CREDIT SUISSE

November 24, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Constitution Center (OGC Eighth Floor)
400 7th Street, SW
Washington, DC 20024

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Dodd-Frank Margin Proposals

Ladies and Gentlemen:

Credit Suisse appreciates the opportunity to provide comments to the Prudential Regulators[1] and the Commodity Futures Trading Commission (the "CFTC" and , together with the Prudential Regulators, the "Agencies") on their proposals (the "Proposed Rules")[2] regarding margin requirements for uncleared swaps[3] entered into by swap

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[1] In this letter, "Prudential Regulators" refers to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the Farm Credit Administration.

[2] This comment letter is submitted with respect to the following proposals: (i) Margin and Capital Requirements for Covered Swap Entities, Docket ID OCC-2011-0008/RIN 1557-AD43, Docket No. R-1415/RIN 7100 AD74, RIN 3064-AE21, RIN 2590-AA45, RIN 3052-AC69, 79 Fed. Reg. 57348 (Sept. 24, 2014) (the "PR Proposed Rules"); and (ii) Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN 3038-AC97, 79 Fed. Reg. 59898 (Oct. 3, 2014) (the "CFTC Proposed Rules").

[3] When used in this letter in the context of the PR Proposed Rules, "swaps" refers to swaps and security-based swaps.

dealers ("SDs") and major swap participants ("MSPs" and, together with SDs, "Swap Entities") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The Proposed Rules are intended to align US margin requirements on uncleared swaps with the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions' ("IOSCO") 2013 final policy framework on margin requirements for uncleared swaps ("BCBS/IOSCO Framework").[4]

Credit Suisse supports efforts by the Agencies to adopt margin requirements that increase the safety and soundness of the global over-the-counter swaps markets. Further, we welcome the Agencies' latest proposal, which makes important inroads towards promoting harmonized international standards for margin requirements.

Nonetheless, despite important progress in the promotion of harmonized international margin standards, we remain concerned that there are a number of outstanding issues in proposed approaches to regulating margin requirements for the uncleared swap markets. Many such concerns were raised in recent comment letters on the Proposed Rules filed by the Institute of International Bankers[5] ("IIB"), The Securities Industry and Financial Markets Association[6] ("SIFMA") and The International Swaps and Derivatives Association[7] ("ISDA" and, collectively together with IIB and SIFMA, the "Associations").

Credit Suisse endorses the comments submitted by the Associations. For this letter, we have focused on reinforcing some of the most urgent issues raised in the Associations' letters, which are (i) verification that the novation of legacy swaps, including but not limited to novations in connection with intra-group restructurings and reorganizations, are exempt from the margin requirements[8], (ii) the need to exempt inter-affiliate swaps

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[4] See BCBS and IOSCO "Margin requirements for non-centrally cleared derivatives" (September 2013).

[5] See IIB Letter re "Dodd-Frank Margin Proposals", addressed to the CFTC and the Prudential Regulators, dated November 24, 2014 ("IIB Letter").

[6] See SIFMA Letter re "Margin and Margin and Capital Requirements for Covered Swap Entities, Docket ID OCC-2011-0008/RIN 1557-AD43, Docket No. R-1415/RIN 7100 AD74, RIN 3064-AE21, RIN 2590-AA45, RIN 3052-AC69" and re "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN 3038-AC97", addressed to the CFTC and the Prudential Regulators, dated November 24, 2014 ("SIFMA Letter")

[7] See ISDA Letter re "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants", addressed to the CFTC, dated November 24, 2014 ("ISDA CFTC Letter") and ISDA Letter re "Margin and Capital Requirements for Covered Swap Entities" addressed to the Prudential Regulators, dated November 24, 2014 ("ISDA PR Letter" and together with the ISDA CFTC Letter, the "ISDA Letters").

