THE FARM CREDIT COUNCIL

Due February 22, 2011

By Electronic Submission

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

Re: End-User Exception to Mandatory Clearing of Swaps (RIN 3038–AD10)

Dear Mr. Stawick:

The Farm Credit Council, on behalf of its members, submits these comments on the Notice of Proposed Rulemaking ("NOPR") issued by the Commodity Futures Trading Commission ("Commission") concerning the end-user exception to mandatory clearing under Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1]

The Farm Credit Council is the national trade association for the Farm Credit System, a government instrumentality created "to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations."[2] Fulfilling this mission, the Farm Credit System's five banks and 87 associations currently account for 40% of agricultural lending in the United States. To provide tailored financing products for farmers and farm-related businesses, Farm Credit System institutions rely on the safe use of derivatives to manage interest rate, liquidity, and balance sheet risk, primarily in the form of interest rate swaps. Because we believe Congress intended the end-user exception to preserve our ability to provide dependable

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[1] End-User Exception to Mandatory Clearing of Swaps, 75 Fed. Reg. 80,747 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 39). Section 723 of Dodd-Frank, Pub. L. No. 111-203, 124 Stat. 1376, 1675-82 (2010), amends Section 2 of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 2.

[2] 12 U.S.C. § 2001(a).

financing to farmers, farm-related businesses, and rural America, the Farm Credit Council appreciates the opportunity to comment.

I. Summary of Comments

The Farm Credit Council supports Dodd-Frank's goal of making the derivatives market safer, and appreciates that mandatory clearing of swaps entered into by risky Wall Street institutions will provide important protections for the market. But clearing would also make the derivatives that the Farm Credit System safely and effectively uses to manage risk more expensive. These new costs would reduce liquidity, discourage effective risk management, frustrate the Farm Credit System's congressionally endorsed mission, and diminish rural America's access to credit. Congress did not intend, and the Commission should not endorse, such a result. Accordingly, the Commission should permit all Farm Credit System institutions to use the end-user clearing exception.

Specifically, our comments address the following issues:

- Dodd-Frank does not limit eligibility for the end-user exception to institutions with total assets of $10 billion or less, and any such limit would be particularly inappropriate for the Farm Credit System.

- In order to preserve competition for agricultural lending, the Commission must "look through" Farm Credit System banks to the smaller associations that own them and that benefit from the banks' derivatives activity. Otherwise, Farm Credit System associations would have to bear the cost of mandatory clearing, while competing commercial banks would not.

- Because the Farm Credit Administration effectively regulates Farm Credit System institutions; because Farm Credit System institutions only enter into safe, non-speculative swaps backed by collateral; and because the Farm Credit System is not interconnected with other financial entities, the Farm Credit System's derivatives activity does not warrant mandatory clearing.

- Alternatively, the Commission should adopt a risk-based approach to mandatory clearing, similar to the proposed definition of major swap participant, that would exempt small financial institutions whose current uncollateralized exposure and potential future exposure fall below certain thresholds.

II. Dodd-Frank does not impose an asset limit on which Farm Credit System institutions may qualify for the end-user clearing exception

Dodd-Frank requires the Commission to "consider whether to exempt . . . farm credit system institutions, . . . including . . . farm credit system institutions with total assets of $10,000,000,000 or less."[3] The Farm Credit Council urges the Commission to clarify that this language does not set an asset limit on which institutions the Commission may exempt from mandatory clearing.

In fact, Congress gave the Commission broad authority to permit Farm Credit System institutions, including those with total assets of more than $10 billion, to use the end-user exception. The following colloquy between Representatives Holden and Peterson of the House Agriculture Committee makes this clear:

> Mr. HOLDEN. . . . Mr. Speaker, I now would like to enter into a colloquy with the chairman of the Agriculture Committee.
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> Mr. Chairman, the conference report includes compromise language that requires the Commodity Futures Trading Commission to consider exempting small banks, Farm Credit System institutions and credit unions from provisions requiring that all swaps be cleared. We understand that community banks, Farm Credit institutions and credit unions did not cause the financial crisis that precipitated this legislation. While the legislation places a special emphasis on institutions with less than $10 billion in assets, *my reading of the language is that they should not in any way be viewed by the Commodity Futures Trading Commission as a limit on the size of the institution that should be considered for an exemption.*
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> Mr. Chairman, would you concur with this assessment?
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> Mr. PETERSON. Yes, I fully agree. The language says that institutions to be considered for the exemption shall include those with $10 billion or less in assets. It is not a firm standard. *Some firms with larger assets could qualify*, while some with smaller assets may not. The regulators will have maximum

[3] Pub. L. No. 111-203, § 723, 124 Stat. at 1680 (CEA § 2(h)(7)(C)(ii)).

