# Coalition for Derivatives End-Users

March 18, 2019

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**Re: Comment to Notice of Proposed Rulemaking – Standardized Approach for Calculating the Exposure Amount of Derivative Contracts [Docket ID OCC–2018–0030; Docket No. R–1629 and RIN 7100–AF22; RIN 3064–AE80]**

The Coalition for Derivatives End-Users (the "Coalition") and the undersigned end-users and trade associations appreciate the opportunity to provide comments in response to the Notice of Proposed Rulemaking regarding proposed revisions to the standardized approach for calculating the exposure amount ("SA-CCR") of derivatives contracts of financial holding companies (the "Proposed Rule"). The Proposed Rule, issued jointly by the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), and the Federal Deposit Insurance Corporation (the "FDIC", together with the OCC and the Board, the "Prudential Regulators")[1], threatens to result in significant and unnecessary costs for end-user companies.

The Coalition represents the views of hundreds of companies employing derivatives primarily to manage risks associated with operating their businesses.[2] Our members range in size, location and industry and form the backbone of local, United States, and the global economies. End-users' use of derivatives to hedge commercial risk not only benefits their own commercial growth, planning and forecasting, but also promotes sustainable economic growth, job creation and stable commercial markets.

The Coalition supports strong, effective and fair regulation of derivatives markets, which appropriately balances the goals of promoting transparency and mitigating systemic risk against

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1 Prudential Regulators, Notice of Proposed Rulemaking, Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, 83 Fed. Reg. 64660 (Dec. 11, 2018), available at https://www.federalregister.gov/documents/2018/12/17/2018-24924/standardized-approach-for-calculating-the-exposure-amount-of-derivative-contracts [hereinafter, the "Proposed Rule"].

2 You can see a list of companies and associations that have been active in the Coalition here: http://coalitionforderivativesendusers.com/AboutUs/coalition-members.

the risks of unduly burdening commercial businesses and harming job growth. Our mission is straightforward: to ensure that financial regulatory reform measures promote economic stability, reduce systemic risks and increase transparency without imposing undue burdens on derivatives end-users.

In implementing the Basel III capital accords, the Prudential Regulators have a difficult task in replacing the Current Exposure Method in their respective U.S. capital regulations, which banks are currently required to use in calculating counterparty credit risk exposure and risk-weighted assets ("RWA") on their derivatives transactions across all asset classes. The Prudential Regulators have proposed more nuanced, risk-based metrics and formulas under SA-CCR to calculate counterparty credit risk exposures and RWA based on the particular asset class of the derivative transaction. The Proposed Rule also would require banks to comply with the new SA-CCR metrics and formulas by July 1, 2020. We believe, however, that these proposed metrics and formulas under SA-CCR (especially in the commodities, foreign exchange and interest rate asset classes), as well as its proposed compliance deadline, if adopted as proposed, are particularly troublesome for end-users' derivatives activities. While we recognize that the Proposed Rule is a direct requirement on banks, the Proposed Rule would have indirect, adverse, and material impacts on end-users, which rely on derivatives executed with bank counterparties in order to hedge risks associated with their commercial operations.

We offer more detailed comments as follows:

## 1. SA-CCR threatens to undermine legislative relief afforded to end-users

For 10 years, the Coalition has advocated for smart, well-tailored derivatives regulations. The two central components of our membership's efforts are the enactment of the end-user margin exemption and the end-user clearing exception, as implemented by U.S. financial regulators.[3] These provisions recognize that end-users' transactions are not speculative in nature, but seek to reduce risks in commercial businesses. To the contrary, their transactions are risk reducing in nature and do not add to systemic risk to financial markets or the U.S. economy. Moreover, these provisions recognize the mutually-beneficial relationship between financial institution counterparties and end-users in addressing business risks. To help facilitate efficient access to the derivatives hedging market, Congress exempted end-users hedging business risks from having to post margin on uncleared derivatives transactions and from having to clear derivatives transactions.[4]

[3] CFTC, Final Rule, End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42,560 (July 19, 2012), available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-17291a.pdf; CFTC, Final Rule, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (Jan. 6, 2016), available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2015-32320a.pdf; U.S. prudential regulators, Final Rule, Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840 (Nov. 30, 2015), available at https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf.

