September 18, 2011

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

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swaps Participants (RIN 3038 – AC97)

COMMENT

Dear Mr. Stawick:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rules ("Proposed Rules") of the Commodity Futures Trading Commission ("CFTC"), imposing requirements for initial and variation margin for certain swaps entered into by swap dealers ("SDs") and major swap participants ("MSPs") for which there is no prudential regulator ("Covered Swap Entities" or "CSEs"), pursuant to and in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amendments to the Commodity Exchange Act ("CEA").

INTRODUCTION

In a previous letter submitted during the first open comment period for this rule, Better Markets argued that the CFTC's original proposal was a good start but needed to be strengthened in important ways.[2] That remains the case, and this view is now further supported by the recently-released BCBS/IOSCO consultative document which has prompted the re-opening of the comment period.[3]

As pointed out in our previous letter, and acknowledged in the Proposed Rules, the absence of prudent margining in derivatives transactions led directly to the financial crisis and the forced infusion of enormous sums of money by the U.S. Treasury and

---

1 Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

2 Better Markets Comment Letter "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants," July 11, 2011, *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47763&SearchText=better%20markets incorporated by reference as if fully set forth herein.

3 Basel Committee on Banking Supervision & Board of the International Organization of Securities Commissions Consultative Document, Margin requirements for non-centrally-cleared derivatives (2012), *available at* www.bis.org/publ/bcbs226.pdf.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

Federal Reserve into the financial markets to avoid total collapse. Central to the reforms mandated by the Dodd-Frank Act is the direction to the CFTC and other regulatory agencies to create a prudent margining system for the OTC derivatives markets to help avoid a repeat of this disastrous situation.

The Dodd-Frank Act requires the CFTC to take specific actions related to margining of uncleared swaps entered into by CSEs:

> The Commission **shall** adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing...[b]oth initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.[4]
>
> To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) **shall**
>
> (i) Help ensure the safety and soundness of the swap dealer or major swap participant; and
>
> (ii) Be appropriate for the risk associated with the non-cleared swaps.[5]

The CFTC rightly interprets the above clear language as a congressionally mandated requirement that uncleared swaps be subject to strict margin requirements, over and above those that would be applied in a DCO. This is due to the fact, clearly stated in the above passage from the Dodd-Frank Act, that uncleared swaps pose greater risks than cleared swaps and that effective use of margin is an essential risk-management tool.[6] The logical approach, adopted in the Proposed Rules, is therefore one of requiring DCO-style margining, but with more conservative standards, commensurate to the higher risk embedded in a noncleared transaction. In DCO-style margining, collateral payments are based on a statistical estimate of the likelihood of default.

Of course, statistical estimates are inherently uncertain, so DCOs must inevitably make a judgment call as to how much room for error or random variation they build into their models. For uncleared swaps, risk not only tends to be higher, it also tends to be harder to estimate, i.e. more uncertain. Consequently, the Proposed Rules would require more conservative margin standards for non-cleared swaps. This approach is an appropriate response to the requirements imposed on the CFTC by the Dodd-Frank Act.

---

4 CEA, § 4s(e)(2)(B) (emphasis added).
5 CEA, § 4s(e)(3)(A) (emphasis added).
6 NOPR, 76 FR, p. 23,733.

Nevertheless, the Proposed Rules must be strengthened in several key respects. The comments below reflect some important changes that would immediately improve the proposal by lowering systemic risk ultimately borne by U.S. taxpayers. Many of these suggestions are supported by the IOSCO report, which is cited where relevant.

1. The Proposed Rules must be strengthened to **require bilateral posting of collateral**, including cases where one or more counterparties are non-financial entities, and cases where both counterparties are CSEs.

2. In cases where posting of non-cash collateral is permitted, the Proposed Rules must be tightened to **require that the non-cash collateral posted is well-suited to the liquidity demands** of the swap.

3. **Rehypothecation of collateral must be prohibited** for both variation and initial margin.

In addition, we present brief comments on extraterritorial application of the Proposed Rules, their relationship to inter-affiliate swaps, and cost-benefit analysis.

