American Express Company
General Counsel's Office
200 Vesey Street
New York, NY 10285

February 22, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

Mr. David A. Stawick
Secretary
Commodity Futures Trading
Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Joint proposed rule; proposed interpretations
Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, RIN 3038-AD06; RIN 3235-AK65, File No. S7-39-10

Dear Ms. Murphy and Mr. Stawick;

American Express Company for itself and its subsidiaries appreciates this opportunity to submit comments in response to the joint notice of proposed rules and proposed interpretations issued by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") (and collectively hereinafter referred to as the "Commissions") regarding definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 Fed. Reg. 80173 (December 21, 2010) (the "Notice"). American Express respectfully submits the following comments concerning the definition of "major swap participant" .

Major Swap Participant

Section 721(a)(16) of the Dodd-Frank Act defines the term "major swap participant" as any person who is not a swap dealer

(i) who maintains a substantial position in swaps for any of the major swap categories excluding "positions held for hedging or mitigating commercial risk" or

(ii) whose outstanding swaps create "substantial counterparty exposure that could have serious adverse affects on the financial stability of the United States banking system or financial markets" or

(iii) who is a "financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency" and maintains a substantial position in outstanding swaps in any major swap category.

In response to the Commissions' request for comments on the definition of swaps qualifying for the "hedging or mitigating commercial risk" exclusion as such terms are defined in proposed paragraph (ttt) of 17 C.F.R. Section 1.3, we respectfully suggest that the hedging and risk mitigating exclusion should not be limited to swaps where the underlying item is a non-financial commodity. In this context, we believe commercial risk should be broadly defined to include all of the commercial activities of the person, regardless of whether they relate to financial or non-financial commodities. We believe such an interpretation is consistent with the intent of the Dodd-Frank Act to regulate only those swap participants whose swap activities are not related to their business activities. We support the inclusion in proposed paragraph (ttt)(1)(i)(F) of the hedging or mitigating of commercial risks arising from fluctuation in interest, currency or foreign exchange rate exposures arising from a person's current or anticipated assets or liabilities. This clearly reflects the Commissions' belief that financial hedging should qualify as hedging. We also support the interpretation that the definition should apply to hedging and risk mitigating activities of financial entities. Such entities should be able to rely on this exclusion and should not face special limits in the context of this exclusion.

In response to the Commissions' request for comments on the treatment of inter-affiliate swaps and security based swaps between wholly-owned affiliates of the same corporate parent in connection with the major participant definitions, we would suggest that swap positions between related entitles that are under common control be excluded from being considered swaps creating "substantial counterparty exposure". Such transactions between affiliates create exposure for the market only to the extent that the resulting net position is cleared with third parties. Since the counterparties are under common control and the likelihood of default or failure to perform by one of the related parties is extremely remote, imposing regulation as a "major swap participant" on such parties would not result in a commensurate benefit.

In response to the Commissions' request for comments on the proposed alternative definitions of "highly leveraged" in applying the third test of the major swap participant definitions, we believe that the 15:1 ratio alternative is more appropriate than the more restrictive 8:1 ratio for the purposes of that definition. As pointed out in the

Commissions' Notice, this alternative is also consistent with the maximum ratio referred to in Title I of the Dodd-Frank Act which would be applicable in the case of entities that pose a grave threat to financial stability and would therefore clearly be appropriate for entities that do not pose such a threat.

Please contact the undersigned at (212) 640-5783 should you have any questions or need further information concerning these comments.

Sincerely,

David Carroll
Senior Counsel
American Express Company
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