[4] "Forcing businesses to post margin not only ties up capital, but also makes it more expensive for firms to utilize the risk management tools that they need to protect their businesses from uncertainty. Today's bill clarifies in

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Notwithstanding these important policy objectives, the Proposed Rule threatens to disproportionately burden bank counterparties by increasing capital requirements, especially with respect to their transactions with end-user counterparties, which are exempt from posting margin. We are concerned that the Proposed Rule, if adopted as final, would force bank counterparties to reset this imbalance by passing through increased capital requirements to their end-user counterparties in the form of higher transaction fees, ceasing to act as derivatives market-makers, thereby resulting in less liquid markets, or both. It is also possible that in some cases, bank counterparties may seek to avoid the higher capital charges imposed by SA-CCR by simply requiring end-users to post margin, directly resulting in a frustration of congressional intent to exempt end-users from onerous margining requirements.[5] We believe that all of these potential outcomes run counter to the congressional intent underlying both the end-user margin exemption and the end-user clearing exception.

We, therefore, ask that the Prudential Regulators reconsider the proposed metrics under SA-CCR for calculating counterparty credit risk and RWA to ensure that the Proposed Rule does not undermine and frustrate the legislatively prescribed end-user benefits enjoyed by our members. In particular, we believe that any final rule regarding SA-CCR should provide a clear exemption for derivatives of a counterparty that: (i) satisfies the criteria to qualify for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act ("CEA") and implementing regulations; (ii) satisfies the criteria in section 2(h)(7)(D) of the CEA and implementing regulations; (iii) qualifies for an exception from clearing under a rule, regulation, or order that the CFTC has issued pursuant to its authority under section 4(c)(1) of the CEA concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the CEA; (iv) is otherwise exempt from the clearing requirements of section 2(h)(1)(A) of the CEA; or (v) is exempt from the initial and variation margin requirements imposed by rules adopted pursuant to sections 4s(e)(2)(A)(ii) and 4s(e)(B)(ii) of the CEA. Such relief would better align the Proposed Rule's objectives with the current regulatory regime and congressional intent for over-the-counter ("OTC") derivatives markets.

Further, even with such an exemption, U.S. banks would still be required to maintain capital against their exposures to non-end-users, which would capture the material universe of counterparty risk faced by financial institutions. Indeed, end-user derivatives transactions

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statute that Congress meant what it said when it exempted end users from margin and clearing requirements. Specifically, it ensures that those businesses which are exempt from clearing their hedges are also exempt from margining those hedges." 114th Cong. Rec. H67-68 (Jan. 7, 2015) (statement of Rep. Mike Conaway).

[5] "Forcing end-users to post margin … could cause harmful effects for the economy and consumers" and "[i]f end-users are posting a margin, those funds are unavailable for investment in jobs and expansion." 161 Cong. Rec. S72-02 (2015) (statement of Sen. Michael Dean Crapo). These concerns were reflected in Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA"), which was signed into law on January 12, 2015 and exempts from the margin rules for uncleared swaps certain swaps for which end-user counterparties qualify for an exemption or exception from mandatory clearing requirements. Pub. L. 114-1, 129 Stat.3.

represent a small portion of the overall OTC derivatives market.[6] By including an exemption for end-user derivatives activities in the Proposed Rule, the Prudential Regulators would in no way exclude the major risks associated with exposures related to entities engaged in speculative derivatives transactions—assets that have been associated with the causes of the 2007-2008 financial crisis.

## 2. SA-CCR threatens end-user access to affordable and liquid markets

End-users are the engines of our economy. To help mitigate the impacts of these price and rate fluctuations and to provide American consumers with affordable products and services, end-users require well-priced, liquid markets to manage risks associated with their businesses. The Proposed Rule threatens to disrupt the derivatives markets by increasing transaction costs and reducing market liquidity, which in turn would likely increase the costs that every-day American consumers pay for the products our members produce, refine, and distribute. In particular, the Proposed Rule would have an adverse effect on end-users' hedging transactions and the types of derivatives typically employed by end-users to manage their business risks.

