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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:

The Institute of International Bankers ("**IIB**") appreciates the opportunity to provide comments to the Prudential Regulators[1] and the Commodity Futures Trading

[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.

Commission (the "**CFTC**") on their proposals (the "**Proposed Rules**")[2] regarding margin requirements for uncleared swaps[3] entered into by swap 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**").

We support the efforts by the Prudential Regulators and the CFTC to foster international harmonization of margin requirements for uncleared swaps, including aligning several aspects of the Proposed Rules with the September 2013 international framework established by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**" and such framework, the "**BCBS-IOSCO Framework**")[4] and an April 2014 proposal made by European supervisory agencies (the "**EU Proposal**").[5] Such harmonization is necessary to preserve the benefits of global markets while also minimizing the potential for regulatory arbitrage and competitive disparities.

Inconsistent national approaches to regulating cross-border trading activities would, however, undermine these harmonization efforts, instead promoting market fragmentation. We have focused in this letter on certain suggestions regarding cross-border aspects of the Proposed Rules that are intended to address this issue while also remaining consistent with the broader objective of mitigating risk to the U.S. financial system.

I. Cross-Border Application of the Proposed Rules

International efforts to harmonize across all the key areas of margin rules – such as the two-way initial and variation margin exchange framework, general categories of covered entities, baseline minimum amounts and methodologies for initial and variation margin, types of eligible collateral and segregation requirements – should ensure that each major jurisdiction's rules produce a comparable aggregate reduction in unmargined risk exposures. As a result, the movement of trading activity among those jurisdictions should not undermine the systemic risk mitigation objective of the rules.

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[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 Proposal**"); 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 Proposal**").

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

[4] BCBS-IOSCO, Margin requirements for non-centrally cleared derivatives (Sept. 2013).

[5] Consultation Paper regarding draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP (Apr. 14, 2014).

While the areas of the rules noted above are the ones most relevant to the mitigation of systemic risk, they are not the only areas where cross-border differences could lead to competitive disparities and changes in trading patterns. More subtle differences relating to the operational mechanics of exchanging and holding margin, documentation matters, and details of initial margin model parameters can still deter cross-border trading activity. For example, in the context of rules that require each party to post and collect initial and variation margin to and from each other, applying multiple, different rule sets to how/when two parties must mechanically exchange that margin or what they must include in their documentation is likely to discourage them from trading with each other.[6] Many market participants may also seek to avoid the increased costs and operational risks associated with developing different systems, documentation practices and initial margin models for use when trading across multiple jurisdictions, even if that means limiting their range of counterparties.

The potential for cross-border margin rule differences to deter cross-border trading activity is undesirable for several reasons. U.S. market participants (including pension plans, investment funds and financial institutions) would face reduced access to hedging and investment opportunities in foreign markets. Within the domestic market, a reduction in the number of counterparties with whom a U.S. market participant could trade would decrease liquidity. The consequences of decreased liquidity would be less favorable pricing and increased volatility.

The application of multiple rule sets to individual trading relationships would further place burdens on regulators. Regulated institutions, which seek to comply with all the laws applicable to them, would have a need for consistent interpretation and administration of each regulator's rule set. For example, an institution subject to U.S. and foreign margin rules would need U.S. and foreign regulators to agree on a consistent set of approved initial margin models and conditions to such approvals. Yet, there are practical limitations on the ability of regulators to consult and coordinate with other, especially when it comes to granular aspects of each other's rules such as model approvals.

In light of these considerations, it is important to leverage the existence of comparable rules wherever possible through making substituted compliance available, as well as to establish a realistic allocation of home and host country oversight responsibilities. We discuss these principles below in the context of (a) foreign-headquartered Swap Entities; (b) U.S. branches of foreign-headquartered Swap Entities; (c) U.S. Swap Entities that are subsidiaries of foreign financial holding companies and (d) the standards and process applicable to comparability determinations.