> flexibility when looking at the risk portfolio of these institutions for consideration of an exemption.[4]

Senator Lincoln made a similar statement in the Senate. She observed that "small financial entities, such as banks, credit unions and farm credit institutions below $10 billion in assets -- *and possibly larger entities* -- will be permitted to utilize the end user clearing exemption with approval from the regulators."[5]

In giving the Commission the authority to exempt institutions with assets exceeding $10 billion, Congress sought to avoid imposing new, clearing-related costs on the Farm Credit System. As Senators Dodd and Lincoln explained, "These entities did not get us into this crisis and should not be punished for Wall Street's excesses. They help to finance jobs and provide lending for communities all across this nation. That is why Congress provided regulators the authority to exempt these institutions."[6]

Further, as Representative Holden described in detail, mandatory clearing would have no benefit as applied to Farm Credit System institutions because they already effectively manage risk:

> Farm Credit System institutions are regulated and examined by a fully empowered independent regulatory agency, the Farm Credit Administration, which has the authority to shut down and liquidate a system institution that is not financially viable. In addition, the Farm Credit System is the only GSE that has a self-funded insurance program in place that was established to not only protect investors in farm credit debt securities against loss of their principal and interest, but also to protect taxpayers.
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> These are just a few of the reasons why the Agriculture Committee insisted that the institutions of the Farm Credit System not be subject to a number of the provisions of this legislation. They were not the cause of the problem, did not utilize TARP funds, and did not engage in abusive subprime lending. We have

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[4] 156 Cong. Rec. H5246 (daily ed. June 30, 2009) (emphasis added).

[5] 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (emphasis added).

[6] *See* Letter from Sens. Dodd and Lincoln to Reps. Frank and Peterson, *in* 156 Cong. Rec. S6192 (daily ed. July 22, 2010).

> believed that this legislation should not do anything to disrupt this record of success.[7]

Although Farm Credit System associations have, on average, total assets that are well under $10 billion, all of the five Farm Credit System banks have total assets exceeding $10 billion. If, despite the Commission's broad authority to exempt all Farm Credit System institutions, the end-user exception were confined to institutions with total assets of $10 billion or less, no Farm Credit System bank would qualify, and the bulk of the System's derivatives activity would be subject to a costly new clearing requirement. As the legislative history demonstrates, the Commission can and should avoid this result. Accordingly, the Farm Credit Council urges the Commission to permit all Farm Credit System institutions -- regardless of their total assets -- to use the end-user clearing exception.

III. If the Commission adopts an asset test, it should look through Farm Credit System banks to the small associations whose risk they hedge with derivatives

If the Commission adopts an asset-based test for which financial institutions qualify for the end-user exception, it should clarify that it will look through Farm Credit System banks and consider the average assets of their affiliated associations. As explained below, any other approach would give commercial banks an unfair competitive advantage in the market for agricultural lending.

Consistent with Congress's "objective . . . to encourage farmer- and rancher-borrowers['] participation in the management, control, and ownership of a permanent system of credit,"[8] the Farm Credit System has a unique structure. Farm Credit System banks are cooperatives primarily owned by their affiliated associations.[9] The Farm Credit Act authorizes the banks "to make loans and commitments to eligible cooperative associations."[10] Farm Credit System associations are, in turn, authorized to make loans to bona fide farmers and ranchers, rural residents, and persons furnishing farm-related services.[11] Put simply, Farm Credit banks lend to Farm Credit associations, which lend to farmers, and farmers own the Farm Credit associations, which own the Farm Credit banks.

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[7] 156 Cong. Rec. H5246 (daily ed. June 30, 2009) (statement of Rep. Holden).

[8] 12 U.S.C. § 2001(b).

[9] *See id.* § 2124(c) (providing that "[v]oting stock may be issued or transferred and held only by . . . cooperative associations eligible to borrow from the banks").

[10] *Id.* § 2128(a).

[11] *See id.* § 2075.