- Uncollateralized / Lien-collateralized / Letters-of-Credit-collateralized Trades: As noted by the Basel Committee on Banking Supervision, a goal of SA-CCR was to develop a more risk sensitive methodology that differentiates between margined and unmargined trades.[7] End-users generally do not utilize cash-margining, as it is often prohibitively expensive and, from a cash-flow perspective, ties up capital in hedging transactions when those monies could be used for job creation, investing in capital projects, and growing their businesses. That, however, is not to say that banks do not account for end-user default risks; rather, end-user default risk is carefully considered by bank counterparties, which often require some form of non-cash collateral or otherwise account for default risk in pricing transactions. This approach recognizes the capital inefficiencies for end-users to post cash margin. In instances where non-cash collateral is requested by an end-user counterparty as a workaround to addressing default risk—such as in commodities or interest rate derivatives—the bank often requires and the end-user agrees to grant liens on assets or provides a letter of credit or parent company guaranty, each sized in terms of

[6] Indeed, it has been noted that end-users represent less than 10% of the total OTC derivatives market. Thomas Deas, Testimony be*fore the US House of Representatives' Subcommittee on Capital Markets and Government* Sponsored Enterprises – Committee on Financial Services (April 11, 2013), available at http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-tdeas-20130411.pdf. An October 2014 study conducted by the Bank of International Settlements noted that "many (but not all) end users have a much smaller footprint in the OTC derivatives market than typical broker-dealers." See OTC Derivatives Assessment Team, Regulatory reform of over-the-counter derivatives: an assessment of incentives to clear centrally, Bank of International Settlements at 18 (October 2014), available at http://www.bis.org/publ/othp21.pdf.

[7] Basel Committee on Banking Supervisions, The standardized approach for measuring counterparty credit risk exposures (Mar. 2014, updated Apr. 2014), available at https://www.bis.org/publ/bcbs279.pdf ("In formulating the SA-CCR, the Basel Committee's main objectives were to devise an approach that is suitable to be applied to a wide variety of derivatives transactions (margined and unmargined, as well as bilateral and cleared) . . . The CEM had been criticised for several limitations, in particular that it did not differentiate between margined and unmargined transactions.").

collateral value as required by the bank to cover its default exposure. Under the Proposed Rule, SA-CCR calculations would ignore market practice when collateral arrangements are utilized and such collateral would not receive any offset recognition against a bank's SA-CCR exposure. Treatment of alternative arrangements under SA-CCR would create artificially inflated exposure amounts that do not reflect the mitigating safeguards of risk-based transaction pricing, asset liens and letters of credit.

- Overly Conservative Supervisory Factors for Commodities: Many of our members and the below signed entities are producers and manufacturers that create and generate products that are used by American consumers. Inherent in physical commodities-based business are those risks associated with holding title to assets. End-users must adequately account for price and rate fluctuations—whether driven by the market or events—in order to provide stable prices for their consumers and grow their businesses. The Proposed Rule threatens to penalize end-users' commodity derivatives hedging strategies by applying an un-calibrated and inflexible supervisory factor across all types of commodity derivatives rather than recognizing variations in maturities of these contracts and volatility differences between the underlying commodities referenced in those derivatives instruments (e.g., oil swaps versus wheat swaps versus power swaps).[8] Indeed, the Basel Committee on Banking Supervision recognized these inherent risk differences when initially adopting the SA-CCR standard.[9] The Prudential Regulators have proposed to take an overly conservative approach, which has not been the subject of any publicly disclosed empirical data, and disregard these risk differences, which might result in increased exposure amounts for end-user counterparties upwards of 460 percent across all types of commodity derivatives.

For the purposes of illustrating how SA-CCR and the Proposed Rule would threaten end-user access to liquid and affordable commodities derivatives markets, we offer the following example:

> An upstream oil company, looking to mitigate price fluctuations in crude oil enters into a one year oil swap on 365,000 bbls total, struck at $55/bbl, with a $0.50/bbl spot exposure. The Current Exposure Method under existing U.S. capital regulations would impose a 10 percent potential future exposure ("PFE") weighting to the notional value of the contract, with an exposure at default amount equal to $2,190,000. However, under the Proposed Rule, uncleared, unmargined oil swaps would be subject to a 56 percent PFE weighting, with an exposure at default amount equal to $11,497,500, representing a 460 percent increase in the exposure amount that the counterparty to the crude oil company must retain capital

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[8] Proposed Rule, Table 2 to §__.132. "It is . . . imperative that regulators do not assume that all over-the-counter transactions share the same risk profile." 156 CONG. REC. S 6192 (daily ed., July 22, 2010) (statement of Senators Christopher Dodd and Blanche Lincoln).