[8] See SIFMA Letter, paragraph IX.B ("Legacy Swaps"). See ISDA CFTC Letter, paragraph I.A.4, and ISDA PR Letter, paragraph A.4. under "Critical Issues" ("A new master agreement should not be required

from initial margin ("IM") requirements[9], (iii) the need to ensure that the method to calculate IM conforms with BCBS and industry recommendations, (iv) the need to permit sensible and safe re-hypothecation of IM[10], and (iv) the need for effective and practical substituted compliance[11]. Left unaddressed, these issues unnecessarily constrain legitimate risk management activity necessary to serve the clients of covered swap entities, impose significant and unnecessary operational burdens on covered swap entities, and raise costs on legitimate activities of counterparties to covered swap entities without any corollary benefit. Moreover, they would increase, rather than decrease, systemic risk and impose an unnecessary drain on liquidity.

Below we highlight our concerns in greater detail.

Novation of Legacy Swaps:

> *The novation of swaps, including for but not limited to, the purpose of intra-group restructuring, should fall under the same exemption as "legacy swaps" and should not trigger the application of margin requirements.*

Under current proposals, margin requirements will apply to non-cleared swaps entered into on or after the applicable compliance date, and not to swaps entered into prior to the applicable compliance date ("legacy swaps")[12], subject to the condition that such legacy swaps not be under the same eligible master netting agreement as swaps entered into on or after the applicable compliance date[13].

We ask the Agencies to affirm that novations of legacy swaps will not alter their grandfathered treatment and their continued exemption from the margin requirements. We support the view expressed in the ISDA and SIFMA Letters that novations of a

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to prevent pre-compliance date swaps from being subject to the margin rules"). See IIB Letter, in Appendix under "Treatment of Legacy Swaps".

[9] See SIFMA Letter, paragraph I.B ("Inter-Affiliate Swaps"). See ISDA CFTC Letter, paragraph I.B.1., and ISDA PR Letter, paragraph B.1. under "Critical Issues" ("Inter-affiliate swaps should be exempt from the IM requirements"). See IIB Letter, paragraph II ("Inter-Affiliate Swaps").

[10] See SIFMA Letter, paragraph VI ("Segregation Requirements"). See ISDA CFTC Letter, paragraph I.4., and ISDA PR Letter, paragraph H.4 under "Additional Issues" ("Appropriate rehypothecation should be permitted").

[11] See SIFMA Letter, paragraph VII.A. ("Substituted Compliance"). See ISDA CFTC Letter, paragraph I.J., and ISDA PR Letter, paragraph I under "Additional Issues" ("Cross-Border"). See IIB Letter, paragraph I.A.2. ("Availability of Substituted Compliance") and section I.D ("Comparability Determination").

[12] See PR Proposed Rule § __.1(d) and CFTC Proposed Rule § 23.150.

[13] See PR Proposed Rule §§ __.4(d) and __.8(b)(2). See CFTC Proposed Rule §§ 23.153(c) and 23.154(b)(2).

legacy swap should be excluded from the margin requirements, as such novation is a continuation of the legacy swap on the same terms.[14] In addition, we wish to advise the Agencies of the significant adverse effect on banking institutions should the Agencies adopt the contrary view that novations of legacy swaps are subject to the margin requirements.

Banking institutions are, and will continue to be, subject to mounting regulatory requirements. These include swap dealer regulations and Basel III regulatory capital and leverage ratio requirements. One of the key tools that banking institutions use to meet these regulatory requirements is the novation of swaps, which allows them to exit swap exposures and to shift swap exposures between affiliates.

For a novation to be legally effective and binding, the remaining party must consent, and it is entitled to deny its consent in its discretion. If such novation is subject to a new margin requirement, the remaining party is more likely to withhold its consent to avoid the cost of such new margin requirements, thereby preventing completion of the novation. Therefore, the imposition of margin requirements, particularly initial margin requirements, on novations of legacy swaps could severely impair banking institutions' ability to novate legacy swaps and thereby impair their efforts to meet their regulatory capital and leverage ratio obligations. As such, this arguably frustrates the goal of the Basel mandates.

Also, we would like to focus the attention of the Agencies on legacy swaps that are novated between a covered swap entity ("CSE") and its affiliates as part of intra-group restructuring or reorganization (such novations, "Intra-Group Novations"). Such Intra-Group Novations may be driven by the need to improve risk management by placing the swap in the jurisdiction where the hedge is traded and local market expertise exists and to optimize and rationalize the organization of the assets and liabilities within the consolidated corporate group in response to regulatory demands of both US and non-US regulators.

We ask the Agencies to unambiguously exempt Intra-Group Novations from the margin requirements. In addition to the stated reasons for exempting novations of legacy swaps generally, exposure to the asset following the Intra-Group Novation remains within the consolidated corporate group because the transferor and transferee are consolidated affiliates. The motivation for an Intra-Group Novation is not to liquidate an existing asset or to acquire a new asset and accordingly does not result in a net change in the assets and liabilities of the consolidated corporate group. Instead, the motivation for such Intra-Group Novations is for the consolidated corporate group to achieve the abovementioned risk management, regulatory compliance or optimization objectives.

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[14] See ISDA CFTC Letter, paragraph I.L.2., and ISDA PR Letter, paragraph K.2. under "Additional Issues" ("Exclude amended trades, novations and new trades resulting from portfolio compressions from scope of the margin rules"). See SIFMA Letter, paragraph IX.B.2 ("Legacy Swap Novations").

Exempting both novations of legacy swaps generally and Intra-Group Novations more particularly from the margin requirement would facilitate the ability of CSEs to effectively comply with new regulations as they become effective. Conversely, the absence of an exemption would greatly hinder such compliance efforts, as such novations will become very difficult to execute, while contributing little to mitigate systemic risk.

We also ask the Agencies to not limit the application of this exemption on an unnecessarily narrow basis, such as permitting the exemption to apply only when required by Section 716 of the Dodd-Frank Act (the "Push-Out Rule"). We note that beyond "Push Out", many new global regulations applicable to foreign CSEs, such as those being enforced (in the case of Credit Suisse, for example) by The Prudential Regulation Authority ("PRA"), The Swiss Financial Market Supervisory Authority ("FINMA") and Basel III Committees, will require such novations of legacy swaps in order to implement and rationalize regulatory compliance.

In addition, we further ask the Agencies to remove the requirement that legacy swaps be under a separate eligible master netting agreement as a condition for the exemption for legacy swaps from the margin requirement. Such a requirement is inconsistent with the BCBS / IOSCO Framework.[15] It would also give counterparties to CSEs the incentive to require CSEs to split up netting sets in order to save on margin costs on legacy swaps, resulting in CSEs being subject to more counterparty credit exposure and risk than would have been the case under a single netting set. Accordingly, we ask the Agencies to permit CSEs to margin legacy swaps (including novated legacy swaps) separately from the margining of post-compliance date swaps under a single eligible master netting agreement.

Inter-Affiliate Swaps:

> *Inter-affiliate ("IA") swaps should be exempt from initial margin ("IM") requirements. Imposing IM requirements on IA transactions would needlessly hold captive significant amounts of liquidity and limit the availability of the beneficial risk management functions of IA transactions.*

Consolidated financial groups like Credit Suisse select certain entities within the group to face external counterparties on swaps, and build the infrastructure in those entities to support that activity. However, other entities within the consolidated group will need hedges from time to time but are unable to face external counterparties, and therefore rely on IA swaps with the affiliate that is "street facing" to access the market. Such internal

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[15] See SIFMA Letter, paragraph IX.B.1 ("Separate Netting Agreement Requirement"). See ISDA CFTC Letter, paragraph I.A.4, and CFTC PR Letter, paragraph A.4 under "Critical Issues" ("A new master agreement should not be required to prevent pre-compliance date swaps from being subject to the margin rules").

risk transfer trades are intended to allow the affiliates within the group to match assets and liabilities with appropriate hedges, subject to centralized risk management. These additional swaps between affiliates do not add to the net risk of the group.

IA swaps are an effective tool for managing risk across the entities in a consolidated group on a centralized basis and do not raise the same systemic issues that are raised by swap transactions with non-affiliates. In fact, applying initial margin requirements to IA swaps would increase, not decrease, risk to the consolidated group, by increasing exposure to third-party custodians, putting strains on the extent of liquid assets available to pledge as initial margin, tie up liquidity unnecessarily due to restrictions on re-hypothecation, and inhibiting effective group-wide risk management.

Further, applying initial margin requirements to IA swaps is not necessary to promote central clearing because regulators have already determined that they should not require the clearing of such IA swaps.

We ask the Agencies exempt uncleared IA swaps from the IM requirement. We reiterate the arguments raised in the comment letters of the Associations, namely:

- Discourages Centralized Risk Management: Such a requirement does not achieve, and runs counter to, the objectives of Dodd-Frank by discouraging centralized risk management.

- Third Party Risk and Consumption of Liquidity: Such a requirement would also include the requirement to segregate IM with a third party custodian, introducing significant third party credit risk for CSEs to custodians on IA swaps which historically have had no third party risk. Also, IM requirements on IA swaps would be subject to restrictions on re-hypothecation, tying up significant amounts of liquidity with no corresponding benefit to systemic risk reduction.

- Sufficiency of Variation Margin: Variation margin ("VM") requirements sufficiently address the goals of margin regulation of uncleared IA swaps. By comparison, the CFTC deemed it adequate to only require posting of variation margin (and not IM) as the condition for exempting IA swaps from the mandatory clearing requirement prior to an equivalence determination for the applicable foreign clearing regulations. The same logic should be applied to the margin regulations.

Initial Margin Calculations:

Final rules on IM calculations should reflect latest developments at and recommendations from BCBS; accordingly, a delay in the compliance date may be warranted.

Best practices for IM calculation continue to develop under the aegis of BCBS. This work may continue through and beyond the currently scheduled compliance dates set out in the Proposed Rules. Therefore, we request that, at a minimum, the Agencies update the Proposed Rules to reflect the latest BCBS and industry recommendations in the final rules and, preferably, the Agencies delay the compliance dates of the margin rules until a consensus is reached as to the optimal manner to implement both the IM model and the table-based method for IM calculation.

With respect to IM models, we support the standardization of IM models consistent with the principles of speed, transparency, simplicity and predictability as the keystone of a successful and workable margin regime for uncleared swaps.[16] Accordingly, we ask that the Agencies ensure that the compliance date of the margin rules not occur until a universal margin model, designed in accordance with these principles, has been developed and is approved by global regulators and made available to, integrated into and fully tested by market participants.

With respect to the table-based method for IM calculation, the Proposed Rules' use of the net-to-gross ratio ("NGR") calculation in the table-based method for calculating IM for non-cleared swaps[17] is based on the Current Exposure Method ("CEM"). CEM is from an outdated BCBS recommendation. BCBS recently announced that CEM will be replaced the Standardized Approach for counterparty credit risk ("SA-CCR")[18], due in part to deficiencies in the application of NGR in the CEM approach. The NGR calculation is not an adequate method for setting IM amounts because the ratio creates an IM requirement even where a portfolio of swaps is fully hedged and offset internally and therefore has flat exposure. In contrast, SA-CCR more accurately recognizes hedging and netting benefits. The BCBS/IOSCO Framework was developed prior to SA-CCR, and so the framework incorporates the NGR calculation in its non-model approach to calculation of IM. As a result, we ask that the Agencies remove the use of the NGR calculation from the Proposed Rules in favor of the current SA-CCR methodology proposed by BCBS.

We ask that the Agencies defer final publication of its margin rules regarding IM calculations until workable recommendations for IM calculations are fully developed by BCBS and the industry, for both the IM model and the look-up table calculations. Alternatively, we ask that the Agencies retain sufficient flexibility in the margin rules to accommodate innovations in IM modeling and calculation. Requiring IM on uncleared

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[16] See SIFMA Letter, paragraph I.A.1.

[17] See PR Proposed Rules, Appendix A to Part [ ] – Standardized Minimum Initial Margin Requirements for Non-Cleared Swaps and Non-Cleared Security-Based Swaps, Table A. See CFTC Proposed Rules, § 23.153(c)(2).

[18] See BCBS, "The standardized approach for measuring counterparty credit risk exposures" (March 2014, revised April 2014).

swaps before IM models and calculation methodologies are adequately developed could have a materially adverse effect on the marketplace and the liquidity of uncleared swaps.

Initial Margin Re-hypothecation:

> *Re-hypothecation of IM should be conditionally permitted, subject to availability of adequate safeguards.*

The Proposed Rules prohibit re-hypothecation of IM.[19] We endorse the positions in the ISDA Letter[20] and the SIFMA Letter[21] that espouse the need for the Proposed Rules to permit re-hypothecation of IM. We further add that the Agencies should not unnecessarily ban re-hypothecation, or even arbitrarily limit the number of times re-hypothecation may be allowed, to the exclusion of alternative arrangements that would adequately safe-guard the interest of the title-holder of the asset being re-hypothecated, such as arrangements that preserve the character of such margin as property of the original owner of the asset. Accordingly, we ask the Agencies to revise the Proposed Rules to make the ban on re-hypothecation of IM collateral applicable only in the absence of such arrangements, so as to not arbitrarily restrict liquidity when the risk of re-hypothecation can be fully addressed. Such a revision would encourage the development of innovations in the marketplace that would adequately protect the title-holder of the pledged asset and thereby allow for safe re-hypothecation.

Substituted Compliance:

> *On the matter of Substituted Compliance, Credit Suisse fully endorses, and would like to reiterate the importance of, the positions taken in the comment letter filed by the IIB.*

Substituted compliance is a priority issue for Credit Suisse, including the manner by which substituted compliance is implemented. Specifically, we highlight the need for timely announcements of comparability determinations far in advance of the applicable compliance dates, so as to give foreign CSEs reasonable time to implement the applicable margin regulation. Implementation of the margin rules requires significant planning and investment to build the functional and compliance infrastructure to meet the requirements of the rule. A project of such magnitude requires clarity as to the applicable rule set, and

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[19] See PR Proposed Rules, § __.7(c)(1). See CFTC Proposed Rules, section 23.157(c)(1).

[20] See ISDA CFTC Letter, paragraph I.I.4., and ISDA PR Letter, paragraph H.4. under "Additional Issues" ("Appropriate rehypothecation should be permitted").

[21] See SIFMA Letter, paragraph VI ("Segregation Requirements").

sufficient time to effectively implement those rules. It is important for resolution to be found sufficiently in advance of compliance dates, so that we and other similarly situated non-US CSEs have the opportunity to make rational business decisions regarding compliance and implementation. This would allow CSEs to avoid unnecessary costs and burdens associated with implementing compliance with multiple sets of regulations prior to a substituted compliance determination that is made on, immediately prior to, or even after, the applicable compliance date.

Accordingly, we support ISDA and SIFMA's proposal to delay the compliance date for IM requirements[22], and to phase in the VM requirements over time[23], provided that additional time be given for the completion of comparability determinations for purposes of substituted compliance, if such comparability determinations occur later. Therefore, we ask the Agencies to revise the compliance date such that:

- the compliance date for the IM requirement be no earlier than the later of (i) two years after the finalization of the rules in the EU, US and Japan and (ii) the completion of comparability determinations among the EU, US and Japan for the purpose of substituted compliance determinations; and

- the phase-in period for the VM requirement occur over the two year period following the later of (i) the finalization of the rules in the EU, US and Japan and (ii) the completion of comparability determinations among the EU, US and Japan for the purpose of substituted compliance determinations.