COMMENTS

Chairman Gensler has rightly pointed out that "it is essential that we align [margin requirements for uncleared swaps] globally, particularly between the major market jurisdictions."[7] With this in mind, the proposals in the BCBS/IOSCO consultative document need to be considered carefully, particularly where they echo comments already submitted by U.S. market participants during the previous comment period and, thereby, represent a broad international consensus. The key points below are cross-referenced to the BCBS/IOSCO document, and further supporting arguments can be found in our previously submitted letter:[8]

1. The Proposed Rules must be strengthened to require bilateral posting of collateral, including cases where one or more counterparties are non-financial entities, and cases where both counterparties are CSEs.

The BCBS/IOSCO consultative document makes it abundantly clear that there is a "broad consensus" that margin should be required for **all** uncleared swaps involving financial firms or significant non-financial entities:[9]

> All covered entities (i.e. financial firms and systemically-important non-financial entities) that engage in non-centrally-cleared derivatives must exchange initial and variation margin as appropriate to the risks posed by such transactions.[10]

7 Statement of Support, http://www.cftc.gov/PressRoom/SpeechesTestimony/genslerstatement070612.
8 Better Markets, *Op. Cit.* (*see* note 6, *supra*).
9 BCBS/IOSCO, p. 14. There are a few qualifiers for inter-affiliate swaps, which are addressed later.
10 *Id.*

This includes foreign exchange forwards and swaps, which are currently under consideration for exemption by the U.S. Secretary of the Treasury.[11] Under the Proposed Rules, only SDs and MSPs would be required to collect margin. The Rules would not require their non-SD/MSP counterparties to collect margin. The reasoning appears to be that SDs and MSPs are less likely to face liquidity crunches and therefore be unable to satisfy their obligations arising from uncollateralized derivatives exposures.

This rationale is deeply flawed. While it is sometimes true that in placid market conditions, SDs and MSPs may tend to have broader access to funding due to their size, this is not likely to be the case in extremely stressed markets. Moreover, from a systemic risk perspective, the last financial crisis was not triggered by the defaults of many small market participants; instead, it was the insolvency of large SDs and MSPs, with excessive and uncollateralized derivatives positions that plunged the system into turmoil. Removing the obligation on CSEs to post margin when facing non-CSE counterparties is simply encouraging the same sort of wild and unmitigated risk-taking that caused, contributed to, or spread the last crisis.

Moreover, collateral acts as a check on excessive risk taking for reasons beyond the immediately obvious. When a trade must be backed with capital, it adds an extra hurdle to its execution, and importantly, an additional check towards prudent business practices in risk management. In fact, far from being an "inefficiency" or a "cost," this built-in delay greatly protects institutions against traders potentially engaging in excessive and rash risk taking.[12]

2. In cases where posting non-cash collateral is permitted, the Proposed Rules must be tightened to require that the non-cash collateral posted is well-suited to the liquidity demands of the swap.

In a stressed market situation, liquidity mismatches are often fatal. As was widely documented during the financial crisis, long-term assets funded by short-term liabilities led to huge losses and fire sales.[13] An analogous problem can easily arise in OTC derivatives. Sharp price moves that trigger default by one party can leave the counterparty facing severe replacement risk, especially when prices are moving sufficiently quickly that daily marks are soon outdated.

---

11 For our comments on this question, *see* Better Markets' Letters "Determination of Foreign Exchange Swaps and Futures," November 29, 2010, *available at* http://bettermarkets.com/sites/default/files/TREAS-Comment%20Letter-%20ForEx%20Swaps-11%EF%80%A229%EF%80%A210.pdf; "New Information on the Proposed Exemption of Foreign Exchange Swaps and Futures: Fed Data Show Collapse of Foreign Exchange Markets During Financial Crisis," February 25, 2011, *available at* http://bettermarkets.com/sites/default/files/Treas-%20Comment%20Letter%20(followup)-%20Forex%20Swaps%202-25-11.pdf; "Meeting Follow-Up on the Exemption for Foreign Exchange Swaps and Futures," March 23, 2011, *available at* http://bettermarkets.com/sites/default/files/Treas-%20CL-%20meeting%20followup-%20FX%20exemption%203-23-11.pdf; and "Determination of Foreign Exchange Swaps and Forwards," June 6, 2011, *available at* http://www.regulations.gov/#!documentDetail;D=TREAS-DO-2011-0004-0019.