[9] Compare Proposed Rule supervisory factors with Basel Committee on Banking Supervision supervisory factors, available at https://www.bis.org/publ/bcbs279.pdf.

> against. As a result of these increases, there is a real risk that the bank counterparty would decline to enter into those swaps given the increased capital burdens associated with entering into unmargined derivatives. With fewer market participants, the upstream oil company may likely find it more difficult to find a bank counterparty that would be willing to offer the derivatives it needs to hedge their business risks. And even if a bank counterparty was willing to offer those derivatives, the upstream oil company would likely have to pay significantly more than they would today for the same derivatives.[10]

The unique circumstances in which end-users employ derivatives to hedge business risks and their related collateralization practices with their bank counterparties would be unduly penalized as a result of the Proposed Rule. In particular, we note that the Proposed Rule ignores these unique circumstances and would impose a blanket increase in capital requirements on all bank derivatives transactions, regardless of purpose. This rigid approach threatens to result in both increased transaction costs and reduced market liquidity.

**a. SA-CCR threatens to increase transaction costs for end-users**

We are concerned that, absent recognition of the current collateralization arrangements employed by end-users, and absent appropriate adjustments to the supervisory factors to tailor each to a level matching the actual exposure risk presented by the underlying derivative, the increases to the amount of capital required to be retained by banks subject to SA-CCR would ultimately be borne by end-users in the form of increased transaction pricing. Increased SA-CCR calculations would not only affect end-users' ability to hedge commodity risks, but also would undermine hedging strategies to mitigate currency[11] and interest rate risks. Risks could increases if end users, in response to higher transaction prices for currency, rates, and commodities derivatives, elect to cease hedging and bear the risk themselves, which would introduce more volatility to corporate cash flow and balance sheets, expose end-users to fluctuations in market dynamics, and increase risks to their lenders.

For the purposes of illustrating how SA-CCR and the Proposed Rule would increase costs on end-users with respect to FX derivatives, we offer the following example:

> To mitigate currency fluctuations, a U.S. airline company enters into two unmargined, at-the-money USD/EUR forwards: (A) a three month FX derivatives contract; and (B) a one year FX derivatives contract, each with a $100,000 notional value. For the three month and one year contracts, current regulations would

[10] Moreover, significant changes to the price to hedge a swap in volatile industries like oil and natural gas production may render the business uneconomical, as the upstream oil company may no longer be able to operate its company in a profitable manner.

[11] Under existing calculations, a 25-year interest rate swap entered into by an end-user would be subject to a 1.5 percent PFE weighting; SA-CCR would increase this to a 10 percent weighting, and after certain additional adjustments thereunder, would represent a 66 percent increase in exposure amount that the bank counterparty will need to retain capital against.

impose a 1 percent PFE weighting to the notional value of the contracts. SA-CCR would increase the PFE for the three month contract to 2.8 percent and 5.68 percent for the one year contact. Cumulatively, changes under the Proposed Rule to the three month FX derivatives contract and one year FX derivatives contract would represent a 133 percent and 320 percent increase, respectively, in capital required to be accounted for by the airline's bank counterparty. As a result of these increases, it is likely that the bank counterparty would pass on these costs to the airline company, thus reducing the efficiency of its USD/EUR hedges.

Additionally, we are concerned that the compounding costs of implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act[12] and Basel III capital requirements, without adequate consideration of the important purpose and benefit of end-user hedging, ultimately would result in a more preclusive and less stable commercial marketplace. The Proposed Rule is one in a series of additional capital costs being passed on to end-users, and the cumulative and compounding effects only serve to further burden end-users' risk mitigation programs, further diverting money away from end-user growth with no meaningful reduction in systemic risk to the U.S. financial system.

We respectfully request that the Prudential Regulators consider the downstream pricing costs on end-users and the adverse impacts of dis-incentivizing banks and their end-user counterparties from using alternative means of addressing counterparty default risk (e.g., asset pledges, inherent risk pricing, letters of credit), and conduct an economic impact analysis of the SA-CCR Proposal in light of such costs. In particular, we ask that the Prudential Regulators take a holistic examination of these capital regulations and the effects of such regulations on end-user risk mitigation, capital formation, market liquidity, and the overall economic impacts.[13] We believe that a disciplined and empirical approach towards the promulgation of capital requirements, especially those with the potential to indirectly burden end-users, would among other things, foster greater economic growth and vibrant financial markets, as well as better addresses systemic risk and market failures, by enabling the Prudential Regulators to identify the costs and burdens, barriers to capital raising, and negative impacts on liquidity that these capital regulations may ultimately have on end-user businesses.