Accordingly, Farm Credit System banks are larger than their affiliated associations. For example, AgriBank, FCB, is the largest district bank, and its assets exceed $10 billion. But the 17 associations that own 99% of AgriBank have average assets of $3.6 billion, well below the $10 billion threshold suggested in Dodd-Frank.

Unique among agricultural lenders, the Farm Credit System's legal structure places the funding function for each district with the district bank. Centralized funding, in turn, enables the associations to benefit from lower administrative and operational costs. Swaps are executed by the district bank to gain hedge accounting, to minimize administrative costs, and to minimize counterparty credit risk and margin requirements via district-wide netting of offsetting exposures. This is more cost effective and strengthens the liquidity of the System. As a result, Farm Credit System associations have a lower risk profile than the small commercial banks with which they compete.

If the Commission adopted a $10 billion asset limit, this structure would place Farm Credit System associations at a competitive disadvantage with respect to commercial banks. Absent a "look through" provision for Farm Credit System institutions, small commercial banks would be eligible for the end-user exception on a standalone basis, while Farm Credit System associations would have to bear the costs of mandatory clearing. Clearing costs would, in turn, be passed on to farmers and ranchers in the form of higher effective interest rates on loans. Community banks eligible for the end-user clearing exception would therefore be able to gain market share by offering lower interest rates. Even banks that do not qualify for the end-user exception would benefit from spreading the costs of clearing across their entire business, including segments outside agriculture.

Although the majority of Farm Credit System associations have assets of less than $10 billion, the few associations with greater assets do not present risk requiring mandatory clearing. Even the failure of a large association would have no material impact on the Farm Credit System's ability to meet its debt obligations because the five Farm Credit System banks are jointly and severally liable for the System's notes and bonds. Thus, no association is so large that it would impact System debt holders if it were placed in receivership. By contrast, if a standalone commercial bank fails, its bondholders will likely face losses.

As noted, Congress gave the Commission "maximum flexibility" to adopt an equitable solution for which small financial institutions will qualify for the end-user exception.[12] The Farm Credit Council believes that the fair way to compare the hedging activities that benefit Farm Credit System associations with the hedging activities of their competing commercial banks is to consider the average assets of Farm Credit System associations in a particular district.

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[12] 156 Cong. Rec. H5246 (daily ed. June 30, 2009) (statement of Rep. Peterson).

If the Commission does not adopt such a "look through" approach, small Farm Credit System associations would be forced to raise interest rates for farmers and ranchers, and they would be placed at a competitive disadvantage in the market for agricultural lending.

IV. Farm Credit System institutions should qualify for the end-user clearing exception

The Commission requested comment on, among other issues, whether an exception for Farm Credit System institutions would be appropriate.[13] As we describe more fully below, an exception is appropriate because the non-speculative, collateralized derivatives activity of comprehensively regulated Farm Credit System institutions does not pose risk to the United States financial system warranting mandatory clearing. Further, imposing a costly new clearing requirement on Farm Credit System institutions would frustrate Congress's equally important mission of providing a dependable source of financing for rural America.

A. Farm Credit System institutions do not cause systemic risk warranting mandatory clearing

1. Comprehensive regulation by the Farm Credit Administration adequately mitigates the risk of Farm Credit System institutions

The Farm Credit Council agrees that the Commission should "take into account the supervisory regimes to which Small Financial Institutions are currently subject, and whether those regulatory regimes adequately mitigate any risks associated with an exception[.]"[14] Farm Credit System institutions are regulated by the Farm Credit Administration, an independent federal agency that adequately mitigates any risks associated with permitting Farm Credit System institutions not to clear derivatives.

First, the Farm Credit Act authorizes the Farm Credit Administration to exercise broad powers "for the purpose of ensuring the safety and soundness of System institutions."[15] Those powers include:

- Bringing cease and desist proceedings against any institution or institution-affiliated party that has engaged, is engaging, or is about to engage in an unsafe or unsound practice;[16]

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[13] NOPR, 75 Fed. Reg. at 80,753.

[14] *Id.*

[15] 12 U.S.C. § 2252(a)(10).

[16] *See id.* § 2261.