12 *See* Better Markets, *Op. Cit.*, p. 5-6 ("However, it ignores others, including the fact that margining constitutes a check on risk-taking by CSEs.")

13 *See, e.g.*, http://www.federalreserve.gov/newsevents/testimony/eichner20120802a.htm.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

In such a scenario, not only is there a gap created by the delay between the most recent mark and the default; if the collateral received as insurance against default is not sufficiently liquid **in the stressed market conditions precipitating the default,** it will be useless. This, in turn, may trigger the additional default of the counterparty holding inadequate collateral, and thus may easily set off a chain reaction.[14] Consequently, acceptable forms of non-cash collateral must be severely restricted to only highly liquid assets, and the rules should be strengthened to stipulate that these assets should be legitimately stress-tested to ensure they would continue to remain liquid in scenarios likely to trigger default.

With this in mind, the CFTC should not consider widening its list of eligible non-cash collateral by, for example, including equities from a major index or gold, as is suggested in the BCBS/IOSCO consultation document.[15] This is important on many levels, as a severe liquidation of a company's public securities by a swap counterparty (selling to gain access to needed cash for collateral demands from other parties) then can cause outright panic selling by those holders of debt and equity in that public company, who generally will have no idea why their company's public securities are suddenly crashing. Unfortunately, with many high-frequency trading firms, hedge funds, and trading desks running trading algorithms which link securities together into baskets, a wholesale equity panic could be precipitated in that scenario. Such is the interconnectedness of today's linked and fragile financial system. It is critical to avoid additional risks such as these by requiring only the highest quality of collateral as acceptable for margining.

3. Rehypothecation of collateral must be prohibited for both variation and initial margin.

The BCBS/IOSCO consultation document notes that "The legal capacity in which initial margin is held or exchanged can have a significant influence on how effective that margin is in protecting a firm from loss in the event of the default of a derivatives counterparty."[16] Indeed, this is an understatement. **The manner in which initial (and variation) margin is segregated and invested can be the determining factor behind whether a firm is able to survive in stressed market conditions.**

Initial margin is a statistical estimate of the potential consequences of a default, based on a defined methodology. Derivatives counterparty risk is defined by these potential consequences. Variation margin is best viewed as a daily recalibration of the risk estimation device which calculates initial margin: as losses accrue, the impact of a potential default increases commensurably, so variation margin is accrued and collected to offset this increased potential impact. The initial margin and variation margin thus work together to provide an (relatively) up-to-date safety barrier to guard against default. They must therefore be treated together with respect to segregation and rehypothecation rules.

---

[14] *See, e.g.,* Bank for International Settlements, "The Basel Committee's Response to the Financial Crisis: Report to the G-20," *available at* http://www.bis.org/publ/bcbs179.pdf.

[15] BCBS/IOSCO, p. 22.

[16] BCBS/IOSCO, p. 24.

LCH Clearnet has clearly articulated this joint role of initial and variation margin in risk-mitigation:

> To ensure that LCH.Clearnet Ltd only faces market risk in the event of the default of one of its clearing members, it needs to ensure that market risk ahead of that default event is fully covered (i.e. to keep LCH.Clearnet's risk current). Variation margin, which is a daily collect/pay in cash or collateral, covers this risk by accounting for the change in price since the previous day. Variation margin cannot take account of price moves after a default event since the defaulting member is, by definition, not in a position to pay variation margin. Instead initial margin – previously deposited by the defaulting member – covers that risk.[17]

In a stressed situation, losses accrue on multiple fronts in short time periods. The capacity of the system to survive such an event depends on the absolute level of collateral present in the system relative to the magnitude of the losses, as well as the speed with which this collateral can move to where it is required. **The fact that derivatives are ultimately a zero sum game does not change the fact that significant price moves in a short time period can cause the entire system to collapse.** A dealer or large swap trader who is ultimately "flat" may still find himself unable to pay out on his obligations if he has collected insufficient collateral on his positions (even if they are net positive) if the counterparties on those positions default. In this way, defaults become contagious.

