have CTUs. Of those respondents, approximately one-third have CTUs that are separate legal entities. *See* Coalition Survey.

negative implication, be misinterpreted as an expression of intent to treat CTUs acting in a principal capacity as "financial end users."

We are similarly concerned that the CTUs of some nonfinancial end-users may inadvertently be considered "financial end users" because they fall within one of the prongs of the Proposal's "financial end user" definition and are not excluded from such definition under paragraph (2)(v) because they execute their swaps as "principal" to the swap. For example, some nonfinancial end-user companies may own a foreign financial entity that, based on paragraphs (1)(i), (1)(ii) and/or (1)(xii) of the "financial end user" definition, could cause a CTU to become a "financial end user" based on the CTU's affiliation with such foreign financial entity.

The CFTC has recognized the benefits of CTUs and the issues surrounding CTUs qualifying for relief under CEA Section 2(h)(7)(D)(i). Accordingly, the CFTC staff has issued no-action relief from mandatory clearing requirements for qualifying CTUs.[8] However, a CTU that qualifies for such relief would not fall within the exclusion in paragraph (2)(v) of the "financial end user" definition since an entity relying on the staff no-action relief would not "qualif[y] for the exemption from clearing pursuant to section 2(h)(7)(D) of the [CEA]."[9] The CFTC has similarly noted in the Proposal that "[i]f the Commission required [nonfinancial end-users] to post margin for uncleared trades, the clearing exemption could be weakened because the costs of clearing are likely to be less than the costs of margining an uncleared position."[10]

We request that the Commission amend paragraph (2)(v) of the "financial end user" definition in proposed § 23.151 to make clear that CTUs that execute swaps on behalf of nonfinancial end-users as principal are excluded from the definition of "financial end user." Specifically, we would recommend the CFTC consider the following language to replace the Proposal's paragraph (2)(v) of the "financial end user" definition:

> *An affiliate of a person that qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) or section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a*

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[8] *See* CFTC Letter No. 13-22, "No-Action Relief from the Clearing Requirement for Swaps Entered into by Eligible Treasury Affiliates" (issued June 4, 2013); CFTC Letter No. 14-144, "No-Action Relief from the Clearing Requirement for Swaps Entered into by Eligible Treasury Affiliates" (issued Nov. 26, 2014).

[9] 79 Fed. Reg. at 59,927.

[10] *Id*. at 59,906.

financial entity, provided that if the hedge or mitigation of such commercial risk is addressed by entering into a swap with a swap dealer or major swap participant, an appropriate credit support measure[11] *or other mechanism must be utilized.*

Without such a clarification, nonfinancial end-users that utilize a CTU structure to hedge or mitigate the commercial risks of their nonfinancial affiliates could be treated as "financial end users" and denied the exclusion from margin requirements. The need for clarity becomes even more striking when one considers that each nonfinancial affiliate on whose behalf the CTU is hedging would itself be excluded from margin requirements, since each nonfinancial affiliate would be considered an "other counterparty."

B. The CFTC's Determination that "Any Other Entity" Could Be Treated as a "Financial End User" Should Be Subject to Notice and Comment

The Coalition is supportive of the Proposal's approach, which provides a list of entities that will be considered "financial end users." We do note, however, that the last item in this list provides the CFTC with the authority to include in the definition "any other entity that the Commission determines should be treated as a financial end user."[12] In order to promote certainty regarding the definition of "financial end user," the Coalition requests that the CFTC clarify the process for making a determination in the future that an entity or class of entities should be treated as a "financial end user."

The Coalition further requests that if the CFTC considers an entity or class of entities to be treated as a "financial end user" and therefore subject to the margin requirements, the CFTC allows the public an opportunity for notice and comment with respect to such determination. The Coalition also requests that the Commission establish a process for entities to use when seeking removal from the enumerated list, either as individual entities or as an entity class.