[6] For example, if foreign rules required a foreign counterparty to deliver margin to a certain type of account, but U.S. rules required a U.S. counterparty to receive margin in a different type of account, then simultaneous compliance with both sets of rules would be impossible.

A. **Foreign-Headquartered Swap Entities**

1. **Scope of U.S. Margin Rules**

Both the PR Proposal and the CFTC's proposed "cross-border guidance" approach would generally exclude from the scope of U.S. margin rules uncleared swaps between a (i) Swap Entity that is organized outside the United States and not controlled or guaranteed by a U.S. person (a "**foreign-headquartered Swap Entity**") and (ii) non-U.S. person that is not guaranteed by a U.S. person.[7] In contrast, the CFTC's proposed "entity-level" approach would subject such swaps to U.S. margin rules, but would make substituted compliance available to the foreign-headquartered Swap Entity.[8]

We believe that the PR Proposal and CFTC cross-border guidance approach reflect a more appropriate scope for the application of U.S. margin rules. Requiring a foreign-headquartered Swap Entity to post margin to a non-U.S. counterparty that is not guaranteed by a U.S. person would not reduce risk to the U.S. financial system, but it would create the potential for conflicts or inconsistencies with the Swap Entity's home country margin requirements.[9] Although requiring a foreign-headquartered Swap Entity to collect margin from such a counterparty would mitigate losses to the foreign-headquartered Swap Entity upon the counterparty's default, such losses would not, on their own, have any impact on the U.S. financial system. And, of course, under Dodd-Frank the risk to the U.S. of a default by a foreign-headquartered Swap Entity on its swaps with U.S. counterparties would already be mitigated by the application of capital requirements to the foreign-headquartered Swap Entity on an entity-wide basis and the requirement to post margin to its U.S. counterparties. These

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[7] See PR Proposal at 57379 and CFTC Proposal at 59916-17. The PR Proposal would, however, include a U.S. branch or agency of a foreign bank as a U.S. counterparty. Our comments on this aspect of the PR Proposal are contained in Part I.B of this letter. The PR Proposal would also apply U.S. margin requirements to uncleared swaps between a foreign-headquartered Swap Entity and a foreign Swap Entity that is controlled by a U.S. person. We do not believe that applying U.S. margin requirements is necessary in this context unless the foreign-headquartered Swap Entity benefits from a legally enforceable guarantee issued by a U.S. affiliate of the foreign Swap Entity. Absent such a guarantee, the swaps would not present a direct and significant risk to the U.S. financial system.

[8] See CFTC Proposal a 59917.

[9] To the extent that the Agencies require a foreign-headquartered Swap Entity to comply with U.S. margin rules for uncleared swaps with foreign counterparties, they will need to take into account the possibility that foreign counterparties located in jurisdictions that fail to adopt the BCBS-IOSCO Framework may not have a legal framework that supports netting and segregation as envisioned by the Proposed Rules. To address this issue, the Agencies should consider measures, such as an "emerging market" exception, that limit a Swap Entity's risks to counterparties located in these jurisdictions but do not require them to engage in practices, such as exchanging margin in gross or posting initial margin in a manner that is not bankruptcy remote, that could expose them to unwarranted, additional risks.

measures would address the potential, indirect risks to the U.S. financial system without applying U.S. law extraterritorially to non-U.S. counterparties that are neither trading with, nor guaranteed by, U.S. persons.