**b. SA-CCR threatens to reduce market liquidity which will impact the ability of end-users to hedge business risks**

[12] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[13] For example, the Coalition, working with FTI Consulting, conducted a survey of end-users' use of OTC derivatives and the impact of margin requirements. See The Impact of Margin Requirements on Main Street Business, Coalition for Derivatives End-Users and FTI Consulting (2014), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/03/EndUserMarginSurvey3-2014-2.pdf?x48633.

End-users are reliant on large bank counterparties to serve critical intermediary roles in the derivatives market.[14] The Coalition is concerned that the Proposed Rule would exacerbate current liquidity concerns within the derivatives marketplace,[15] thus threatening the ability of end-users to engage in prudent risk management. Prohibitive costs imposed by SA-CCR calculations, as noted above, may serve to only further deter banks from providing liquidity in these markets, leaving end-users fewer counterparties with which to transact; these counterparties may be less-regulated and less-creditworthy counterparties that are not subject to SA-CCR.

Liquid markets enable end-users to effectively and efficiently access the derivatives instruments that they need to help mitigate and manage their tailored business risks. When managing business risks through derivatives, end-users generally choose large bank counterparties and bank-affiliated intermediaries as these entities provide economies of scale and cost savings when entering into highly tailored hedging transactions. End-users desire to transact with well-capitalized and well-regulated banks with strong credit ratings. A reduction in liquidity may force end-users to try to piece together multiple trades across several counterparties that may be less-regulated and less-creditworthy in order to address their business risks, as opposed to the current one-stop approach that end-users enjoy today.

We, therefore, respectfully request that the Prudential Regulators consider the effects that the Proposed Rule would have on market liquidity and the ability for end-users to access tailored hedging solutions.

### 3. SA-CCR threatens to create an unfavorable and unlevel playing field with foreign competitors of end-users

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[14] For example, many municipalities enter into "municipal gas prepayment contracts" with suppliers in order to provide reliable and competitively priced natural gas for sale to their residential, commercial and industrial customers. To facilitate these trades and mitigate the inherent risks (i.e., interest and commodity rate fluctuations) with the long-dated nature of these contracts (often 30-year contracts), a bank may serve as an intermediary to the transaction, utilizing back-to-back matching swaps between the parties. On one end, the bank and the supplier will enter into a swap, where variation margin is exchanged, and on the other end the bank and municipality enter into an inverse swap that is not always only secured by a collateral asset pledge. The Proposed Rule, however, has the potential to create a mismatch in capital requirements required under each of the two swaps despite their inverse risk correlation. The Proposed Rule could impose a significant capital requirement on the bank-municipality swap given the large notional value of the transaction and the lack of cash margining employed by the parties, whereas the exposure under the bank-supplier swap would be partially offset by the margin exchanged between the parties.

[15] Compounding regulation by the Prudential Regulators serves to incrementally push-out banking institutions from the derivatives marketplace. For example, the Coalition in the past has argued that the Volcker Rule has reduced liquidity in the derivatives and capital markets, and injects risks to the overall stability of bank counterparties. An academic analysis conducted by the University of Michigan, National University of Singapore and Harbin Institution of Technology support this proposition, finding that the Volcker Rule raised the default probabilities of 34 U.S. banks by decreasing the size of their liquid trading books and increasing their illiquid banking books. Sohhyun Chung et al., The Impact of Volcker Rule on Bank Profits and Default Probabilities, Working Paper (June 19, 2016) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167773.

From a regulatory perspective, American commercial businesses are competing on an unlevel playing field, and the Proposed Rule threatens to exacerbate the numerous disadvantages borne by U.S.-based end-users. As of the Basel Committee on Banking Supervision's latest report,[16] seven other jurisdictions, including the European Union, have yet to implement a SA-CCR framework. The lack of certainty with respect to SA-CCR regime harmonization and the differing stages in which each jurisdiction currently stands to implement SA-CCR is cause for concern. In particular, we are concerned that adoption of the Proposed Rule before SA-CCR is adopted in other jurisdictions would leave U.S. end-users susceptible to additional competitive disadvantages, as we have seen in the past with respect to other aspects of Basel III implementation.

