



May 6, 2010

Robert McDonald
Chief Executive Officer
Procter & Gamble
1 Procter & Gamble Plaza
Cincinnati, OH 45201

Dear Mr. McDonald:

Procter & Gamble was listed as a member of the "Coalition for Derivatives End-Users" in an October 2, 2009 letter from this coalition to the U.S. House of Representatives. Does your company still align itself with this coalition's ideology?

The most recent letter sent by this coalition to the U.S. Senate laid out proposed changes to the Restoring American Financial Stability Act (S.3217), which would result in:

- Reducing proposed capital requirements for swaps dealers
- Creating regulatory exemptions for insurance companies (like AIG), hedge funds (like Long Term Capital) and other financial players
- Exempting up to two-thirds (66%) of all over-the-counter (OTC) derivatives from clearing, trading and margin requirements.
- Stripping the "too big to fail" provisions that ensure that swaps dealers are not bailed out by taxpayers

All of these proposals will benefit swaps dealers and financial players while hurting legitimate derivatives end-users, shareholders and Main Street America.

Experts agree that it was the interlocking web of exposures amongst large financial players that almost toppled the financial system in 2008. If all of these suggestions were adopted, the result would be to destroy the Senate's attempts to effectively regulate the dangerously opaque and unregulated derivatives markets.

The Council of Institutional Investors, which represents \$3 trillion worth of pension fund money, along with the CFA Institute, which offers rigorous accreditation to financial analysts, have formed an Investor's Working Group. This group, chaired by William H. Donaldson and Arthur Levitt, Jr., sent a letter to the Senate on February 12, 2010, calling for mandatory central clearing for all OTC derivatives that can be centrally cleared through an exchange, as well as mandatory exchange trading for all OTC derivatives that can be moved onto an exchange for trading.

Former, current and future shareholders, as well as your customers - the American people - deserve to know where you stand on this critical issue of national significance. Do you stand with the vast majority of your shareholders and customers who want to see mandatory clearing and trading requirements for OTC derivatives, and the economic security that would create? Or do you stand with the Coalition for Derivatives End-Users who want to see giant loopholes exempting financial players from these requirements?

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(340) 692-5102 ▲ Fax (340) 692-5110

As a legitimate commercial end-user, it's easy to understand why Procter & Gamble would want an exemption from clearing, trading and margin requirements. In October 2009 when you joined the coalition's letter to the House of Representatives, it was not clear in the proposed House bill whether an end-user exemption would be available to legitimate commercial end-users.

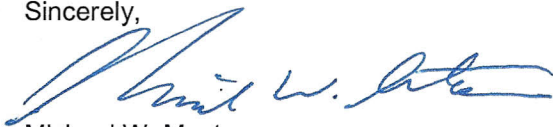
Now the Senate bill on financial regulatory reform includes an explicit 100% exemption for commercial end-users hedging their commercial risk. This guarantees that Procter & Gamble would be completely exempt from exchange clearing and exchange trading requirements, as long as your company is not betting in the financial markets through speculation.

As an equity market investor, former shareholder of Procter & Gamble, and current consumer of many of your products, I believe it is essential for your shareholders and customers to understand your company's position on this critical issue. The recent financial crisis led to the worst economic recession since the Great Depression. Trillions of dollars in investor wealth were destroyed as a result of the reckless behavior of a few large financial players on Wall Street. Sensible reforms, including effective regulation of derivatives, can prevent future financial crises.

If you stand with your shareholders and customers, then I ask you to publicly disassociate Procter & Gamble from the "Coalition for Derivatives End-Users" and express your support for derivatives reform. My intention in this letter is to encourage you to seriously reconsider the need for regulatory reform, and to seek your public commitment to support these measures.

I look forward to continuing this dialogue with you, and if you have any questions regarding these issues I would welcome the opportunity to discuss them.