C. Special Purpose Vehicles that Are Subsidiaries of Captive Finance Companies that Are Exempt from Clearing Requirements Should Be Exempt from the Margin Requirements

The Proposal properly excludes captive finance companies exempt from clearing pursuant to the Dodd-Frank Act from the margin requirements.[13] However, many captive finance companies establish special purpose vehicle ("SPV") subsidiaries in order to securitize the loans of the captive

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[11] For example, a guarantee or letter of credit supporting a CTU's external swap obligations would be an "appropriate credit support measure."

[12] 79 Fed. Reg. at 59,927.

[13] *Id*. at 59,903.

finance company parent. Captive finance companies rely on these securitization SPV subsidiaries to provide financing to them so that they can make loans to customers who purchase their products. Subjecting the SPV subsidiaries that are securitizing the loans of captive finance entities to margin requirements would increase costs, significantly impacting the ability of a captive finance company to finance its products with customers.

We are concerned that the plain language of CEA Section 2(h)(7)(C)(iii) would not include such SPVs, although the Commission has indicated that this language should be interpreted broadly.[14] The Coalition believes that SPVs that are wholly owned by and consolidated with captive finance companies should qualify themselves as captive finance companies. Wholly owned, consolidated SPVs are included in a captive finance company's calculation as to whether it satisfies the 90/90 requirements to qualify for the captive finance company exception set forth in CEA Section 2(h)(7)(C)(iii).

Accordingly, we ask that the language of the Proposal be clarified to ensure that such securitization SPV subsidiaries fall within the language of CEA Section 2(h)(7)(C)(iii),as they provide financing through the captive finance company and should be viewed on a consolidated basis with the captive finance entity. To interpret otherwise would create an anomalous result, where the captive finance companies would be exempt from margin requirements pursuant to paragraph (2)(iv) of the "financial end user" definition and the securitization SPV subsidiaries that finance the excluded captive finance companies would not be eligible for such exclusion and would be considered "financial end users."[15] Yet these are two sides of the same coin and, logically, should be treated the same for purposes of margin requirements. Captive finance companies are subsidiaries of nonfinancial companies that help consumers to afford products manufactured by such companies. Subjecting these companies to costly margin requirements could reduce a captive finance company's ability to finance its products, thereby reducing the ability for the American consumer to obtain such products.[16]

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[14] *See* End-User Exception to Clearing Requirements for Swaps, 77 Fed. Reg. 42,559, 42,564 (July 19, 2012).

[15] In an exchange between Senators Stabenow and Lincoln, Senator Stabenow specifically addresses securitization and requested confirmation that the captive finance company exception cover both the captive finance company and its securitization affiliates. Senator Lincoln responds to this question affirmatively and confirms this intent. 156 CONG. REC. S5905 (July 15, 2010).

[16] We note that under the European Market Infrastructure Regulation, securitization SPVs will most often be defined as "non-financial counterparties" that fall below the relevant thresholds thereby exempting them from mandatory clearing and margin requirements.

D. Clarification of the Scope of the "Financial End User" Definition

We believe that the list of excluded entities set forth in paragraph (2) of the definition of "financial end user" in proposed § 23.151 is meant to exclude such paragraph (2) entities from the "financial end user" definition regardless of whether they fall within the enumerated categories in paragraph (1) of the definition. Additional clarity would be helpful to market participants to provide certainty that entities described in paragraph (2) of the definition would be considered "other counterparties." To achieve this result, we would recommend the following addition to paragraph (2) of the definition of "financial end user":

> (2) *Notwithstanding subsection (1) above,* the term "financial end user" does not include any counterparty that is:
> …

III. Importance of Consistency Among Regulators

Consistency among domestic regulators is important because many end-users will transact with swap entities regulated by the CFTC, the Prudential Regulators[17] and the Securities and Exchange Commission ("SEC"). Consistency across regulators on margin requirements will reduce complexity and lessen compliance burdens. The Coalition appreciates the CFTC's coordination with the Prudential Regulators and the SEC in developing the Proposal[18] and requests that such coordination continue throughout the rulemaking process and implementation. We note the importance of regulators remaining consistent with respect to the rule text and interpreting and enforcing margin requirements consistently.

