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February 22, 2011

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

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
rule-comments@sec.gov

Re: RIN 3235–AK65, Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'' (Release No. 34-63452; File No. S7-39-10)

Dear Mr. Stawick and Ms. Murphy:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on a joint proposal by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) to define "swap dealer," "securities swap dealer," and other terms. 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 believes that the Federal Home Loan Banks (FHLBs) should be excluded from the definitions of a "swap dealer" and a "security swap dealer." Without such an exemption, FHLBs are likely to significantly decrease or eliminate the products credit unions and other FHLB-member financial institutions use to hedge interest rate and similar risks.

Federal credit unions and some state credit unions are allowed to enter into agreements that would meet the definition of swaps or security-based swaps. Credit unions use limited authorities available under National Credit Union Administration (NCUA) Board rules to mitigate business risks directly related to financial institution operations. FHLBs are often the only viable option for credit unions to purchase swaps or caps to hedge their business risks in part because NCUA requires credit unions to enter only into swap agreements with counterparties which have very strong capacities to meet their financial commitments, currently defined as an AA- or higher credit rating.

The FHLBs are a group of federally-chartered cooperatives that make advances to their members—credit unions and other lending institutions—to help finance housing and economic development in local communities. FHLBs are comprehensively regulated by the Federal Housing Finance Agency (FHFA). As member-owned cooperatives, they do not have the pressure for high returns that they would have if their stocks were publicly traded. The FHLBs' primary purpose is to provide their members with loans to facilitate liquidity on a cooperative basis, not to maximize profits with high risk activities.

Under Section 721(a)(49)(C) of the Dodd-Frank Act, a swap dealer or a security swap dealer does not "include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business." To the limited degree that FHLBs deal with swaps, they are typically acting as agents on behalf of their members—in what amounts to a fiduciary capacity—in arranging mirror image swaps. The FHLBs should therefore be excluded from the swap dealer and security swap dealer definitions because they fall squarely within the Section 721(a)(49)(C) exemption. FHLBs fall within this exemption because their primary and regular business is lending and because FHLBs are essentially acting as their members' agents with respect to their limited swaps activities.

In addition, we believe the de minimis threshold for the swap dealer or security swap dealer exemption should be higher than the proposed amount of $100 million and should be based on a percentage of the aggregate derivatives market for a type of instrument—such as 1 percent—rather than a dollar amount.

Further, the de minimis exception should also apply when the end-user is a federally-insured credit union, bank, or thrift, in order to ensure that credit unions continue to have access to swaps products needed to hedge interest-rate risk and other risks inherent to financial institution operations. At a minimum, this exemption should apply when the customer falls within the swaps end-user exemptions, proposed by the Commissions to apply to federally-insured credit unions with fewer than $10 billion in assets.[1]

However, we see no safety and soundness or public policy reason to limit the an end-user de minimis exemption by asset size when the customer is using swaps in a conservative manner to reduce risks inherent to the business of a financial institution. Rather, failure to include such a de minimis exemption could decrease the financial system's safety and

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[1] *See* End-User Exception to Mandatory Clearing of Swaps, 75 Fed. Reg. 80,747 (Dec. 23, 2010); End-User Exception to Mandatory Clearing of Security-Based Swaps, 75 Fed. Reg. 79,992 (Dec. 21, 2010).

soundness by, for example, reducing the tools available for credit unions, banks, and thrifts to hedge against interest rate risk in a rising-rate environment.

NCUA comprehensively regulates federally-insured credit unions for safety and soundness purposes, much as the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency comprehensively regulate federally-insured banks and thrifts. Further, NCUA rules prohibit credit unions from using swaps except to reduce risk, and then only in limited circumstances, such as pursuant to an investment pilot program.[2] A de minimis customer exemption should therefore apply when the end-user is a federally-insured credit union, bank, or thrift of any size which is using swaps to hedge risks inherent to financial institutions, such as interest rate risk or foreign-exchange risk related to international operations.

It is also important for the Commissions to consider the FHLBs' status as government-sponsored enterprises and their existing regulatory framework under FHFA. FHFA regulations already prohibit trading or speculation in derivatives outside of hedging activities and further regulation could have unintended consequences such as limiting credit unions' access to swaps.

The current proposal and the broad swap dealer and security swap dealer definitions would impair the ability of the FHLBs to offer their member credit unions products to hedge their business risks. If credit unions have reduced options or no option to hedge, they may no longer be able to protect against interest rate and other risks in an effective manner and could be forced to limit their loan portfolios and services to their members.

Thank you for the opportunity to comment on the Commissions' joint proposal. 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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[2] *See* 12 C.F.R. §§ 701.21(i), 703.14(g), § 703.19, 703.16(a), 741.3(a)(2).