The Coalition has long been concerned with U.S. regulation that imposes burdens that non-U.S. end-users do not face.[17] For example, the potential effects of the Proposed Rule are similar to those created by the application of the credit valuation adjustment ("CVA") capital charge under current U.S. bank capital regulations,[18] which creates an unlevel playing field that directly disadvantages U.S. commercial businesses. Currently, European Union regulations have exempted end-user transactions from CVA capital charges, whereas the United States has not, thus affording both banks and end-user counterparties in the European Union an economic advantage in terms of transaction pricing.[19] We are fearful that the premature adoption of the Proposed Rule may result in a similar outcome as with the CVA, whereby U.S. end-users are subject to pass-through costs not borne by their foreign counterparts.

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16 Basel Committee on Banking Supervision, Fifteenth progress report on adoption of the Basel regulatory framework (Oct. 2018), available at https://www.bis.org/bcbs/publ/d452.pdf.

17 See, e.g., Coalition for Derivatives End-Users, Comment Letter: Net Stable Funding Ratio (Aug. 5, 2016), available at https://www.federalreserve.gov/SECRS/2017/May/20170511/R-1537/R-1537_080516_130459_533996296227_1.pdf; Coalition for Derivatives End-Users, Comment Letter: Net Stable Funding Ratio (Oct. 8, 2015), available at https://www.federalreserve.gov/SECRS/2016/November/20161108/R-1537/R-1537_100815_130496_471518073103_1.pdf.; Coalition for Derivatives End-Users, Comment Letter: Project KISS (Sept. 29, 2017), available at https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=28504; Coalition for Derivatives End-Users, Comment Letter: Credit Valuation Adjustment (Oct. 22, 2012), available at https://www.federalreserve.gov/SECRS/2013/January/20130129/R-1442/R-1442_102212_110215_388225682014_1.pdf.

18 The CVA is another capital charge promulgated by the Basel Committee on Banking Supervision in an effort to address counterparty credit risk with respect to mark-to-market losses. While agreed to in principal by the international community, implementation of this capital charge has differed across jurisdictions in several notable respects. In particular, the European Union has exempted such charges on financial institutions when transacting with non-financial corporations in order to reflect an existing exemption under the European Market Infrastructure Regulation.

19 The disparity in how the United States and European Union impose CVA capital charges has provided commercial businesses in the European Union with reduced costs for nearly five years. A study conducted by Risk.net indicates that the median CVA capital charge for the eight US global systemically important banks was 7.7 times larger than the twelve European Union global systemically important banks, with aggregate charges of $16.3 billion and $3.7 billion, at the end of 2017. Louie Woodall, US CVA charges over seven times higher than EU, Risk.net (June 1, 2018), available at https://www.risk.net/risk-quantum/5656911/us-cva-charges-over-seven-times-higher-than-eu.

We respectfully request that the Prudential Regulators delay the implementation of SA-CCR as presently planned in July 2020, in light of differing implementation timelines and the downstream effects that SA-CCR calculations would have on end-users' ability to hedge and mitigate business risks. Adopting a compliance timeline that is consistent with the compliance timelines adopted by foreign jurisdictions would help to ensure a level playing field for U.S. derivatives markets.

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The Proposed Rule has the potential to indirectly affect real-world businesses that engage in OTC derivatives and impose disproportionate costs on transactions that do not constitute meaningful risk to the financial markets.[20] End-users rely on efficiently priced derivatives markets in order to mitigate their business risks and ensure stable pricing for American consumers. We, therefore, would like to reiterate and request that the Prudential Regulators, when considering the Proposed Rule for adoption, consider the following adjustments:

- End-User Exemption: Transactions with derivatives end-users should be explicitly exempted from SA-CCR calculations. An exemption, as described in Section 1 above, is consistent with congressional intent behind the end-user clearing and margin exemption and ensures that capital charges would not flow down to end-users and American consumers;

- Better Offset Recognition: Alternative collateral arrangements (e.g., asset liens, letters of credit, and other non-cash collateral) employed by end-users should receive offsetting recognition against the exposure calculations of SA-CCR. Recognition of these risk-reducing arrangements would better calibrate SA-CCR's calculation of the true exposure at default risk and would reduce the overall transaction pass-through costs borne by end-users;