The Coalition would also like to stress the importance of coordination between the CFTC and international regulators when implementing margin requirements. Inconsistencies in margin requirements between global regulators could lead to significant costs and operational burdens on derivatives end-users, and could impact liquidity and fragment the global markets, making it difficult for end-users to hedge their risks. For example, the Coalition is particularly concerned that the disparity between the Proposal's $3 billion threshold for determining whether a "financial end user" must exchange initial margin and the €8 billion threshold recommended by the Basel Committee on Banking Supervision ("BCBS") and Board of the International Organization of

[17] The "Prudential Regulators" consist of the Department of the Treasury Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency.

[18] *See* 79 Fed. Reg. at 59,901.

Securities Commissions ("IOSCO") Consultative Document (the "International Standards")[19] would disincentivize non-U.S. affiliates of multinational end-user companies from engaging in swaps with U.S. "financial end users," which also could contribute to market fragmentation.

IV. The Material Swaps Exposure Calculation Should Be Modified

The Proposal provides a threshold such that only those "financial end users" that have "material swaps exposure" are subject to initial margin requirements for swaps with covered swap entities. The Proposal explains that "[m]aterial swaps exposure would be computed using the average daily aggregate notional amount of uncleared swaps, security-based swaps, foreign exchange forwards, and foreign exchange swaps[] with all counterparties for June, July, and August of the previous calendar year. Essentially, a financial end user would have material swaps exposure if it held an aggregate gross notional amount of these products of more than $3 billion."[20]

Some nonfinancial end-users may have affiliates that are "financial end users" under the Proposal. For example, "financial end user" affiliates might include pension and retirement plans. The inclusion of "all affiliates" in the "material swaps exposure" calculation does not accurately reflect the risk exposure of an entity and would effectively require market participants, including multinational end-users, to establish new and costly compliance regimes so that all affiliates can report their swaps for global tabulation.

As a threshold matter, we do not believe that the "material swaps exposure" calculation should include the swaps activities of "all affiliates" of that "financial end user." In particular, we believe the following affiliate transactions should be excluded from the "material swaps exposure" calculation:

(1) **Affiliate Swaps with No Recourse**: Swaps entered into by affiliates with respect to which the affiliate has no recourse to the "financial end user" (e.g., a pension or retirement plan) should be excluded from the calculation. The CFTC and SEC have recognized that swaps between affiliates for which there is no recourse are not appropriate to include when calculating risk exposure to determine an entity's status with respect to the major participant definitions.[21] The agencies explained that "… an entity's swap or security-based swap positions in general would be attributed to a parent, other affiliate or guarantor for purposes of the major participant analysis to

[19] *See* BCBS-IOSCO Consultative Document, Margin requirements for non-centrally cleared derivatives (Sept. 2013).

[20] 79 Fed. Reg. at 59,904.

[21] *See* 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, 30,689 (May 23, 2012).

the extent that the counterparties to those positions would have recourse to that other entity in connection with the position. Positions would not be attributed in the absence of recourse."[22] We therefore request that the CFTC clarify that the calculation in the "material swaps exposure" definition excludes the swaps activities of affiliates for which there is no recourse to the "financial end user." The inclusion of all swaps activities of "all affiliates" does not reflect the risk posed by the "financial end user," as the CFTC and SEC recognized with respect to the risk-based calculation in the major participant determinations.

(2) **Non-U.S. Affiliate Swaps Not Subject to Transaction-Level Requirements**: We also note that, as proposed, the inclusion of the swaps activities of all affiliates in the calculation of "material swaps exposure" would require the counting of swaps activities of non-U.S. affiliates whose swaps activities are not subject to transaction-level oversight under the CFTC's regulation because such swaps do not meet the statutory threshold requiring "a direct and significant connection with activities in, or effect on, commerce of the United States."[23] We therefore request that the CFTC clarify that the activity of non-U.S. affiliates with respect to which U.S. transaction-level requirements do not apply be excluded from the "material swaps exposure" calculation.

