

June 24, 2011

David A. Stawick,
Secretary, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581
RIN 3038—AC97

Office of the Comptroller of the Currency
250 E St. SW., Mail Stop 2-3
Washington, DC 20219
Docket ID OCC- 2011-0008
RIN: 1557-AD43

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Docket No. R-1415
RIN: 7100 AD74

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429
Attention: Comments RIN: 3064-AD79

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency, Fourth Floor
1700 G Street, NW.
Washington, DC 20552
Attention: Comments/ RIN 2590-AA45

Gary K. Van Meter
Acting Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
RIN: 3052-AC69

Re: Margin and Capital Requirements for Covered Swap Entities/File numbers RIN: 1557-D43;
RIN: 7100 AD74; RIN: 3064-AD79; RIN 2590-AA45; RIN: 3052-AC69.

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants/File number RIN 3038—AC97.

Ford Motor Credit Company is pleased to offer comments as requested by the "prudential regulators" (i.e., the Board of Governors of the Federal Reserve, Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency) and the Commodities Futures Trading Commission (CTFC) regarding their notices of proposed rulemaking (NPRs) on margin requirements for certain derivatives that are not cleared through a clearinghouse to implement section 4s(e) of the Commodity Exchange Act (CEA), as amended by section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

In further support of the comments provided by the group of captive finance companies (dated June 23, 2011), Ford Motor Credit Company (Ford Credit) respectfully urges that, consistent with the intent of the Dodd-Frank Act, the rules clarify that (i) a "non-financial end user" and a "non-financial entity" (as such terms are defined in the NPRs) include captive finance companies of manufacturing companies meeting the statutory Dodd-Frank Act exemption from the clearing requirements and (ii) derivatives of which a "non-financial end user" or a "non-financial entity" is a counterparty would be exempt from the margin requirements.

Definition of non-financial end users and non-financial entity

Ford Credit is concerned that even if a manufacturing company's captive finance affiliate meets the statutory exemption from the clearing requirements that it might nonetheless be considered a financial end user or entity, which is not the intent of the Dodd-Frank Act.

Consistent with section 2(h)(7)(C)(iii) as amended by section 723 of the Dodd-Frank Act, we urge the prudential regulators and the CFTC to specifically include in the definitions of non-financial end user and non-financial entity "an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company". As evidenced by the following references, the discussion in the NPRs seems to acknowledge that captive finance companies should be excluded from margin and clearing requirements:

Footnote 35 in section _1(2) of the prudential regulators' NPR states that *"Although the term "commercial end user" is not defined in the Dodd-Frank Act, it is generally understood to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps and security-based swaps under section 2(h)(7) of the Commodity Exchange Act and section 3C(g) of the Securities Exchange Act, respectively."*

Footnote 41 in section _2(1)(b) of the prudential regulators' NPR states that *"This definition of "financial end user" is based upon, and substantially similar to, the definition of a "financial entity" that is ineligible to use the end user exemption from the*

mandatory clearing requirements of sections 723 and 763 of the Dodd-Frank Act. See 7 U.S.C. 2(h)(7); 15 U.S.C. 78c-3(g)."

The CFTC, in its NPR, states that their definition of financial entity *"tracks the definition in Section 2(h)(7)(C) of the Act that is used in connection with an exception from any applicable clearing mandate."*

Although the intent to be consistent with Dodd-Frank Act is evident, the financial end user definition in section 2.2(1)(b) of the prudential regulators' NPRs and the financial entity definition in section 23.150 of the CFTC NPR are slightly different from each other and neither of them explicitly excludes captive finance companies using the Dodd-Frank Acts' definition quoted above.

To be consistent with the Dodd-Frank Act, we urge that the prudential regulators and the CFTC in their final risk-based margin requirements to explicitly exclude captive finance companies along with end users from the financial end users and financial entities definitions as defined in CEA section 2(h)(7)(C)(iii) as amended by section 723 of the Dodd-Frank Act.

Margin exemption for non-financial end users

Although the regulators note their intent to be consistent with current market practices with respect to non-financial end users, the NPRs require swap dealers to collect initial or variation margin from a non-financial end user counterparty. Section 2.1(2) of the Prudential regulators' NPR requires banks to collect margin above an exposure threshold adopted by the banks. Similarly, sections 23.151 and 23.154 of the CFTC NPR require swap dealers to execute credit support arrangements specifying exposure thresholds and margin requirements and require swap dealers to collect margin from non-financial end users if thresholds were to be exceeded.

We agree that trading derivatives is a credit decision for dealers and that their credit exposure should be appropriately managed. However, posting margin or having a credit support agreement is not a universal practice followed by all market participants today. Swap dealers execute master netting agreements with their end-user counterparties and manage net credit exposure on a portfolio basis rather than managing credit exposure from derivative transactions in isolation. In many cases, as an alternative to requiring margin, the dealers buy credit protection to reduce their credit exposure and transfer the cost to the end-user counterparty as credit charges on the transaction.

Dealers generally post and collect margin with each other which helps reduce their net cash requirement. Being market makers, they have offsetting derivative transactions where they post margin on some and collect margin from others. In contrast, if margin requirements were imposed on an end-user such as Ford Credit, we would be required to post margin for our derivative transactions but, unlike many banks and market-makers, we would not be able to collect margin from offsetting derivative transactions because the exposures we hedge with derivatives are legitimate underlying business risks such as the impacts on our business of movements in interest rates and currency exchange rates. We are concerned that this would significantly increase end user costs and liquidity requirements and use capital that otherwise

could be reinvested in business and job creation, or could create a disincentive for end users to hedge business risks.

Throughout the process of drafting, passing, and implementation of the Dodd-Frank Act, Congress has repeatedly expressed its intent to exempt non-financial end users, including certain captive finance companies, from margin requirements. This is evident in records of Congressional proceedings, colloquies, and many letters, the most recent of which is the letter dated June 20, 2011 submitted by Chairman Stabenow and Chairman Lucas to the prudential regulators and CFTC in response to the proposed margin rules. This letter not only asks for clarification that certain captive finance affiliates of manufacturing companies (*"whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company"*) be classified as non-financial end users, but also expresses concern that the proposed margin rules undermine the exemption granted by the Dodd-Frank Act to the non-financial end users.

In summary, we recommend that the definition of financial end user and financial entity in both the prudential regulator and CFTC rules explicitly excludes entities as defined in section 2(h)(7)(C)(iii) as amended by section 723 of the Dodd-Frank Act and that the non-financial end users and non-financial entities be exempt from margin requirements consistent with Congressional intent and the clearing exemption provided by the Dodd-Frank Act.

We thank you for providing us with the opportunity to comment on the NPRs and look forward to working with you in strengthening the derivative markets.

Sincerely,

/s/

John T. Noone

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