- Suspending or removing directors or officers of Farm Credit System institutions who engage in unsafe or unsound practices;[17] and

- Assessing civil monetary penalties against institutions or individuals that violate provisions of the Farm Credit Act or Farm Credit Administration regulations.[18]

Further, if the Farm Credit Administration determines that a System institution is in an "unsafe or unsound condition to transact business," the Farm Credit Administration may place that institution in conservatorship or receivership.[19]

Second, the Farm Credit Administration effectively oversees the capital adequacy of System institutions. By regulation, the Farm Credit Administration ensures that institutions meet minimum capital requirements and establish written capital adequacy plans reviewed by that agency.[20] Specifically, each Farm Credit System institution must maintain permanent capital of at least 7% of its risk-adjusted asset base.[21] The Farm Credit Administration also rates the safety and soundness of each System institution using the uniform Financial Institutions Rating System, or CAMELS.[22] At the end of 2009, 82% of Farm Credit System banks and direct lending associations earned a score of one or two, out of five, on the CAMELS scale, with a score of one indicating that the institution is "sound in every respect."[23] Indeed, more than 90% of System assets are currently housed in institutions rated one or two.

Third, the Farm Credit Administration adequately oversees derivatives activity. By regulation, Farm Credit System institutions must adopt policies that mitigate risk, including credit risk, by limiting their exposure to single or related counterparties, geographical areas, industries, or obligations with similar characteristics.[24] The Farm Credit Administration has further directed each Farm Credit System institution "to establish a policy with appropriate limits

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[17] *See id.* §§ 2264-2265.

[18] *See id.* § 2268.

[19] *See id.* § 2183.

[20] *See* 12 C.F.R. §§ 615.5200-615.5215.

[21] *See id.* § 615.5205.

[22] The name CAMELS derives from the rating's focus on six factors: capital, assets, management, earnings, liquidity, and sensitivity to market risk.

[23] Farm Credit Administration, 2009 Annual Report on the Farm Credit System 42, *available at* http://www.fca.gov/Download/AnnualReports/2009AnnualReport.pdf.

[24] *See* 12 C.F.R. § 615.5133.

to ensure that counterparty risks are consistent with the institution's risk-bearing capacity."[25] In reviewing institutions' policies on exposure to counterparty credit risk, the Farm Credit Administration considers:

- Criteria for appropriate due diligence including processes for measuring and managing counterparty risk;
- Criteria for selecting and maintaining relationships with counterparties, which may include credit ratings;
- Controls that limit the exposure of capital to single counterparties expressed as a percent of the institution's capital base;
- Periodic reporting and monitoring of counterparty exposures to the board;
- Periodic reporting to the board on each counterparty's financial condition, including an assessment of its ability to perform on agreements and contracts executed with the institution; and
- Actions to mitigate an institution's exposure in the event the financial condition of a counterparty deteriorates and doubts arise about its ability to perform in accordance with the relevant agreements or contracts.[26]

Together, these comprehensive regulatory requirements effectuate the Farm Credit Administration's mission of ensuring a safe, dependable source of credit for agriculture and rural America. The Commission should not add a costly, unnecessary clearing requirement when the Farm Credit Administration's regulation and oversight already effectively mitigate risk to the financial system.

2. Farm Credit System institutions primarily use fixed-for-floating interest rate swaps and effectively manage counterparty credit risk

The Farm Credit Council further agrees that the Commission should "consider treating different types of swaps differently when considering whether any exception should be

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[25] Memorandum from Roland E. Smith, Director, to Chairman, Board of Directors, Chief Executive Officer, All Farm Credit Institutions Regarding Counterparty Risk (Oct. 21, 2003), *available at* http://www.fca.gov/apps/infomemo.nsf (click on "Counterparty Risk").

[26] *Id.*

available."[27] Because the Farm Credit System uses safe, non-speculative interest rate swaps and already effectively addresses counterparty credit risk, clearing should not be required.

Farm Credit System institutions primarily use plain vanilla, fixed-for-floating interest rate swaps, and materially all of our derivatives qualify for hedge accounting treatment. Farm Credit System institutions do not use swaps to speculate, and do not use the credit default swaps that caused the financial crisis. As the Commission determined in setting a higher substantial position threshold in the rate swaps category for purposes of identifying major swap participants, interest rate swaps are less risky than more complex or speculative instruments.[28]

Further, Farm Credit System institutions already effectively manage counterparty credit risk. To minimize the risk of credit losses from derivatives, Farm Credit System institutions deal with counterparties that have an investment grade or better long-term credit rating from a nationally recognized statistical rating organization, and further monitor the credit standing of and levels of exposure to individual counterparties. System institutions enter into master netting agreements that govern all derivative transactions with a counterparty. Substantially all derivative contracts are supported by credit support agreements requiring the bilateral posting of collateral in the event certain dollar thresholds of exposure are reached. These thresholds are small relative to the bank's capital. Accordingly, as of September 30, 2010, the net exposure of Farm Credit System institutions to swap dealers was only $252 million.[29]

