February 20, 2011

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: End-User Exception to Mandatory Clearing of Swaps
17 CFR Part 39 RIN 3038–AD10

Dear Mr. Stawick:

Reval.com, Inc. ("Reval") appreciates the opportunity to submit its comments in response to the Commodity Futures Trading Commission's ("Commission" or "CFTC") December 23, 2010, 17 CFR Part 39 RIN 3038–AD10 End-User Exception to Mandatory Clearing of Swaps ("Rule").

Reval would like to commend the CFTC and its staff for putting together a clear and simple Rule that captures the intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act", "Dodd-Frank") to allow end-users of OTC derivatives an exemption from the cost associated with clearing Swaps.

Reval® provides end-users of OTC derivatives with an award-winning Web-based platform that supports derivative risk management and hedge accounting. With over 500 of the world's leading corporations, and financial institutions using Reval's services to better manage foreign exchange, interest rates, energy, credit and commodities, Reval is uniquely positioned to understand how end-users use OTC derivatives to hedge commercial risk.

On December 2, 2009, I had the privilege of testifying before the U.S. Senate Agriculture Committee on the significant impact of clearing to end-users and offered suggestions on how regulators can determine if a market participant is using OTC derivatives to hedge commercial risk, with many suggestions making it into the proposed Rule. The Commission should be commended for creating a Rule that does not provide a significant burden of proof on the end-user and delivers a simple solution to a complicated issue.

The simple "checklist" approach outlined in **§ 39.6 Electing to use the end-user exception to mandatory swap clearing** is sufficient enough to meet the qualifications for end-user exemption by demonstrating that the end-user:

- is not a Financial Entity
- can meet its financial obligations for the Swap
- is hedging commercial risk
- is not using Swaps for speculation, trading or investment

Since the proposed rules for the Swap Data Repository (SDR) require only one counterparty (typically the Swap Dealer) to be the Reporting Entity, it will be difficult and mostly ineffective to request much more than the information proposed. The Swap Dealer can only do so much to verify the information provided by the end-user for reporting to the SDR. Certainly the Swap Dealer can independently verify that the end-user is not a financial entity. Also, it already would have determined that the end-user had met its financial obligation through the Swap Dealer's own internal credit risk monitoring method and systems, or it would not have been able to enter into the Swap with the end-user in the first place. In turn, the

Prudential Regulator of the Swap Dealer should be auditing the Swap Dealer's credit exposure in order to ensure that the Swap Dealer has met its capital requirements. It will be very difficult for the Swap Dealer to verify that the end-user is hedging commercial risk, unless the end-user were to provide the results of its documentation around Financial Accounting Standards Board ASC 815 (formerly FAS 133).

It should be noted that the data elements outlined in § 39.6 were not the required data fields outlined in 17 CFR Part 45 RIN 3038–AD19 Swap Data Recordkeeping and Reporting Requirements. This information would need to be retrieved from the SDR by the Commission should they wish to investigate further any clearing exemption in question. Also, the SDR cannot do much more than report the data and confirm whether the end-user does indeed qualify for the clearing exemption as both parties are not required to report to the SDR. Therefore, the Swap Dealer would have to make the assessment that the requirements of § 39.6 are satisfactorily met.

Any potential abuse to this end-user clearing exemption might be if a Swap is actually used for speculation and not the intended use for hedging commercial risk. Given the broad scope of demonstrating commercial hedging, it would be difficult to see how *technically* an abuse of this nature could occur. For those circumstances, the Swap Dealer's main recourse would be to terminate the Swap. The litmus test is really whether an entity like a hedge fund could fictitiously create an enterprise that was actually speculating, investing or trading and still claim the end-user clearing exemption. The hedge fund would have to go to extreme lengths, including obtaining board approval. Furthermore, § 39.6 (F) (2) (ii) does not allow the Swap to hedge another Swap, which would be a common method of arbitrage in the OTC derivative markets by hedge funds.

Within the proposed rules, there are questions about the definition of hedging commercial risk. As stated in my testimony[1] to the Senate Agricultural Committee, it can be as broad as referring to a risk management policy to as narrow as looking at hedge effectiveness tests under FASB ASC 815. Ultimately, end-user activities were not the cause of the financial crisis and the actual volumes of any end-user is not likely to be significant enough to cause systemic risk to the financial system. The proposed definition should suffice. Additionally, it would make sense to apply the same definition of hedging commercial risk to define a Major Swap Participant's net position and not to create two separate definitions.

Should abuse occur, it would be difficult to prevent as information is coming in post-trade at the SDR, and the SDR is not tasked with policing this activity, but just recording the data. Monitoring the volumes of uncleared trades may not have much value as it is expected that all non-financial corporations would take advantage of this ability, and it is unlikely that any trading patterns would signal abuse. One expensive alternative would be to have end-users report directly to the SDR and be audited by the Commission, which would be cost prohibitive and an unnecessary burden to the end-user. Ultimately, the Swap Dealer will be responsible for ensuring that the clearing exemption is allowed as it best knows the end-user as a client and the Swap transaction in question.

Section III of this proposed Rule also requests comments for allowing the clearing exemption for small banks and other financial entities with assets less than $10,000,000,000. As long as these entities are hedging and not speculating, then Reval would support this exemption. At the end of the day, these entities are hedging asset or liability risk with basic hedging strategies in a very similar manner as non-financial end-users and, therefore, should be allowed the same benefits on clearing.

There are other considerations that should be made with regards to end-user Swaps:

- Some regional banks and Financial Entities sell Swaps to end-users but do not make markets in Swaps. Instead, they back to back the transaction with another Swap Dealer. If these regional banks have to clear the back to back transaction with Swap Dealers, then either this avenue for

[1] Jiro Okochi (Chief Executive Officer and Co-Founder, Reval.com, Inc). "Testimony on OTC Derivatives Reform and Addressing Systemic Risk Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry." (Date: 12/2/09). Retrieved from http://ag.senate.gov/site/calendar.html

providing hedging to local companies will decrease, or, ultimately, the clearing costs would be passed back on to the smaller companies (larger companies can obtain Swap credit lines from larger Swap Dealers). A Swap transaction that is executed on a matched book basis with end-users should also be considered for a clearing exemption.
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- Prudential Regulators should not create a separate rule requiring Swap Dealers to clear all of their Swaps or be forced into collateralized swap agreements if a trade does not clear. This would be in clear violation of the end-user clearing exemption passed within Dodd-Frank.

- Although capital charges are not part of this proposed Rule, the end-user clearing exemption could become moot if capital charges are unnecessarily high for uncleared trades. High capital charges would result in Swap Dealers pulling back from offering the necessary customized swaps to end-users that won't clear anyway, or the cost passed onto end-users would be so high that end-users would not hedge their customized risk exposures.

On behalf of end-users of OTC derivatives, we look forward to the final rule and hope that the intent and scope of the end-user exemptions passed into law are realized through this regulation.

Sincerely,

Jiro Okochi
CEO and Co-founder
Reval.com, Inc.
212-901-9750
jiro.okochi@reval.com