E. Robert Lupone
Senior Vice President
General Counsel & Secretary

June 1, 2011

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

COMMENT

Re: RIN 3038-AC97, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; and RIN number 3038-AD10, End User Clearing Exception

Dear Mr. Stawick:

The following comments to the above-referenced proposed rules ("Proposed Rules") are submitted on behalf of Siemens Corporation. Siemens Corporation is a U.S. subsidiary of Siemens AG, a multinational company operating in the industry, energy and healthcare sectors. Siemens employs approximately 62,000 people throughout all 50 states. Over the past ten years, Siemens has invested over $25 billion in the U.S., and spends billions of dollars in research and development. As with other derivative end users, Siemens participates in the derivatives market to manage risk for commercial purposes only.

Siemens Corporation commends the efforts of the Commodity Futures Trading Commission to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act and its goal of improving transparency and stability in the markets for financial derivatives, while at the same time preserving flexibility for commercial end users with respect to clearing and posting of margin, in connection with their derivative transactions. Siemens is concerned, however, that the Proposed Rules adopt an overly-broad definition of "financial entity" relating to the End User Clearing Exception and the posting of Margin, provide certain end users with exemptions from the requirements to clear and post Margin, and yet unintentionally fail to provide the same exemptions to certain low risk financial entities that have the same risk profile as the exempted commercial end users . In our view, the inability of these low risk financial entities to take advantage of such exemptions under the Proposed Rules would have the unintended consequence of denying needed flexibility to such financial entities. This, in turn, disadvantages such financial entities and their affiliates in a manner clearly not intended by the Dodd-Frank Act, and harming such entities merely as a result of their organizational structure.

Like other large companies, Siemens operates many different businesses, and runs those businesses through separate subsidiary legal entities. For example, some of the subsidiaries of Siemens Corporation are Siemens Energy, Inc., Siemens Industry, Inc., and Siemens Medical Solutions USA, Inc. Each of these entities, as well as Siemens Corporation itself, would qualify as a commercial end user under the Proposed Rules.

The Proposed Rules provide that commercial end users may choose not to clear their derivative transactions through a clearing organization, and need not post either Initial Margin or Variation Margin unless required by their counterparty. Implicit in the Proposed Rules is the concept that derivatives executed in connection with the hedging of risk by commercial end users pose minimal threat to the financial markets.

Small or independent companies will necessarily manage their own cash flow, including interest rate and foreign exchange exposure. If such end users desire to hedge their own commercial risk, they will do so directly with an external counterparty. However, a larger group of interrelated companies (such as Siemens) may choose to pool their cash flow to reduce the overall financial burden upon the group (the "Affiliated Group") and, in the process, hedge the net interest rate and foreign exchange risk on behalf of the Affiliated Group. By doing so, the Affiliated Group actually

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reduces the net risk to the financial markets. Unfortunately, it appears that the current wording of the Proposed Rules would not provide proper treatment to a financial entity that acts for the Affiliated Group as the aggregator of their commercial end user risk. The Affiliated Group would therefore be inadvertently deprived of the use of the commercial end user exceptions. This, we believe, was not the intent of Congress, and is outside of the scope of the behavior that policymakers are focused on changing.

By way of further explanation, we note that it is common practice for Affiliated Groups to centralize their banking activity and related risk in a treasury affiliate (a "Treasury Affiliate"). To better manage the cash flow of the Affiliated Group, the positive or negative bank account balances of each affiliated company are at the end of each day automatically "swept" by the bank into an account owned by the Treasury Affiliate at the same bank. The result of such "zero balancing" is that, at the close of each business day, the bank account of each affiliated company has a balance of zero, while the Treasury Affiliate's bank account contains the net balance of funds for all entities in the Affiliated Group. As an example, the Siemens companies in the U.S. rely upon their affiliate Siemens Capital Company, LLC ("SCC"), a Delaware limited liability company wholly owned by Siemens Corporation, as their Treasury Affiliate. We believe a similar model is currently followed by many other Affiliated Groups.

In such a case it would then be the Treasury Affiliate, and not each individual member of the Affiliated Group, that would enter into foreign exchange swaps and interest rate hedges (the "Swaps") so as to hedge the interest rate risk and foreign exchange risk for the U.S. operations of the Affiliated Group. The hedging would cover both the risks arising from the net results of the cash pooling system, as well as from reports from members of the Affiliated Group of their expected foreign currency and liquidity needs. Swaps would then be entered into by the Treasury Affiliate with external counterparties under ISDA documentation.

As noted above, the Proposed Rules would define each member company of such an Affiliated Group as a commercial end user, and would allow each such company to exempt itself from the clearing and mandatory margin posting requirements. However, as aggregator of all of the treasury risk for the entire Affiliated Group, the Treasury Entity would not be exempt. This is because the activity that the Treasury Entity undertakes in connection with the cash pooling program would cause it to fall under the definition of "financial entity."[1] Further, since the Treasury Affiliate would be entering into Swaps in its own name with respect to the net exposure of the Affiliated Group, and not necessarily as agent for any individual member of the Affiliated Group, the Treasury Affiliate would not fall within any currently drafted options that would allow it to take advantage of the End User Exception. Moreover, such Treasury Affiliates would not be "subject to capital requirements set by a banking regulator or a state insurance regulator", such that each Treasury Affiliate would fall under the definition of "high risk financial end user" and would therefore be required to post margin.

Given that each such Treasury Affiliate would be the aggregator of the net commercial end user risk of each member company of the Affiliated Group, we submit that such an outcome was not intended by Dodd-Frank, and is an unintended and unwarranted consequence of the Proposed Rules.

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[1] Each of the regulations includes in their definition of "financial entity" a reference to entities that engage in "activities that are financial in nature" as defined in Section 4(k) of the Bank Holding Company Act. Section 4(k) of that Act includes the following activities:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities;

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

Accordingly, we ask that you consider expanding the group of entities that can take advantage of the clearing and margin requirements so as to include financial entities such as Treasury Affiliates.

While there may be many ways of accomplishing such changes, one method of amending the Proposed Rule regarding Clearing would be to add a new subsection to Section 39.6 so as to clarify that a financial entity acting as a Treasury Affiliate does satisfy the statutory criteria for "acting on behalf of the person and as an agent." Additionally, one method of amending the Proposed Rule regarding the posting of Margin would be to modify the existing exceptions so as to include financial entity counterparties that use swaps to hedge or mitigate the risks of the business of their affiliates, coupled with language indicating that the provision of financial services to affiliates would be an acceptable alternative to being subject to capital requirements established by a regulator.

Thank you in advance for your consideration of this letter.

Sincerely,

By: _____

E. Robert Lupone
Senior Vice President, General Counsel and Secretary