B. The Farm Credit System Is Not Interconnected with Other Financial Institutions

The Farm Credit Council recognizes that the determination of whether Farm Credit System institutions should be exempted from mandatory clearing depends not only on their safety and soundness, but also on the extent to which they are interconnected with other financial entities. As Chairman Gensler has recognized, "[t]he risk of a crisis spreading throughout the financial system is greater the more interconnected financial companies are to

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[27] NOPR, 75 Fed Reg. at 80,753.

[28] *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 75 Fed. Reg. 80,174, 80,187-94 (proposed Dec. 21, 2010) (to be codified at 17 C.F.R. pts. 1 & 240).

[29] *See* Federal Farm Credit Banks Funding Corporation, Third Quarter 2010 -- Quarterly Information Statement of the Farm Credit System 26 (Nov. 10, 2010) (hereinafter "Third Quarter 2010 Information Statement"), *available at* http://www.farmcredit-ffcb.com/farmcredit/financials/quarterly.jsp.

each other."[30] Farm Credit System institutions are not so interconnected with other financial entities to raise this concern.

First, based on their unique funding structure, Farm Credit System institutions neither borrow from nor lend to commercial banks. As a result, Farm Credit System institutions' primary credit relationships with other financial entities include (1) derivatives counterparty relationships and (2) federal funds investments. As described above, Farm Credit System institutions carefully manage derivatives counterparty relationships with bilateral collateral agreements, so that the System's exposure to counterparties is at low levels relative to capital. Federal funds investments, which are primarily overnight, can be unwound on any day with no transaction costs should credit concerns arise.

Second, because Farm Credit System institutions do not take deposits, Farm Credit System banks and associations cannot experience a "run on the bank." To the extent the concern about interconnectedness involves the consequences of declining depositor confidence, it does not apply to the Farm Credit System because the System does not rely on depositors for funding.

Finally, the Systemwide Debt Securities used to fund the Farm Credit System are insured by the Farm Credit System Insurance Corporation, a government-controlled, independent entity, that administers an insurance fund. As of September 30, 2010, the assets in the insurance fund totaled $3.193 billion, or roughly 2% of the Farm Credit System's aggregate insured obligations.[31] If a bank cannot pay principal or interest on an insured debt obligation, the Insurance Corporation must pay investors from the fund. In the event that the entire insurance fund is exhausted, investors have further recourse to the five Farm Credit System banks, which are jointly and severally liable for Systemwide Debt Securities. Accordingly, even though most investors in Systemwide Debt Securities are professional money managers, not banks, these layers of investor protection make sure that the Farm Credit System will not cause a run on the funding of other entities.

C. Imposing a costly, new clearing requirement would frustrate the Farm Credit System's mission of providing financing to rural America

Although mandatory clearing would not make the Farm Credit System's derivatives activity safer, it would substantially raise the costs of derivatives for our members. For example, our members would incur significant negative carry costs on investments or cash

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[30] Testimony of Chairman Gary Gensler before the House Committee on Agriculture (Feb. 10, 2011), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-68.html.

[31] *See* Third Quarter 2010 Information Statement 32 (Nov. 10, 2010).

posted to meet new initial margin requirements. Furthermore, if the clearing alternatives do not offer end users interest on initial and variation margin, the Farm Credit System's costs could easily increase by tens of millions of dollars.

Market volatility, the direction of interest rates, and the maturity term of outstanding swaps also affect the amount of margin required. If market volatility returned to the levels observed after the Lehman Brothers bankruptcy in September 2008, the initial margin requirement for the Farm Credit System's derivatives could be expected to at least triple, and the projected negative carry expense on this component would easily exceed $2 million annually.

At September 30, 2010, the majority of the System's derivative positions had positive market value, so on an aggregate basis, the System was not required to provide a material amount of collateral or variation margin to our derivative counterparties. If, however, interest rates increase, the derivative exposure would swing in favor of our counterparties, and System institutions would then be required to provide variation margin, in addition to required initial margin. In this scenario, negative carry on variation margin is expected to be a significant cost. To minimize negative carry, it is especially important that clearing rules provide a mechanism for end users of over-the-counter swaps to earn interest on the variation margin provided to our counterparties. On top of these costs would be new account fees paid to clearing members, which we estimate could easily reach $1.5 to $2.5 million each year.