- Recalibration of Supervisory Factors: Supervisory factors should be better calibrated to the specific asset class and sub-asset class to reflect differences in contract maturities and the true volatilities (e.g., power versus oil and natural gas). A better calibration of these factors would help to reflect the true volatility in the commodities derivatives in which end-users transact; and

- Temporal Consistency: Finalization and implementation of the Proposed Rule should be consistent with those of foreign jurisdictions. Consistent implementation would help to ensure a level playing field and ensure that foreign competitors do not directly benefit from early adoption of U.S. regulations.

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[20] Supra note 6.

Thank you in advance for your consideration of the Coalition's and the below listed end-users' and trade associations' comments in response to the Proposed Rule. Please contact Michael Bopp at 202.955.8256 or at mbopp@gibsondunn.com if you have any questions regarding our comments or require any additional information on any of the topics discussed herein.

Respectfully submitted,

The Coalition for Derivatives End-Users
AK Steel Holding Corporation
Alenco Inc.
Alliant Energy Corporation
American Investment Council
American Petroleum Institute
American Seafoods Group LLC
Applied Materials, Inc.
Aptiv PLC
ARM Energy Holdings LLC
Ascent Resources Utica Holdings, LLC
Ball Corporation
Basin Electric Power Cooperative
BP America
Bridge Energy LLC
Bruin Williston Holdings, LLC
California Resources Corporation
Calumet Specialty Products Partners, L.P.
Can Manufacturers Institute
Century Aluminum Co.
Chesapeake Energy Corporation
Clarke-Mobile Counties Gas District (Jackson, Alabama)
Conagra Brands
Constellation Brands Inc.
Crystal Flash, Inc.
Cummins Inc.
Dakota Gasification Company
Dean Foods Company
Deere & Company
Direct Energy
East Penn Manufacturing Co.

Encana Corporation
Energy Transfer LP
EnerVest, Ltd
EnLink Gas Marketing, LP
EnLink Midstream, LLC
Ensign Natural Resources LLC
Fleur de Lis Energy, L.L.C.
Flywheel Bakken, LLC
Flywheel Energy, LLC
Ford Motor Company
Frontier Airlines Inc.
Hartland Fuel Products, LLC
Hess Corporation
Hilton Worldwide Holdings Inc.
Honeywell International Inc.
Independent Petroleum Association of America
Industrial Energy Consumers of America
Kaiser Aluminum
Kayne Anderson Capital Advisors, L.P.
Keurig Dr Pepper Inc.
Kosmos Energy Ltd.
Lario Oil & Gas Co.
LyondellBasell Industries N.V.
Maclean-Fogg Company
Microsoft Corporation
National Association of Corporate Treasurers
National Association of Manufacturers
National Cattlemen's Beef Association
National Propane Gas Association
Navistar International Corporation
Norwegian Cruise Line Holdings Ltd.
Novelis Inc.
Owens-Illinois Inc.
PBF Energy Inc.
Peabody Energy Corporation
Pinedale Energy Partners, LLC
Pioneer Natural Resources Company
Plains All American Pipeline, L.P.

Pro Petroleum, Inc.
Rackspace Hosting, Inc.
Sabinal Energy, LLC
Schweitzer-Mauduit International, Inc.
Sensata Technologies Holding PLC
Siemens Capital Company LLC
Southwest Airlines Co.
Southwestern Energy Company
Southwire Company
Sysco Corporation
TE Connectivity Ltd.
Terra Energy Partners LLC
The Black Belt Energy Gas District (Jackson, Alabama)
The Boeing Company
The Coca-Cola Company
The Dow Chemical Company
The Hershey Company
The Lower Alabama Gas District (Evergreen, Alabama)
The Procter & Gamble Company
The Southeast Alabama Gas District (Andalusia, Alabama)
The Southeast Alabama Gas Supply District (Andalusia, Alabama)
The Tennessee Energy Acquisition Corporation (Clarksville, Tennessee)
U.S. Chamber of Commerce - Center for Capital Markets Competitiveness
Vistra Energy Corp.
Whirlpool Corporation
Wolverine Gas and Oil Corporation
Worthington Industries Inc.
WPX Energy, Inc.
Venado Oil & Gas, LLC