Allowing re-hypothecation of margin (whether initial or variation) is therefore a suicidal move from the perspective of the system as a whole. Naturally, each individual dealer and trader prefers the ability to re-hypothecate collateral, as this constitutes a supremely cheap form of financing for their own derivatives trades. **However, the cost is borne by the system, which ultimately means the American taxpayer.**

In fact, the situation is even worse than this. For the short-term benefit of securing cheap financing for derivatives bets, the entities re-hypothecating collateral stick the American taxpayer with a greatly increased risk of financial crisis. The effects of this can be devastating, and, undoubtedly, many, many times greater than the original small benefit to the re-hypothecating entities.

Re-hypothecation must not be allowed for either initial or variation margin. To do so would contradict the clear directions of Congress as set down in the Dodd-Frank Act by undermining the risk management methodology legally required of uncleared swaps. The short-term "cost" of slightly cheaper financing for financial firms' derivatives bets is a small price to pay to avoid another devastating financial crisis.

---

[17] LCH Clearnet, "Variation Margin," *available at* http://www.lchclearnet.com/images/lch%20clearnet%20ltd%20-%20variation%20margin_tcm6-44528.pdf.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

Moreover, characterizing the loss of artificially cheap funding for large swaps dealers and traders as a "cost" is as disingenuous as it is dangerous. The financial industry was never entitled to this subsidized funding in the first place: the practice of re-hypothecating collateral represents a unilateral contract between the financial industry and the American taxpayer, in which the taxpayer is systematically put at great risk with no reward, not to mention no input into the matter.

The CFTC exists to protect the public interest, and the Dodd-Frank Act specifically reinforces this point with respect to uncleared swaps. The CFTC must therefore ban re-hypothecation of any and all margin posted against uncleared swaps exposures.

The BCBS/IOSCO consultative document lends further support for this view:

> Given the potential for the net treatment of provided margin to undermine the general benefits of the proposed margin requirements, there was broad consensus among the BCBS and IOSCO that the proposed requirements should address these risks by requiring the gross exchange and the segregation or other effective protection of provided initial margin, so as to preserve its capacity to fully offset the risk of loss in the event of the default of a derivatives counterparty...
>
> **...Proposed requirement**
> Initial margin should be exchanged on a gross basis and held in a manner consistent with the key principle above. Cash and non-cash collateral collected as initial margin should not be re-hypothecated or re-used.[18]

As argued above, initial margin cannot be viewed independently from variation margin: the two work together as a holistic risk mitigation tool. Therefore, the reasoning presented in the BCBS/IOSCO document applies to all kinds of margin.

Extraterritorial application and inter-affiliate swaps

The CFTC has come under some pressure to address issues of extraterritorial application and inter-affiliate swaps within the context of this rulemaking. However, it is not appropriate to do so.

The Proposed Interpretive Guidance on Cross-Border Application of Certain Swaps Regulations and the Proposed Rule on Inter-Affiliate Swaps are the appropriate places to deal with these topics. Embedding elements of them into the Proposed Rules would merely create unnecessary duplication and complication, making any future revisions needlessly convoluted, at best.

For specific discussion of extraterritorial application of the Proposed Rules, we refer you to our comment letter on the Cross-Border Guidance.[19] Better Markets will also submit

---

18 *Op. Cit.* p. 25

19 *See* Better Markets Comment Letter "Proposed Interpretive Guidance and Policy Statement: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act," August 27, 2012, *available at*

a separate comment letter on Inter-Affiliate Swaps. We would, however, point out that the BCBS/IOSCO consultation document does recommend that all inter-affiliate transactions be subject to variation margin, which is a common sense position that should be upheld in the face of objections to the contrary.[20]

Analysis of Costs and Benefits

The Release makes clear that the Commission has satisfied its duty under Section 15(a) of the CEA to consider the costs and benefits of the Proposed Rules. In fact, the Commission has exceeded its statutory obligation by weighing the costs and benefits associated with the Proposed Rules and concluding that "the benefits to the overall financial system, and to individual participants in the swaps markets, outweigh the costs to those participants."[21] Although the Commission need not engage in such netting or weighing of costs and benefits under Section 15(a), its conclusion is certainly correct as to the Proposed Rules.