2. Availability of Substituted Compliance

The PR Proposal and CFTC entity-level approach would make substituted compliance available to a foreign-headquartered Swap Entity in connection with all aspects of its obligations under U.S. margin rules, except posting margin to a U.S. Swap Entity or a foreign Swap Entity that is guaranteed by a U.S. person.[10] In contrast, the CFTC cross-border guidance approach would only make substituted compliance available to a foreign-headquartered Swap Entity in connection with its uncleared swaps with the foreign branches of U.S. Swap Entities and non-U.S. persons that are guaranteed by a U.S. person.[11]

We do not believe that preventing a foreign-headquartered Swap Entity from relying on substituted compliance for its uncleared swaps with U.S. counterparties, as envisioned by the CFTC cross-border guidance approach, is necessary. Because of the harmonization efforts reflected by the BCBS-IOSCO Framework, any differences between U.S. margin rules and those in other key jurisdictions would not involve those areas of the rules that are material to the rules' systemic risk mitigation objective. In connection with other rules where a similar level of harmonization exists, such as those governing swap confirmations, portfolio reconciliation and compression, and valuation documentation, the CFTC has provided the equivalent of substituted compliance relief for all swaps, including those with U.S. persons.[12]

The comparability determination process should address concerns relating to jurisdictions that have not harmonized their rules with those of the Prudential Regulators and CFTC to a sufficient extent, thus mitigating any potential competitive disparities associated with permitting substituted compliance for uncleared swaps with U.S. counterparties.[13] In particular, the Prudential Regulators and CFTC could condition their comparability determination on measures intended to address potential competitive disparities while preserving the benefits of reliance on comparable foreign rules. For example, if a foreign-headquartered Swap Entity's home country rules did not require it to post margin to a U.S. counterparty, but otherwise were comparable to U.S. rules, the Prudential Regulators and CFTC could condition their comparability determination on the foreign-headquartered Swap Entity posting margin to a U.S. counterparty under home country rules as if the foreign-headquartered Swap Entity were in the place of the counterparty.

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10 See PR Proposal at 57379-80 and CFTC Proposal at 59917.

11 See CFTC Proposal at 59916.

12 See CFTC No-Action Letter 13-45.

13 See PR Proposal at 57380.

For similar reasons, it is also unnecessary to prevent foreign branches of U.S. Swap Entities and U.S.-guaranteed foreign Swap Entities from relying on substituted compliance in connection with their uncleared swaps with foreign counterparties, including foreign-headquartered Swap Entities, as would be required under the PR Proposal and the CFTC entity-level approach. When trading with foreign counterparties, such Swap Entities will generally be subject to foreign margin rules but ineligible for substituted compliance or equivalence relief based on compliance with U.S. margin rules. Foreclosing substituted compliance with foreign margin rules in these circumstances would foster regulatory conflicts that inhibit the participation of such Swap Entities in foreign markets. In many foreign markets, foreign branches of U.S. Swap Entities and U.S.-guaranteed foreign Swap Entities are important sources of liquidity.

Neither limiting the participation of foreign-headquartered Swap Entities in domestic markets, nor limiting the participation of U.S. Swap Entities and U.S.-guaranteed Swap Entities in foreign markets, should be a desirable outcome. These outcomes are also unnecessary in circumstances where they can be avoided through deference to comparable foreign margin rules. Accordingly, substituted compliance should be available for all aspects of U.S. margin rules applicable to uncleared swaps at least one counterparty to which is located in a jurisdiction that has adopted comparable margin rules.[14]

B. U.S. Branches and Agencies of Foreign-Headquartered Swap Entities

The PR Proposal would distinguish the U.S. branch and agencies of foreign-headquartered Swap Entities from the foreign branches of such Swap Entities, subjecting U.S. branches and agencies to U.S. margin rules even for uncleared swaps with foreign counterparties.[15] However BCBS-IOSCO have taken the position, for purposes of swap margin requirements,[16] that a branch is part of the same legal entity as its headquarters. The risks of swaps entered into by a U.S. branch or agency of a foreign-headquartered Swap Entity with a non-U.S. counterparty that is not guaranteed by a U.S. person are ultimately borne by the foreign-headquartered Swap Entity and its non-U.S. counterparty outside the United States.

