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August 5, 2016

VIA ELECTRONIC SUBMISSION

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

Re: Notice of Proposed Rulemaking, Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions (Docket No. R-1538; RIN No. 7100 AE-52)

Dear Mr. deV. Frierson:

I. Introduction

CMC is a trade association that brings together exchanges and their industry counterparts. Its members include commercial end-users which utilize the futures and swaps markets for agriculture, energy, metals, and soft commodities. Its industry member firms also include regular users and members of such designated contract markets (each, a "DCM") as the Chicago Board of Trade, Chicago Mercantile Exchange ("CME"), ICE Futures U.S. ("ICE"), Minneapolis Grain Exchange, New York Mercantile Exchange, and NASDAQ Futures, Inc. They also include users of swap execution facilities (each, a "SEF"). The businesses of all CMC members depend upon the efficient and competitive functioning of the risk management products traded on DCMs, SEFs, or over-the-counter ("OTC") markets. As a result, CMC is well positioned to provide a consensus view of commercial end-users on the impact of the proposed regulations on commodity markets. Its comments, however, represent the collective view of CMC's members, including end-users, intermediaries, and exchanges.

II. The Proposed Rule

This letter pertains to Notice of Proposed Rulemaking, Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 81 Fed. Reg. 29,169 (May 11, 2016). The Proposed Rule seeks to impose contractual limitations on the rights of counterparties to uncleared qualified financial contracts ("**QFCs**") with certain entities of global systemically important banking organizations ("**GSIBs**"). Per the Proposed Rule, certain entities of GSIBs

(i.e., "**Covered Entities**") would not be permitted to transact under QFCs ("**Covered QFCs**") unless those QFCs comply with the requirements of the Proposed Rule.

III. Comments of the Working Group of Commercial Energy Firms

CMC concurs with the comments of the Working Group of Commercial Energy Firms with respect to the impact of the Proposed Rule on the end user counterparties to GSIB-related entities. In particular we share their concern that the proposal would limit the ability of end users to exercise their rights to terminate and net obligations under QFCs that are currently protected under the Federal Deposit Insurance Act and U.S. Bankruptcy Code, and potentially subject U.S. persons to foreign law notwithstanding the specific contractual provisions in their agreements choosing U.S. law as governing.

IV. Additional Concerns of Farmers, Ranchers and Commercial End Users

In addition to the views expressed by the Working Group, CMC notes the particular burden on commodity market participants from the requirement that GSIBs demand counterparties extinguish their well-established rights to seek new arrangements and mitigate operational and credit risk upon the default of a counterparty-related entity. The imposition of a stay on the exercise of a commodity end user's ability to exercise these rights creates potentially serious operational risks that, in a time of economic crisis, could exacerbate market disorder and systemic crisis well beyond what are typically considered the financial markets. The Proposed Rule does appear to address these risks in any meaningful way. In addition the proposal appears to require a U.S. company to agree to submit its legal rights to the resolution regime applicable to the GSIB parent of the counterparty, even if the relevant agreements are otherwise explicitly subject to U.S. law.[1] For instance, if a grain operator located in Kansas enters into a QFC with a non-bank subsidiary of a foreign banking organization, and the subsidiary's foreign parent subsequently defaults, the Proposed Rule appears to require that Kansas-based company to agree to submit its claims for resolution by the foreign resolution authority. CMC is not aware of any other instance where a United States regulatory agency has required U.S. persons engaged in U.S. commerce to agree to submit to the jurisdiction of a foreign government.

V. Conclusion

End users of commodities are deeply concerned that the Proposed Rule threatens to disrupt supply chains during times of economic stress by undermining well established law and

[1] See e.g. Proposed Rule 12 C.F.R. § 252.83: " (b) Provisions required. A covered QFC must explicitly provide that (1) The transfer of the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) from the covered entity will be effective <u>to the same extent as the transfer would be effective under the U.S. special resolution regimes if the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) were governed by the laws of the United States or a state of the United States and the covered entity were under the U.S. special resolution regime;</u> and (2) Default rights with respect to the covered QFC that may be exercised against the covered entity are permitted to be exercised <u>to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was governed by the laws of the United States or a state of the United States and the covered entity were under the U.S. special resolution regime</u> (underline added)." Fed NOPR at 29,178.

precedent with respect to the exercise of termination and netting rights. The Proposed Rule creates a one-sided regime whereby a GSIB-related entity, but not its commercial counterparty, will continue to enjoy these protections while end user counterparties are left to deal with the risks associated with a bar on these carefully crafted rights. This appears to be in contradiction to the Federal Reserve's own longstanding policy in this area. (See, for example, the testimony of Federal Reserve Associate General Counsel Oliver Ireland addressing these rights in a congressional hearing held in 1999:

> The right to terminate or close-out protects federally supervised financial institutions, such as insured banks, on an individual basis, and by protecting both supervised and unsupervised market participants, protects the markets from systemic problems of "domino failures." Further, absent termination and close-out rights the inability of market participants to control their market risk is likely to lead them to reduce their market risk exposure, potentially drying up market liquidity and preventing the affected markets from serving their essential risk management, credit intermediation, and capital raising functions.)[2]

We respectfully request that the Board of Governors withdraw the Proposed Rule to allow market participants to more fully engage in the creation of a policy that would so deeply impact the rights of institutions not regulated by the Federal Reserve. In addition, we seek the Board's reassurance that the Proposed Rule will not require U.S. farmers, ranchers and other end users to submit to the jurisdiction of non-U.S. authorities not withstanding explicit contractual provisions providing for the protections of U.S. law. Lastly we request that, if the Board of Governors intends to proceed in this area, it explicitly carve out physical delivery commodity contracts from the application of any final rule.

Sincerely,

Kevin K. Batteh
General Counsel
Commodity Markets Council

[2] Testimony of Oliver Ireland, Associate General Counsel, Board of Governors of the Federal Reserve System. The proposed Bankruptcy Reform Act of 1999 Before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives March 18, 1999