Nevertheless, notwithstanding the Commission's clear fulfillment of its duty under Section 15(a), representatives from industry still challenge proposed rules claiming that the Commission fails to conduct an adequate "cost-benefit analysis." Such claims have already been made twice in the last year: industry lobby organizations have filed lawsuits in federal district court seeking to invalidate two Commission rules claiming insufficient cost-benefit analysis, one establishing position limits and the other requiring investment companies to register as commodity pool operators if they trade commodity interests.[22]

These attacks rest on a series of fundamentally flawed claims that:

(1) exaggerate the actual duty imposed on the agency by the governing statute, Section 15(a) of the CEA;

(2) disregard the paramount role of the public interest in the rulemaking process as required by the governing statute; and

(3) ignore the enormous costs of the financial crisis and the benefit of the rules designed to help prevent a recurrence of that crisis or something far worse.[23]

These three critically important principles governing the application of Section 15(a) of the CEA and the implementation of the Dodd-Frank Act are discussed below, which makes clear that the Commission has fully satisfied its obligations under Section 15(a).

1. The limited duty under Section 15(a) is simply to consider costs and benefits, not conduct a cost-benefit analysis.

Most importantly, Section 15(a) of the CEA imposes a limited obligation on the CFTC simply to "consider" the costs and benefits of its rules in light of five specified public

---

http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58706&SearchText=better%20markets

20 BCBS/IOSCO, p. 26-7.

21 NOPR, 76 FR, p. 23,743.

22 *See* note 24 *infra,* discussing the *amicus* briefs submitted by Better Markets in those rule challenges.

23 *See* BETTER MARKETS, THE COST OF THE WALL STREET-CAUSED FINANCIAL COLLAPSE AND ONGOING ECONOMIC CRISIS IS MORE THAN $12.8 TRILLION (Sept. 15, 2012), *available at* http://bettermarkets.com/sites/default/files/Cost%20Of%20The%20Crisis_0.pdf.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

interest factors.[24] Congress's careful choice of words in Section 15(a), and the case law construing similar provisions, make clear that the CFTC has broad discretion in discharging this duty. In fact, the Supreme Court has long recognized that when statutorily mandated considerations are not "mechanical or self-defining standards," they "imply wide areas of judgment and therefore of discretion" as an agency fulfills its statutory duty.[25]

In fact, the CFTC has no obligation to quantify costs or benefits, weigh them against each other, or find that a rule will confer a net benefit before promulgating it. The rationale for this flexible obligation in the law is clear: requiring the CFTC to conduct a resource intensive, time consuming, and inevitably imprecise cost-benefit analysis as a precondition to rulemaking would significantly impair the agency's ability to implement Congress's regulatory objectives.

2. The Commission must be guided by the public interest as it considers the economic impact of its rules, not by concerns over the costs of regulation imposed on industry.

The five factors that the CFTC must consider under Section 15(a) reflect Congress's primary concern with the need to fashion regulations that serve the public interest and accomplish the agency's mission, not with a need to spare industry the costs of regulation. Without exception, each factor relates to a public benefit that arises from a robustly regulated marketplace, including preventing abuse, promoting competition, enhancing transparency, and limiting systemic risk.[26]

Tellingly, none of the listed factors mentions any industry-focused concerns, such as compliance costs or the feasibility of conforming to rule requirements. Removing any doubt, the fifth and final factor in Section 15(a) requires the CFTC to consider generally "any **other public interest** considerations."[27]

---

[24] Better Markets has set forth a comprehensive analysis regarding the scope of Section 15(a) in the *amicus curiae* brief it filed in support of the Commission in *ISDA v. CFTC,* Civil Action No. 11-cv-2146 (RLW) ("*Amicus* Brief") (*available at* http://bettermarkets.com/sites/default/files/Corrected%20Brief%20of%20Better%20Markets%20as%20Amicus%20Curiae%20in%20Support%20of%20Defendant%20CFTC%20Apr.%2030,%202012.pdf). In that case, representatives of industry are challenging, *inter alia*, the Commission's consideration of costs and benefits in connection with the position limits rule. (*See also* http://bettermarkets.com/sites/default/files/ICI%20v.%20CFTC%20-%20Amicus%20Brief%20of%20Better%20Markets%20June%2025,%202012.pdf). In addition, Better Markets has written to the Office of Management and Budget ("OMB") opposing Commissioner Scott O'Malia's request that OMB review the cost-benefit analysis performed by the Commission in connection with several recently finalized rules. Letter from Better Markets to Jeffrey Zients, Acting Director of OMB (Feb. 29, 2012) ("Letter to OMB") (*available at* http://bettermarkets.com/sites/default/files/O'Malia%20CBA%20letter%20to%20OMB.pdf). In the Letter to OMB, Better Markets makes clear that various executive orders and OMB guidelines requiring cost-benefit analysis are inapplicable to the Commission's rulemaking. Both *Amicus* Briefs and the Letter to OMB are incorporated by reference as if fully set forth herein.

