



Credit Union National Association

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cuna.org

February 22, 2011

David A. Stawick  
Secretary of the Commission  
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 Credit Union National Association (CUNA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (Commission's) proposed 17 C.F.R. § 39.6, which implements exceptions to the mandatory clearing of swaps authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's nearly 7,600 state and federal credit unions, which serve approximately 93 million members.

CUNA supports the Commission establishing an exemption for credit unions and other end-user depository institutions with fewer than \$10 billion in assets from the proposal's mandatory swaps clearing requirements. Federal credit unions are allowed to enter into some types of over-the-counter agreements, which would meet the definition of "swaps," and some state credit unions have this authority as well. Credit unions will therefore be disadvantaged if the Commission does not expand the end-user exemption to include credit unions.

We believe that the \$10-billion asset threshold for the exemption should not be lowered. We would prefer it to be higher. However, we recognize that under the Commodity Exchange Act the Commission cannot adopt a higher threshold. Nevertheless, we question whether coverage under the Dodd-Frank Act's provisions on mandatory clearing of swaps should be based on asset size alone. We think credit unions should be covered only if they have at least \$10 billion in assets **and** transact significant volumes of swaps, with "significant volume" to be defined by the Commission consistently with the Commodity Exchange Act and other relevant regulations.

Credit unions use limited authorities available under National Credit Union Administration (NCUA) Board rules to mitigate business risks that may be directly related to the operations of financial institutions. These investments rarely



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present safety and soundness concerns because of the comprehensive nature of existing NCUA derivatives rules. Federal credit unions are generally prohibited from investing in derivatives except to hedge interest rate risk on certain loans and bond investments, and a few other circumstances.<sup>1</sup>

Federal credit unions that are well-capitalized and meet other stringent safety and soundness criteria can also employ a wider range of derivatives if approved by NCUA to participate in an investment pilot program on a case-by-case basis.<sup>2</sup> Some federally-insured state credit unions have somewhat broader investment powers than federal credit unions; however, any federally-insured state credit union with investments—including derivatives—that do not conform to those permitted for federal credit unions must establish special reserves to control for associated risk.<sup>3</sup>

Given the broad definition of “swaps” under federal law, it is likely that credit unions’ ability to hedge interest-rate risk on loans and to hedge other risks inherent in the business of financial institutions would be negatively impacted unless the Commission includes credit unions within the end-user exemption. We believe that there are no safety and soundness or public policy justifications for the Commission not to exclude from the clearing requirements credit unions, which are subject to comprehensive safety and soundness rules and supervision.

Thank you for the opportunity to comment on the Commission’s proposed rule on the exception from mandatory clearing of swaps. If additional information about CUNA’s views on the proposal would be useful, please do not hesitate to contact me at 202-508-6705.

Sincerely,



Michael S. Edwards  
Senior Assistant General Counsel

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<sup>1</sup> See 12 C.F.R. §§ 701.21(i), 703.14(g), 703.16(a).

<sup>2</sup> See 12 C.F.R. § 703.19.

<sup>3</sup> See 12 C.F.R. § 741.3(a)(2).