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Submitted via email: dstawick@cftc.gov

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

RE: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"; CFTC RIN No. 3235-AK65; SEC Release No. 34-63452; File No. S7-39-10; 75 Federal Register 80174, December 21, 2010 and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, CFTC RIN No. 3038-AC97, April 28, 2011.

Dear Mr. Stawick:

We appreciate the opportunity to provide comment on the Commodity Futures Trading Commission's (CFTC) proposed rule regarding further defining terms relating to swaps. On behalf of Mutual of Omaha Bank, this letter specifically responds to the definition of "swap dealer" and the exclusion for swaps in connection with originating a loan (IDI exemption).

Mutual of Omaha Bank, while still a relatively new player in the industry, is growing quickly, with operations in thirteen states and $5.5 billion in assets. We support the CFTC's efforts to interpret and implement the provisions of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. However, we strongly oppose the approach taken with regard to the narrow interpretation of the IDI exemption and do not believe such an extreme limitation is valid, nor is it in line with the underlying goals of consumer protection intended by *Dodd-Frank*.

Background

The *Dodd-Frank Act* provides that the CFTC will regulate "swaps," and the SEC will regulate "security-based swaps." It also requires the agencies to, jointly and separately, further define associated terms. Given those requirements, the CFTC and SEC first issued a joint Advance Notice of Proposed Rulemaking on August 13, 2010, requesting public comment regarding the definitions of associated terms in accordance with Title VII of *Dodd-Frank*.

Following review of public comments and discussions with market participants, the Commissions issued a second proposal, as identified above, to further define "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant" and "eligible contract participant," to propose related rules, and to discuss certain factors relevant to market participants when determining their status with respect to the defined terms.

The Commissions state within the December 21, 2010, proposal that the rules will help determine which entities will be subject to comprehensive regulation of their swap and security-based swap activities, and may also cause certain entities to modify their activities to avoid being subject to the regulations. We appreciate the acknowledgement by the CFTC and SEC of the importance of crafting these rules carefully to maximize the benefits of the regulation imposed by the *Dodd-Frank Act*, and to do so in a way that is flexible enough to respond to market developments.

The *Dodd-Frank Act* also provides exclusion for an insured depository institution "to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer." The proposed IDI exemption would apply only to swaps that are connected to the financial terms of the loan itself. In the rule proposal, the CFTC has asked for comment on whether the IDI exemption should be limited to swaps entered into contemporaneously with loans. Mutual of Omaha Bank is a member of the American Bankers Association (ABA) and we fully support the comments made with respect to this issue in its most recent submission to the CFTC, dated November 3, 2011. Specifically, that such a limitation would be too restrictive, since it would not take into account common lending practices that include entering into swaps to hedge or mitigate loan-related risk at other times during the lending relationship. We would also offer the following additional comments for your consideration.

Discussion

The intent behind the IDI exemption is very much in line with how Mutual of Omaha Bank, and many others, uses interest rate swaps as part of our lending practices and we should fall under its purview. We do not hold ourselves out as a market maker for swaps in the marketplace. Each swap deal is structured with respect to the loan facility to mitigate interest rate risk for the small to medium sized loan customer.

Banks such as ours manage interest rate risk in the loans we offer to borrowers. For example, with rates at historical lows, we feel it is prudent banking not to take the interest rate risk associated with longer term fixed rate lending. To accomplish the borrowers' goal of a longer term fixed rate, the solution is to structure the loan as a floating rate instrument and to offer the borrower a swap to fix the rate. Our bank is then able to compete for longer term fixed rate loans that we would otherwise be unable to offer the marketplace.

We want to ensure that any final rules allow banks to be able to use loan collateral to back the swaps, which is the core piece of the loan level swap business. Banks underwrite the loans with sufficient collateral to support the total lending facility including the swap component. This collateral is posted up front as part of the loan facility. Posting cash collateral based on market movements with the swap would eliminate the ability for banks like us to offer longer-term fixed rate swap loans.

Banks with very large capital markets divisions do not have the same complications associated with being considered a "swap dealer." They have the infrastructure in place to support this activity and hold themselves out to accept bids and offers. If the IDI exemption is very narrowly focused so as to cause small and medium sized banks to be unable to compete in this market, the larger banks will increase market share for this type of lending at the expense of those banks and the customers they serve. Specifically, the "at loan origination" portion of the proposed rules are extremely problematic for all of the reasons cited within the ABA letter referenced above. Keeping this provision would significantly disadvantage small to medium sized banks in middle-market swap loans.

At Mutual of Omaha Bank, we estimate that roughly 25 percent of our anticipated loan growth is eligible to participate in the fixed interest rate swap program. With average loan sizes between $1 and $10 million, this proposal will have a significant impact to our ability to serve small to medium sized business customers. If it were determined that we be considered a swap dealer, we would likely be unable to compete in this market and would risk losing a large portion of this production. Moreover, if the IDI exemption were very narrowly focused, we would likely lose at least half of this loan production as well.

Conclusion

The intent behind this business is to reduce the interest rate risk for our loan customers and the bank and not to speculate. The intent of this exemption was to be able to preserve small to medium sized banks ability to offer customer interest rate hedging solutions combined with the loan facilities. Narrowly defining the IDI exemption may have the unintended consequence of reducing such activities and thereby increasing systemic risk to middle-market loan customers and small to medium sized banks. We join the ABA in urging the Commission to accommodate all common lending practices in the IDI exemption and to confirm that a bank entering into a swap to offset its own risk would not be considered a swap dealing activity.

Once again, we appreciate the opportunity to comment on the proposed swap dealer definition and the IDI exemption. Thank you for your consideration.

Sincerely,

Jeffrey R. Schmid
Chairman and CEO

cc: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission