

October 22, 2018

Mr. Christopher Kirkpatrick,
Secretary of the Commission,
Commodity Futures Trading Commission,
Three Lafayette Centre
1155 21st Street NW,
Washington, DC 20581

SUBMITTED VIA CFTC COMMENTS PORTAL: <https://comments.cftc.gov>

RE: Amendments to Clearing Exemption for Swaps Entered Into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions – Notice of Proposed Rulemaking, RIN 3038-AE33, 83 Federal Register 44001,

Dear Mr. Kirkpatrick:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Commodity Futures Trading Commission's (Commission) Notice of Proposed Rulemaking² (NPR) whereby the Commission is proposing rule amendments, pursuant to its authority under section 4(c) of the Commodity Exchange Act (CEA), to exempt from the clearing requirement set forth in section 2(h)(1) of the CEA certain swaps entered into by certain bank holding companies, savings and loan holding companies, and community development financial institutions.

In the NPR, the Commission states that it proposes to codify in its regulations, the no-action letters that the Commission's Division of Clearing and Risk (DCR) issued in 2016³ providing that DCR would not recommend the Commission take enforcement action against certain small bank holding companies, savings and loan holding companies, and community development financial institutions for not clearing swaps covered by the clearing requirement of section 2(h)(1) of the CEA (Clearing Requirement). The proposed revisions to Commission Regulation 50.5 are consistent with the no-action letters and would exempt from the Clearing Requirement a swap entered into to hedge or mitigate commercial risk if one of the counterparties to the swap is either (a) a bank holding company or savings and loan holding company, each having no more than \$10 billion in

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

² Amendments to Clearing Exemption for Swaps Entered Into by Certain Bank Holding Companies, Savings and Loan Holding Companies, and Community Development Financial Institutions, Notice of proposed rulemaking and request for comment, 83 Fed. Reg. 44001 (August 29, 2018).

³ See CFTC Letter No. 16-01 (January 8, 2016) and CFTC Letter 16-02 (January 8, 2016)

consolidated assets, or (b) a community development financial institution transacting in certain types and quantities of swaps. The Commission believes that this proposal would be consistent with the exemption from the Clearing Requirement the Commission granted for transactions entered into with small banks, savings associations, farm credit institutions, and credit unions⁴.

ABA Supports the Proposed Rule Amendments

ABA supports the Commission's proposal to codify CFTC Staff Letters 16-01 and 16-02. As the Commission points out in the NPR⁵, CFTC Staff Letter 16-01 was issued in response to a request from ABA and we are appreciative of the fact that the Commission now proposes to codify the letter in its regulations.

The Commission should treat all non-swap dealer (SD) or non-major swap participant (MSP) banks, bank holding companies, savings associations, and savings and loan holding companies (banking entities) as end users and exempt such entities from the Clearing Requirement

ABA urges the Commission to treat all non-SD and non-MSP (non-SD/MSP) banking entities as end users irrespective of asset size. To effect this treatment, ABA requests that the Commission exercise its exemptive authority under CEA Section 4(c) to adopt rule amendments, similar to the ones being proposed under the NPR, to exempt such entities from the Clearing Requirement.

In exercising its exemptive authority under CEA Section 4(c), the Commission is not constrained by the amount of assets that a non-SD/MSP may hold. In fact the Commission has taken similar action in the past when it exempted cooperatives from the Clearing Requirement⁶. Among the cooperatives are the four banks that are members of the Farm Credit System⁷. Two of them have assets that exceed \$100 billion (AgriBank, FCB reporting assets of some \$105.5 billion at the end of the second quarter of 2018⁸, and CoBank, ACB reporting assets of some \$131.2 billion at the end of the second quarter, 2018⁹).

Non-SD/MSP banking entities should be treated as end users because they are no different from the other end users that the Commission has previously exempted from the Clearing Requirement. These banking entities use swaps to manage their own business

⁴ See End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560 (Jul. 19, 2012) (2012 End-User Exception final rule), codified in Commission Regulation 50.50(d); 17 C.F.R. § 50.50(d).

⁵ 83 Fed. Reg. 44001 at 44003.

⁶ See Clearing Exemption for Certain Swaps Entered Into by Cooperatives; Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators; Final Rules, 78 Fed. Reg. 52286 (August 22, 2013), codified in Commission Regulation 50.51, 17 C.F.R. § 50.51.

⁷ These are Farm Credit Bank of Texas, AgFirst Farm Credit Bank, AgriBank, FCB, and CoBank, ACB.

⁸ See AgriBank 2018 Quarterly Report, June 30, 2018 available at http://info.agribank.com/investorrelations/layouts/15/WopiFrame.aspx?sourcedoc=/investorrelations/FinancialReports/622000%20AgriBankOnly_Q2_18%20final.pdf&action=default

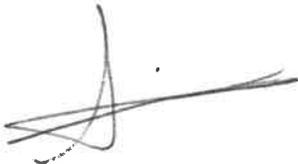
⁹ See CoBank 2018 Quarterly Report, June 30, 2018 available at <https://www.cobank.com/-/media/files/financials/2018/cobank-2018-q2-quarterly-report.pdf>

risk, accommodate customer risk management needs in connection with loans or other forms of credit extended to such customers, and to meet bank regulatory expectations for asset-liability management. Furthermore, these banking entities enter into swaps on a much less frequent basis than SDs. However, absent an exemption, they incur substantial costs in clearing their swaps because the initial and annual fixed clearing fees and initial margin costs that they incur is incrementally higher relative to the number of swaps that they execute over a given period of time. These are funds that they could put to better use in meeting the credit needs of their customers.

Finally, exempting non-SD/MSP banking entities from the Clearing Requirement would have inconsequential impact on systemic risk given the number of swaps cleared by them compared to the number of swaps cleared by SDs.

Thank you for the opportunity to respond to the Commission's request for comments. Please do not hesitate to contact the undersigned at 202-663-5037 or anandar@aba.com if you have any questions.

Sincerely,



Ananda Radhakrishnan
Vice President
Center for Bank Derivatives Policy

cc: The Honorable J. Christopher Giancarlo, Chairman
The Honorable Brian D. Quintenz, Commissioner
The Honorable Rostin Behnam, Commissioner
The Honorable Dawn DeBerry Stump, Commissioner
The Honorable Dan M. Berkovitz, Commissioner
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