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[14] The Agencies should also clarify that, if one counterparty to a swap is subject to comparable foreign regulation, the entire transaction is eligible for substituted compliance. For example, if a non-U.S., non-EU Swap Entity entered into a swap with an EU counterparty, the swap should be eligible for substituted compliance with EU margin rules (even if the home jurisdiction of the Swap Entity has not received a comparability determination from the Agencies). If EU rules did not require the non-U.S., non-EU Swap Entity to collect margin from the EU counterparty, the Prudential Regulators and CFTC could condition substituted compliance on the Swap Entity collecting margin from the EU counterparty under EU rules as if the Swap Entity were in the place of the EU counterparty

[15] See PR Proposal at 57380.

[16] See BCBS-IOSCO Framework at p. 22.

Applying U.S. margin rules to those swaps is therefore not necessary to mitigate risk to the U.S. financial system. Doing so could also create conflicts with foreign margin rules, which are likely to apply to such swaps but may not provide for substituted compliance with U.S. margin rules because of the absence of any U.S. counterparty to the swap. Accordingly, U.S. margin rules should not distinguish between the U.S. branches or agencies of a foreign-headquartered Swap Entity from the Swap Entity's foreign branches.[17]

C. U.S. Swap Entity Subsidiaries

Several foreign financial holding companies have established U.S. Swap Entity subsidiaries. In most cases, these subsidiaries are likely to use initial margin models that have been designed to meet parameters established by their parent's home country regulator or the home country regulator of an affiliate, and that regulator will also oversee updates of and modifications to these models. Where the foreign regulator's model parameters and oversight are comparable to U.S. parameters and oversight, requiring separate model approval and oversight in the United States would result in an inefficient use of private and public sector resources. Permitting the use of the same initial margin model across a consolidated group would, in contrast, better promote group-wide credit risk management, consistent with the proposed group-wide application of initial margin thresholds. Accordingly, the Prudential Regulators and the CFTC should 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.

D. Comparability Determinations

1. Comparability Standard

The Prudential Regulators have indicated that, in evaluating the comparability of foreign margin rules, they will focus on whether those rules produce outcomes that are comparable to those produced by U.S. margin rules, based on a holistic view across the entire margin framework.[18] This approach is largely consistent with the one laid out by the CFTC in its

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17 A a minimum, if U.S. margin rules make such a distinction, whether those rules apply to swaps between a U.S. branch or agency and a non-U.S. counterparty that is not guaranteed by a U.S. person should depend solely on whether the swap is booked to the U.S. branch or agency. The location of the foreign-headquartered Swap Entity's personnel or agents has no bearing on whether the swap gives rise to any risks to the U.S. financial system. Because of the risk mitigation objectives of margin rules, the involvement of U.S. personnel or agents in a swap between non-U.S. persons should be irrelevant to whether those rules apply.

18 PR Proposal at 57380.

cross-border guidance,[19] which has been reflected in several comparability determinations by the CFTC.[20]

We support the adoption of a holistic, outcomes-based approach to evaluating comparability. Given the extensive international harmonization of margin rules, we believe that such an approach should focus on consistency with international standards, including the BCBS-IOSCO Framework.[21] As noted above, where foreign margin rules are consistent with these standards, they should, in the aggregate, produce similar reductions in unmargined risk, thus producing a comparable outcome to U.S. margin rules.

In contrast, evaluating outcomes in the context of a single transaction or counterparty pair would not be consistent with the systemic risk mitigation objective of the rules or the proposed holistic approach to evaluating comparability. A reduction in the amount of margin exchanged for a given transaction or by a given counterparty, if largely balanced by an increase in margin for other transactions or other counterparties, would not result in a material increase in systemic risk. There is thus no need to condition substituted compliance on an evaluation and application, on a trade-by-trade or counterparty-by-counterparty basis, of the "stricter" set of margin rules. Such a condition would, in effect, make substituted compliance meaningless. The resulting costs to market participants, both direct compliance costs and indirect trading costs due to reduced cross-border liquidity, would likely outweigh the incremental risk mitigation benefits, if any, of applying the "stricter" rule to every transaction.