(3) **Swaps Executed by Nonfinancial Affiliates**: The Coalition is also concerned that the definition of "material swaps exposure" would appear to encompass the swaps activities of even a nonfinancial affiliate that is not subject to margin or clearing requirements. For a large multinational company with a robust risk management program, the $3 billion level could easily be exceeded, thereby subjecting "financial end user" affiliates to initial margin requirements based on the swaps activities of its nonfinancial affiliates. Further, requiring a nonfinancial end-user that has one or more "financial end user" affiliates to monitor the gross notional amount for all of its derivatives (including foreign exchange forwards and foreign exchange swaps) could be an onerous and costly undertaking for many end-users. We therefore request that the CFTC clarify that the swaps activities of nonfinancial affiliates that are treated as "other counterparties" under the Proposal and are otherwise excluded from mandatory margin requirements be excluded from the material swaps exposure calculation.

(4) **Inter-affiliate Swaps**: As noted, end-users relying on CTUs often use inter-affiliate swaps to convey the benefits of a swap transaction from one entity to another within a corporate group. Such transactions do not create outward-facing exposure from the corporate group to swap dealer. This practice conveys numerous benefits to the corporate group without exposing the company to appreciable risk. We believe that when a "financial end user" within a corporate group transacts with an affiliate, such transactions should be excluded from the calculations of "material

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[22] *Id*. at 30,689.

[23] CEA Section 2(i), 7 U.S.C. § 2(i); *see*, Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013).

swaps exposure." We therefore request that the CFTC clarify that such inter-affiliate transactions are excluded from the "material swaps exposure" calculation.

V. The Substantial Indirect Effects on End-Users

A. The Costs of Posting Initial Margin Incurred By Swap Entities Will Ultimately Be Passed On to End-Users and Other Customers

Derivatives end-users remain concerned about the indirect costs that the proposed margin requirements will impose on their transactions, even if nonfinancial end-users are appropriately exempt from direct margin requirements for transactions with covered swap entities. When an end-user's covered swap entity counterparty enters into transactions with other covered swap entities or "financial end users" to hedge its exposure to such end-user, the margin costs associated with those hedging transactions are ultimately passed on to the end-user. As a result, while the Coalition commends the CFTC for excluding nonfinancial end-users from the margin requirements, we ask that the final rule refrain from an overly broad application of initial margin requirements and limitations on eligible collateral, that inconsistencies across jurisdictions be minimized and that an implementation timeframe be adopted that will minimize indirect costs on derivatives end-users.

B. Restrictions on Eligible Collateral May Lead to Increased Costs or an Inability to Hedge

Many end-users post noncash collateral, including physical assets, to their counterparties as collateral. While we recognize that these types of arrangements would still be permissible under the Proposal with respect to swaps with "other counterparties," we are concerned that covered swap entities will increase costs on end-users that post noncash collateral or may not, in some cases, permit end-users to use such collateral in the first place because of the strict requirements on eligible collateral under the Proposal.

For example, the Proposal unnecessarily restricts eligible collateral for variation margin "to only cash."[24] The requirement to limit variation margin to cash only is narrower than the parallel requirement in the International Standards, which provides that noncash collateral may be used for variation margin.[25] Such flexibility to use noncash collateral will help to reduce costs that are passed along to end-users.

The Coalition also has members that sponsor defined benefit plans to provide retirement benefits for their employees. Derivatives are used within these plans to hedge interest rate risk associated with assets. Accordingly, the Coalition is concerned that the Proposal's cash-only

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[24] 79 Fed. Reg. at 59,932.

[25] *See* International Standards at 19.

limitation on eligible collateral for variation margin could affect the returns for retirement plans and increase costs, as performing assets would need to be liquidated to raise cash. Such an impact could ultimately reduce the retirement benefits of thousands of employees.