These millions of dollars in new costs would make derivatives less attractive for risk management. To the extent new costs discourage Farm Credit System institutions from safely entering into derivatives to hedge or mitigate risk, mandatory clearing would actually make the Farm Credit System less safe. These new costs also represent millions of dollars that the Farm Credit System could otherwise lend to farmers and farm-related businesses, and new costs the Farm Credit System will have to offset with higher interest rates to farm-related businesses. In this way, mandatory clearing would frustrate the Farm Credit System's mission of providing safe, dependable financing to rural America.

In deciding which institutions should be eligible for the end-user exception, the Commission should consider that the Farm Credit System's mission is also federal policy. Congress created the System "to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them."[32] Dodd-Frank does not alter this congressional goal. To the contrary, Congress "insisted that the institutions of the Farm Credit System not be subject to a number of the provisions of [Dodd-Frank]."[33]

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[32] 12 U.S.C. § 2001(a).

[33] 156 Cong. Rec. H5246 (daily ed. June 30, 2009) (statement of Rep. Holden).

V. Alternatively, the Commission should adopt a risk-based approach for determining which small financial institutions will be exempt from mandatory clearing

The Commission requested comment on whether "measures other than total assets of $10 billion, such as financial risk or capital, . . . could be used for determining whether an entity qualifies for an exception."[34] The Farm Credit Council believes that systemic risk created by derivatives is not a function of an institution's asset size; it is a function of the type and amount of derivative activity after netting offsetting positions and collateral. Put simply, small financial institutions entering into many risky trades pose greater risk to the financial system than larger institutions that carefully manage their derivatives portfolio. Accordingly, the Commission should focus on risk instead of asset size.

The Commission has already proposed such a risk-based framework for determining when an entity has a "substantial position" in a major swaps category warranting regulation as a major swap participant.[35] The Farm Credit Council proposes that a similar test measuring uncollateralized current exposure or current exposure plus potential future exposure would be appropriate in determining which small financial institutions pose enough risk to warrant mandatory clearing. Specifically, we believe that current uncollateralized exposure of $2 billion in the rate swaps category and $1 billion in other categories -- or current uncollateralized exposure and potential future exposure of $3 billion for rate swaps or $1 billion for other swaps -- would be appropriate. These proposed thresholds, which are lower than the thresholds the Commission has proposed for identifying major swap participants, would both address risk among financial entities and more accurately capture financial institutions whose swap exposure poses risk to the financial system.

Alternatively, the Commission could adopt a test based on an institution's exposure to swaps as a percentage of capital. The Farm Credit Council suggests that appropriate risk limits would be current uncollateralized exposure to swaps of 10% of capital, or current uncollateralized plus potential future exposure to swaps of 20% of capital. We believe these limits would appropriately identify which small financial institutions pose systemic risk warranting mandatory clearing. We believe that mandatory clearing would not be justified for institutions with less exposure to swaps as a percentage of capital. A test of current uncollateralized swap exposure as low as 5% of capital would, however, allow most of the Farm Credit System's risk management activities to survive without a costly new clearing requirement.

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[34] NOPR, 75 Fed. Reg. at 80,754.

[35] *See* Further Definition, *supra* note 28, at 80,188-94.

VI. Conclusion

For the reasons described above, the Farm Credit Council urges the Commission to exercise its ample authority to permit all Farm Credit System institutions -- including those with total assets exceeding $10 billion -- to use the end-user clearing exception. Because Farm Credit System banks use derivatives on a district-wide basis to manage risk for much smaller associations, the Commission should look through the banks to the average asset size of their affiliated associations. Otherwise, mandatory clearing would put small Farm Credit System associations at a competitive disadvantage with respect to competing commercial banks. This approach is appropriate because safe, sound Farm Credit System institutions do not need an additional, redundant layer of regulation. And new clearing regulation would impose costs that would both discourage Farm Credit System institutions from mitigating risk and diminish the availability of credit for farmers and rural America.

The Farm Credit Council appreciates the opportunity to comment. If you have any questions or we can provide other information, please do not hesitate to contact us. As always, we would welcome the opportunity to work with the Commission in developing the final rule.

Sincerely,

Robert P. Boone, III
Vice President, Government Affairs
Farm Credit Council

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner