# Congress of the United States

## Washington, DC 20515

January 19, 2024

The Honorable Michael S. Barr
Vice Chairman for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Mr. Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Dear Vice Chair Barr, Chairman Gruenberg, and Acting Comptroller Hsu:

Futures and derivatives markets provide critical tools to manage risk for farmers, ranchers, grain and food processors, energy producers, and other important commercial end-users. We have concerns, however, that the GSIB Surcharge Proposal and the Basel III Endgame Proposal (the proposals) will generate disincentives for prudent risk management strategies and drive up the cost of hedging for end-users. Ultimately, consumers who are already facing elevated prices from record levels of inflation will pay the price at the grocery store and the gas station.

On the heels of inflation rates not seen in over 40 years, Americans are facing record high costs in grocery stores, at gas stations, and in their energy bills. Futures and derivatives markets play a stabilizing role for prices, helping to insulate consumers and businesses from market instability while involving minimal risk for end-users. For this reason, many nonfinancial firms that use derivatives for traditional hedging purposes were exempt from a number of regulations in the Dodd-Frank Act that would have made it more expensive for them to manage their risk. Former Senate Banking, Housing, and Urban Affairs Chairman Dodd, along with former Senate Agriculture, Nutrition, and Forestry Chairman Lincoln, highlighted the importance of preserving these tools in the Dodd-Frank Act. "Regulators, namely the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), and the prudential regulators, must not make hedging so costly it becomes prohibitively expensive for end users to manage their risks."[1]

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[1] See letter from Senators Dodd and Lincoln to Chairman Frank and Peterson, dated June 30, 2010. https://www.wsj.com/public/resources/documents/dodd-lincoln-letter070110.pdf

As policymakers and stakeholders review the proposals, we remain concerned that the proposals ignore congressional intent to keep critical risk management tools accessible and low-cost.

When farmers, ranchers, or other end users enter into futures or other centrally-cleared derivatives contracts to mitigate the risk they face from fluctuating commodity prices, they generally initiate the trade through a Futures Commission Merchant (FCM) registered with the CFTC. FCMs provide market access to their clients through memberships at regulated derivatives exchanges and clearinghouses, and the vast majority of FCMs today are banks that will be subject to the proposals. Increasing regulatory capital charges for banks that provide end-users with access to these hedging markets and risk management tools is a misguided approach.

For another key hedging tool, uncleared swaps, the proposals would represent a massive increase in the cost of trading these instruments. The banking entities who facilitate these transactions as swap dealers allocate capital on a business line basis, and as a result, disproportionate capital requirements for a certain business line or trading desk may cause banks to decrease their offerings of these risk-reducing tools. As a result, liquidity in these markets could decrease dramatically, and the costs of hedging for end users would be driven even higher.

The Basel III Proposal's public listing requirement would make it more expensive for privately owned investment-grade companies to hedge against risk, despite the lack of any empirical link between a public listing and creditworthiness. In addition, the new capital requirements for "Credit Valuation Adjustment" or "CVA" Risk on derivative transactions could further penalize end users. The new CVA requirements are most severe for derivative transactions with end users.

The GSIB Surcharge Proposal and Basel III Endgame Proposal substantially exceed the Basel III framework and go significantly further than what is being implemented in other jurisdictions, such as Europe. This will inevitably put end-users seeking to hedge and manage risk on an uneven playing field with competitors in other jurisdictions.

In turn, we respectfully ask that you respond to the following questions by February 16, 2024.

- Have you conducted any economic analysis about these disparities? Please provide your analysis with regard to the international consistency of the US proposals with other major jurisdictions, and, in particular, how the US and EU jurisdictions treat end users under the respective proposals.
- As you were developing these proposals, how was the end-user impact of increased capital charges for hedging and risk management tools factored into your decision-making? Have you produced any economic analysis about the impacts these proposals will have on end-users?
- How would increased FCM consolidation create more stability in the derivatives marketplace?

The impact of these bank capital proposals will have a direct effect on the economy and our constituents. It is vital to approach any proposal regarding increased capital requirements, particularly increased capital requirements for hedging and risk management tools, with careful consideration and input from industry as well as a comprehensive cost-benefit analysis.

With rising economic and geopolitical risks, now is not the time to increase costs for farmers' cooperatives, energy producers, and food processors seeking to responsibly hedge against instability.

Sincerely,

cc:

Federal Reserve Board Chair Jerome Powell
Federal Reserve Board Vice Chair Phillip Jefferson
Federal Reserve Board Governor Michelle Bowman
Federal Reserve Board Governor Christopher Waller
Federal Reserve Board Governor Lisa Cook
Federal Reserve Board Governor Adriana Kugler
Commodity Futures Trading Commission Chair Rostin Behnam
Federal Deposit Insurance Corporation Vice Chairman Travis Hill
Federal Deposit Insurance Corporation Director Jonathan McKernan
Federal Deposit Insurance Corporation Director Rohit Chopra

Zachary Nunn

Zach Nunn
Member of Congress

Jerry Moran

Jerry Moran
United States Senator

Andy Barr

Andy Barr
Member of Congress

John Boozman

John Boozman
United States Senator

Glenn Thompson

Glenn Thompson
Member of Congress
Chairman, House Committee on Agriculture

French Hill
Member of Congress

John Thune
United States Senator

Kevin Cramer
United States Senator

Blaine Luetkemeyer
Member of Congress

Thom Tillis
United States Senator

Frank D. Lucas
Member of Congress

Roger Marshall, M.D.
United States Senator

Wiley Nickel
Member of Congress

Dusty Johnson
Member of Congress

Austin Scott
Member of Congress

Scott Fitzgerald
Member of Congress

John Rose
Member of Congress

Roger Williams
Member of Congress

James R. Baird
Member of Congress

Cynthia M. Lummis
United States Senator

Bill Hagerty
United States Senator

Mike Flood
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Donald G. Davis
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John S. Duarte
Member of Congress

Tommy Tuberville
United States Senator

Mike Braun
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Bryan Steil
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Cindy Hyde-Smith
United States Senator

Erin Houchin
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Monica De La Cruz
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Dan Meuser
Member of Congress

Alex X. Mooney
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Katie Boyd Britt
United States Senator