2. Application Process

The PR Proposal would require Swap Entities to apply for comparability determinations.[22] The CFTC has, in contrast, also accepted such applications from trade associations and foreign regulators. We believe that the Prudential Regulators should embrace the more flexible application process adopted by the CFTC.

Permitting foreign regulators to apply for comparability determinations would have many benefits. Begun early enough, the dialogue between U.S. and foreign regulators

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[19] Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013) ("**CFTC Cross-Border Guidance**") at 45343-44.

[20] These determinations can be found on the CFTC's website at http://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.

[21] We note that, in the analogous area of clearing organization regulation, the CFTC has indicated that it intends to take a similar approach, making comparability determinations based on consistency with IOSCO standards. CFTC Cross-Border Guidance at 45346.

[22] PR Proposal at 57380.

should identify rule differences that could create impediments to comparability before those rules are finalized.[23] For example, regulators could seek to harmonize their respective "financial end user" definitions (or equivalents) more closely in order to ensure that permitting reliance on each other's definitions in connection with cross-border trading activity would not result in a material increase in unmargined risk.

An early beginning to the comparability determination process would also allow that process to complete before margin rules come into effect, permitting market participants to take comparability determinations into account during the implementation process instead of implementing every jurisdiction's rules simultaneously. Otherwise, market participants would incur the costs of designing systems, models and documentation to comply with multiple rule sets only to find out later that they may rely on substituted compliance for some or all of those rules sets. Thus, to avoid these costs, regulators should adopt a transition period between when they publish their comparability determinations and when margin rules go into effect.

II. Inter-Affiliate Swaps

While the foregoing section of this letter addressed direct cross-border trading activity between third parties, another structure through which Swap Entities effectively provide their customers with access to foreign markets is through the use of inter-affiliate swaps. Under this structure, transactions by a regional affiliate with local counterparties may involve an underlying asset category that is generally dealt in by another affiliate. For example, a UK affiliate may enter into a commodity swap with a European counterparty on a U.S.-based commodity. A U.S. affiliate may enter into a Euro-denominated swap with a U.S. counterparty. A Japanese affiliate may enter into a U.S. Dollar currency swap with a Japanese counterparty.

In each of these cases, consolidating the trading relationship between the regional Swap Entity and its native regional counterparties is both efficient, potentially necessary for local regulatory compliance purposes, and produces risk-reducing netting benefits, both to the Swap Entity and to its counterparty. These risk-reducing effects benefit both the regional Swap Entity and the group as a whole. Because the U.S. Swap Entity has the largest natural portfolio of U.S. commodity risk and the trading expertise to manage that risk, it is risk-reducing for the regional affiliates and the group as a whole for the UK affiliate to back-to back the market risk of its commodity swap to the U.S. affiliate where there is the greatest potential for an internal risk offset (and associated cost efficiencies) and the most experienced trading personnel (located in the appropriate market and time zone) to manage any residual market risk. The same analysis applies equally to the U.S. Swap Entity's Euro swap (for which the Euro exposure is most appropriately managed as part of the UK affiliate's Euro risk portfolio) and the Japanese Swap Entity's U.S. Dollar currency swap (for which the Dollar currency exposure is most appropriately managed as part of the New York affiliate's Dollar currency risk portfolio).

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[23] In the Appendix to this letter, we discuss certain cross-border differences that we have identified and make recommendations for addressing those differences.

While it is common for Swap Entities that engage in inter-affiliate swaps to exchange variation margin in connection with those swaps, exchanging initial margin is very rare. Applying initial margin requirements to inter-affiliate 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 and inhibiting effective group-wide risk management. In this regard, we note that CFTC rules require that a Swap Entity's risk management program take into account risks posed by affiliates and be integrated into risk management at the consolidated entity level.[24]

It also is not necessary to apply initial margin requirements to inter-affiliate swaps in order to achieve the objectives of the Proposed Rules. Because inter-affiliate transactions are not a vector for direct transmission of risk to third parties, nor increase group-wide leverage, such transactions are not a source for systemic risk. Furthermore, applying initial margin requirements to inter-affiliate transactions is not necessary to promote central clearing because regulators have already determined that they should not require the clearing of inter-affiliate transactions.[25] Applying variation margin requirements to inter-affiliate transactions, together with existing capital requirements (including concentration charges), risk management requirements, and documentation requirements, should be sufficient to ensure the safety and soundness of Swap Entities trading with affiliates.[26]

In addition, it is necessary for the Prudential Regulators and the CFTC to clarify how their proposed initial margin thresholds and "material swaps exposure" definitions apply to groups that manage risk through inter-affiliate swaps. Because those thresholds and definitions are meant to measure group-wide systemic significance, it would not be appropriate for them to include inter-affiliate swaps. Including inter-affiliate swaps in those thresholds and definitions would put groups that manage risk through swaps such at a competitive disadvantage.

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[24] CFTC Rule 23.600(c)(1)(ii).

[25] See, e.g., CFTC Rule 50.52 (inter-affiliate clearing exemption).

[26] To the extent other provisions, such as Sections 23A and 23B of the Federal Reserve Act, would result in the application of initial margin requirements to inter-affiliate transactions, those requirements are subject to a separate analysis under those provisions and have no bearing on whether initial margin should be required under these rules.

The IIB appreciates the consideration of these matters by the Prudential Regulators and the CFTC. Please do not hesitate to contact the undersigned at (212) 421-1611 with any questions regarding this letter.

Respectfully submitted,

Sarah A. Miller

Sarah A. Miller
Chief Executive Officer
Institute of International Bankers

Appendix

This Appendix describes areas of the Proposed Rules that differ from the BCBS-IOSCO Framework or the EU Proposal and our recommendations for addressing those differences.

- **Covered Products**. The Proposed Rules would not apply to uncleared derivatives that are not defined as "swaps" or "security-based swaps" under Dodd-Frank, and the CFTC Proposal would not apply to uncleared security-based swaps. Nor would the Proposed Rules apply variation margin requirements to physically settled foreign exchange swaps or forwards. The BCBS-IOSCO Framework and EU Proposal, in contrast, would apply to all uncleared derivatives (other than physically settled foreign exchange swaps or forwards) and would apply variation margin requirements to physically settled foreign exchange swaps or forwards. To address these differences, the Prudential Regulators and the CFTC should permit voluntary portfolio margining of uncovered products with covered products.

- **"Control" Definition**. The Proposed Rules would apply a "control" definition that is based on the Bank Holding Company Act definition, including the incorporation of a 25% ownership threshold for whether an entity controls, is controlled by or is under common control with another entity. While this definition is likely to be familiar to banks, it is less likely to be familiar to financial end users. The definition also departs from the EU Proposal, which generally incorporates a 50% ownership threshold that is more consistent with applicable accounting standards. Given that Title VII of Dodd-Frank does not mandate the use of the Bank Holding Company Act definition, and that definition serves statutory purposes and requirements different from those of Title VII, the Prudential Regulators and CFTC should conform to the EU Proposal's definition in order to ensure consistent application of phase-in thresholds, "material swaps exposure" definitions and initial margin thresholds globally, thereby avoiding conflicts of law and competitive disparities.

- **"Financial End User" Definition**. The Proposed Rules' "financial end user" definition is both broader and narrower than the definitions that establish the scope of counterparties covered by the EU Proposal. For example, the Proposed Rules would cover all securitization vehicles, whereas the EU Proposal would generally cover such vehicles only if their volume of swaps exceeded a specified volume threshold. On the other hand, the Proposed Rules would not apply to non-financial end users under any circumstances, no matter their volume of swaps. We believe that the Prudential Regulators and CFTC should work with European authorities to adopt more consistent definitions. Greater consistency would help promote the availability of substituted compliance.