Lastly, we reiterate the importance of the following matters, raised the aforementioned IIB comment letter, pertaining to substituted compliance:

- Availability of Substituted Compliance for Onshore Transactions: CSEs should not be subject to overlapping margin requirements of multiple regulators when doing business globally. Therefore, we ask that substituted compliance be available to a foreign CSE when facing U.S. counterparties in the manner set out in the PR Proposed Rules. To the extent the CFTC were to use the transaction-level approach for cross-border application of its margin rules, we ask the CFTC to modify such approach to permit non-US CSEs to apply their home country margin regulations when facing with U.S. counterparties in lieu of U.S. regulations, via either substituted compliance or an "essentially identical" determination for swaps. Additionally, we ask that when US rules require a non-

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[22] See ISDA CFTC Letter, paragraph I.A.1., and ISDA PR Letter, paragraph A.1. under "Critical Issues" ("The IM rules should only take effect two years after finalization"). See SIFMA Letter, paragraph IX.A. ("Phase-In Schedule").

[23] See ISDA CFTC Letter, paragraph I.A.2., and ISDA PR Letter, paragraph A.2. under "Critical Issues" ("The VM rules should be phased in during the two years after finalization"). See SIFMA Letter, paragraph IX.A. ("Phase-In Schedule").

US CSE to post margin to a US counterparty but no like requirement exists under the non-US CSE's home country margin rules, then substituted compliance can be achieved by requiring such CSE to post margin to the US counterparty under the rules of the CSE's home jurisdiction in a manner as if the US counterparty had an obligation to collect margin under the CSE's home jurisdiction margin rules.

- Substituted Compliance Not Required for Offshore Swaps: We ask the Agencies to ensure that the U.S. margin regulations do not apply to swaps between a non-U.S. CSE and a non-U.S. counterparty, which are appropriately outside the jurisdiction of the Agencies. Likewise, we ask the CFTC not to apply the CFTC entity-level approach to the margin rules. Because they are outside the jurisdiction of the Agencies, such swaps do not require substituted compliance.

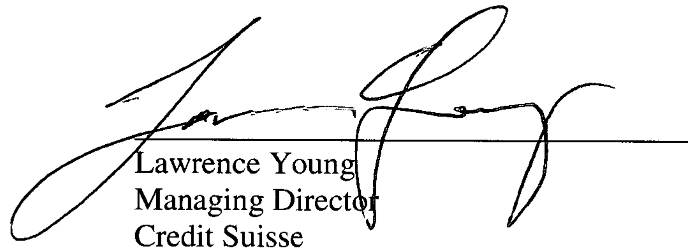
- U.S. Swap Entity Subsidiaries: We ask the Agencies to recognize initial margin models subject to approval and oversight by a foreign regulator (including a consolidated holding company group supervisor) whose approval and oversight standards are comparable to U.S. standards.

- Comparability Determination: We ask the Agencies to support the adoption of a holistic, outcomes-based approach to evaluating comparability. Such an approach should focus on consistency with international standards, including the BCBS-IOSCO Framework. Where foreign margin rules are consistent with these standards, they should, in the aggregate, produce similar reductions in un-margined risk, thus producing a comparable outcome to U.S. margin rules.

- Application for Comparability Determination: U.S. rules should permit foreign regulators to apply for comparability determinations, instead of requiring individual swap entities to make the request. We ask the Agencies to revise the Proposed Rules to align with this practice.

Credit Suisse appreciates the consideration of these matters by the Prudential Regulators and the CFTC. Please do not hesitate to contact the undersigned at (212) 325-1866 with any questions regarding this letter.

Respectfully submitted,



Lawrence Young
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