[25] *Sec'y of Agric. v. Cent. Roig Ref. Co.,* 338 U.S. 604, 611 (1950).

[26] 7 U.S.C. § 19(a)(2).

[27] 7 U.S.C. § 19(a)(2)(E) (emphasis added).

3. For any rule promulgated in accordance with the Dodd-Frank Act, the ultimate "public interest consideration" is implementing the reforms that Congress enacted to prevent another financial crisis.

As the CFTC considers the costs and benefits of rules implementing the Dodd-Frank Act, it must give proper weight to Congress's overriding objective: to institute a comprehensive set of reforms, including a regime for regulating swaps, to prevent another financial collapse and economic crisis, including trillions of dollars in financial losses and incalculable human suffering. By Better Markets' calculation, the dollar cost alone of the financial collapse and still-unfolding economic crisis comes to at least $12.8 trillion.[28] Therefore, as the CFTC assesses the costs and benefits of the Proposed Rules under Section 15(a), it must continue to consider, above all, the benefits of the entire collection of reforms embodied in Title VII and the Dodd-Frank Act, of which a proposed rule is but one, integral part.

Congress's resolve to prevent another financial crisis clearly overrides cost concerns under the Dodd-Frank Act. Congress passed the Dodd-Frank Act knowing full well that it would impose significant costs on industry, yet it determined those costs were not only justified but necessary to stabilize our financial system and avoid another financial crisis. Those costs include the elimination of extremely profitable lines of business as well as significant and ongoing compliance costs. A leading example is the establishment of the new, comprehensive regulatory regime for swaps. It will require the financial industry to incur significant costs arising from new personnel and technology, ongoing compliance, margin and collateral, and reduced revenues and profits.

Congress fully understood these costs and consequences. It knew that regulatory reform would impose costs, in some cases totaling billions of dollars. The Dodd-Frank Act reflects Congress's unflinching determination to increase the financial industry's costs across the board and very substantially—or, more accurately, to shift those costs back to industry from a society that has paid the bill for industry's unregulated excesses. In short, Congress conducted its own cost-benefit analysis and concluded that the enormous collective benefits of the law far exceeded the costs and lost profits that industry would have to absorb.

Indeed, against the backdrop of the worst financial and economic crisis since the Great Depression, it is inconceivable that Congress would enact sweeping reforms and then allow the implementation of those reforms to hinge on the outcome of a rule-by-rule cost-benefit analysis that ignored the overriding purpose of the new regulatory framework—and that gave controlling weight to cost concerns from the very industry that precipitated the crisis and inflicted trillions of dollars in financial damage and human suffering across the country.

In short, the following analytical framework for the consideration of all relevant costs and benefits must guide the application of Section 15(a) to the Proposed Rules.

- Congress's ultimate objective in the Dodd-Frank Act was to prevent another crisis and the massive costs it would inflict;

[28] *See* Report, cited *supra* at note 23.

- Prudent margining of uncleared swaps is an integral component of the reforms that Congress decided were necessary to achieve this objective; and

- The costs of compliance and reduced profit margins that industry may have to absorb by virtue of these margin requirements pale in comparison with the benefits of preventing another crisis—a benefit that can be valued at over $12.8 trillion.

CONCLUSION

Prudent margining of derivatives could well have severely mitigated the force, breadth, and duration of the financial crisis of 2008. The Proposed Rules are critical to avoiding a recurrence of those events.

We hope these comments are helpful in your consideration of the Proposed Rules.

Sincerely,

Dennis M. Kelleher
President & CEO

David Frenk
Research Director

Better Markets, Inc.
1825 K Street, NW
Suite 1080
Washington, DC 20006
(202) 618-6464

dkelleher@bettermarkets.com
dfrenk@bettermarkets.com

www.bettermarkets.com