- **"Material Swaps Exposure" Definition**. The Proposed Rules incorporate a lower $3 billion "material swaps exposure" definition relative to the $11 billion (or €8 billion) volume-based exception included in the BCBS-IOSCO Framework and EU Proposal. We do not believe that the analysis contained in the Proposed Rules provides sufficient support for this difference because it implicitly assumes that financial end users trade with only a single counterparty, when in practice such concentration of trading activity is uncommon. Accordingly, the Prudential Regulators and CFTC should conform to the BCBS-IOSCO Framework and EU Proposal or, at a minimum, defer the adoption of different definition until they have conducted a more thorough analysis of the uncleared swap markets.

- **Currency Denominations**. The Proposed Rules would denominate phase-in thresholds, "material swaps exposure" definitions, initial margin thresholds and minimum transfer amounts in U.S. dollars, instead of Euros as would be the case under the BCBS-IOSCO Framework and EU Proposal. Over time, currency fluctuations could cause these different denominations to result in meaningful cross-border differences. To address this issue, the Prudential Regulators and the CFTC should periodically re-calibrate these amounts. In addition, making substituted compliance available more broadly would help prevent short-term currency fluctuations from disrupting cross-border trading activity.

- **Initial Margin Model Parameters**. Certain aspects of the Proposed Rules' initial margin model parameters (such as the frequency of model recalibrations and the number of risk categories) differ from the parameters contained in the EU Proposal. The Prudential Regulators and CFTC should seek to adopt consistent model parameters with regulators in key foreign jurisdictions in order to facilitate the use of common models across different jurisdictions and recognition of approved foreign models.

- **Segregation Requirements**. The Proposed Rules include more restrictive segregation requirements than the BCBS-IOSCO Framework and EU Proposal, requiring segregation of initial margin at an unaffiliated third-party custodian in all cases. This more restrictive approach goes beyond what is necessary to protect a posting party in the bankruptcy of the collecting party. The Prudential Regulators and CFTC should therefore permit alternative segregation arrangements consistent with the BCBS-IOSCO Framework and EU Proposal.

- **Eligible Variation Margin**. Unlike the BCBS-IOSCO Framework and EU Proposal, the Proposed Rules would limit variation margin to cash. This limitation would foster competitive disparities and increase costs and risks for many financial end users who do not regularly have sufficient cash to satisfy variation margin requirements. Accordingly, the Prudential Regulators and CFTC should eliminate this limitation.

- **Collateral Haircuts**. Unlike the BCBS-IOSCO Framework and EU Proposal, the Proposed Rules would not permit the use of models to compute collateral haircuts. Rules-based haircuts, however, are not as risk-sensitive as models. When they overstate risk, they will foster competitive disparities. When they understate risk, they will result in under-collateralization of credit exposures. The Prudential Regulators and CFTC should therefore permit the use of models to compute collateral haircuts.

- **Treatment of Legacy Swaps**. The Proposed Rules would require swaps entered into before the rules' compliance dates to be documented under a different eligible master netting agreement than swaps entered into after those dates in order for margin rules not apply to the pre-compliance date swaps. This requirement is not contained in the BCBS-IOSCO Framework or the EU Proposal. It would also increase credit risk by encouraging the break-up of netting sets. The Prudential Regulators and CFTC should eliminate this requirement.

- **Variation Margin Control Mechanisms and Documentation**. The CFTC Proposal contains additional requirements relating to variation margin control mechanisms and documentation not contained in any other proposal. The CFTC should either eliminate these requirements or, at a minimum, confirm that they would not require a Swap Entity to agree with its counterparty to specific valuation methodologies (as opposed to agreed processes for how they will calculate margin requirements and resolve margin disputes).