Accordingly, we ask that the CFTC consider the indirect costs on end-users and the potential effects on retirement plans and relax the restrictions on noncash collateral.[26]

C. Hypothetical Calculations of Margin and Documentation Rules Will Create Unnecessary Burdens on Nonfinancial End-Users

Proposed § 23.155(a)(3) would require that a covered swap entity "calculate a hypothetical variation margin requirement for each swap for which the counterparty is a non-financial end user that has material swaps exposure to the covered counterparty as if the counterparty were a covered swap entity ...."[27] The Proposal further requires in proposed § 23.154(a)(6) that a covered swap entity calculate a hypothetical initial margin.[28] We question the necessity of this requirement, as covered swap entities are already required, pursuant to CFTC regulations, to maintain risk management programs. We are particularly concerned that the requirement will require nonfinancial end-users to provide their covered swap entity counterparties with updates as to their swaps exposure levels so that the covered swap entity can determine whether the nonfinancial end-user meets or exceeds the "material swaps exposure" threshold.

Proposed § 23.158(a) states that if a covered swap entity exchanges initial or variation margin with a nonfinancial counterparty, then the documentation must comply with the documentation requirements applicable to swaps subject to the margin requirements.[29] The CFTC has already addressed documentation requirements for transactions between nonfinancial end-users and covered swap entities in other Commission rules and the imposition of additional documentation requirements in this context is unnecessary and would create additional burdens on nonfinancial end-users that are otherwise exempt from the margin requirements.[30]

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[26] CEA Section 4s(e)(3)(C) provides that "[i]n prescribing margin requirements … the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral …."

[27] 79 Fed. Reg. at 59,931.

[28] *See id*. at 59,929.

[29] *Id*. at 59,932.

[30] For example, nonfinancial end-users have been required by their covered swap entity counterparties to amend their swap trading relationship documentation as a result of

[Footnote continued on next page]

We therefore ask that the CFTC amend or remove these proposed requirements to ensure that nonfinancial end-users that are exempt from margin requirements would not be subjected to unnecessary and costly burdens.

D. December 2015 Compliance Deadline for Variation Margin May Disrupt the Markets

The Proposal, as written, requires that "[f]or variation margin, covered swap entities must comply by December 1, 2015."[31] While the Coalition recognizes that the CFTC has chosen this deadline in order to remain consistent with the International Standards, the Coalition is concerned that the December 1, 2015 deadline is fast approaching and final rules will not be promulgated until sometime in 2015. We are concerned that many financial end-users may have significant problems complying with these requirements on that date. Further, we are concerned that a "big bang" approach to the variation margin requirements could lead to market disruption. Accordingly, we would ask the CFTC to consider phasing-in the variation requirements to avoid any such market disruptions.

E. Interaction Between Margin and Capital Requirements

Given the close interaction between the margin and capital requirements for swap dealers and major swap participants, the Coalition urges the Commission to re-propose its capital requirements incorporating framework modifications that similarly acknowledge the risk-reducing benefits of end-user hedging. Because capital and margin requirements are so closely linked, we would recommend reopening comment periods for both concurrently.

VI. Conclusion

We thank the CFTC for the opportunity to comment on this important Proposal. The Coalition appreciates the regulators' efforts to implement margin requirements that serve to strengthen the derivatives market without unduly burdening end-users and the economy at large. We are available to meet with the CFTC to discuss these issues in more detail.

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requirements in CFTC regulation 23.504(b)(4) and other CFTC risk mitigation requirements and business conduct standards.

[31] 79 Fed. Reg. at 59,921.

Thank you for your consideration of these very important issues to derivatives end-users. Please contact Michael Bopp at 202-955-8256 or mbopp@gibsondunn.com if you have any questions or concerns.

Yours sincerely,

Agricultural Retailers Association
Business Roundtable
Commodity Markets Council
Financial Executives International
National Association of Corporate Treasurers
National Association of Manufacturers
U.S. Chamber of Commerce