Sincerely,



Michael W. Masters
Managing Member
Masters Capital Management
17 Church Street
Christiansted, VI 00820

Cc: Jon R. Moeller, Chief Financial Officer, Procter & Gamble (without enclosures)
Teri L. List, S.V.P. & Treasurer, Procter & Gamble (without enclosures)
Mark Erceg, Investor Relations, Procter & Gamble (without enclosures)
Ben LaRocco, Government Relations, Procter & Gamble (without enclosures)
Rotha Penn, External Communications, Procter & Gamble (without enclosures)
Honorable George Voinovich, Senator from Ohio (without enclosures)
Honorable Sherrod Brown, Senator from Ohio (without enclosures)

Enclosures: Analysis of Coalition for Derivatives End-Users Proposals
February 12, 2010 letter from Investors Working Group to Senate Banking Committee
October 2, 2009 Coalition for Derivatives End-Users Letter to House of Representatives
April 29, 2010 Coalition for Derivatives End-Users Proposals for Senate Bill 3217

CORPORATIONS MIKE MASTERS HAS CALLED UPON
TO DISASSOCIATE THEMSELVES FROM THE
COALITION FOR DERIVATIVES END-USERS

3M
Apple
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Cummins
Deere
Eastman Chemical
Eli Lilly
Ford
General Electric
Harley-Davidson
IBM
Intel
Johnson & Johnson
Lexmark
Medtronic
Procter & Gamble
Whirlpool

For more information please contact Simone Allen at (404) 692-5102.



February 12, 2010

The Honorable Christopher J. Dodd
Chairman
United States Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Member
United States Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John F. "Jack" Reed
Chairman
United States Senate Committee on Banking,
Housing, and Urban Affairs Subcommittee on
Securities, Insurance, and Investment
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Judd Gregg
United States Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd, Ranking Member Shelby, Subcommittee Chairman Reed, and Senator Gregg:

As you continue to discuss potential revisions to the over-the-counter (OTC) derivatives provisions of the *Restoring American Financial Stability Act of 2009* discussion draft, we write to highlight the relevant recommendations of the Investors' Working Group (IWG) concerning this important area of regulatory reform.

A blue ribbon panel of industry and market experts, the IWG is an independent, nonpartisan commission sponsored by the CFA Institute Centre for Financial Market Integrity ("CFA Institute") and the Council of Institutional Investors to provide an investor perspective on ways to improve the regulation of U.S. financial markets. After months of deliberations, the findings and specific recommendations of the IWG were published in its July 2009 report *U.S. Financial Regulatory Reform: The Investors' Perspective* ("IWG Report").

Among its various findings, the IWG concluded that unregulated OTC derivatives contracts, especially credit default swaps, were at the heart of the financial crisis. Although OTC derivatives have been justified as vehicles for managing financial risk, they also spread and multiplied risk throughout the economy during the crisis, causing great harm. Specific problems plaguing the OTC derivatives market identified by the IWG include lack of transparency and price discovery, excessive leverage, rampant speculation, and inadequate prudential controls.

Despite these serious problems, the enormous OTC derivatives market is virtually exempt from all regulation under the Commodity Futures Modernization Act of 2000 (CFMA). Such lax oversight led the IWG to conclude that regulation of the OTC derivatives market is one of a number of "critical gaps that urgently need attention" from policymakers. In order to help close this serious gap in the regulation of the U.S. financial system, the IWG recommended that Congress "enact legislation overturning the exemptive provisions of the CFMA and requiring standardized (and standardizable) derivatives contracts to be traded on regulated derivatives exchanges and cleared through regulated derivatives clearing operations."

Consistent with this recommendation, the IWG opposes any exemption to exchange trading and central clearing requirements for end users of standardized OTC derivatives. In our view, such exemptions would leave a gaping hole in the regulation of derivatives to the detriment of investors and the financial markets generally.

Accordingly, we respectfully urge you to consider derivatives reform guided by the following principles:

- 1. All OTC derivative contracts that can clear centrally should be required to be cleared through a regulated clearinghouse.** The *Restoring American Financial Stability Act* discussion draft narrowly limits the clearing requirement to only certain derivative contracts where one side of the trade is either a swap dealer or major swap participant. As a result, a large volume of OTC contracts that can be cleared will not be cleared because, as is often the case, one of the parties to the transaction is not a swap dealer or a major swap participant as defined in the discussion draft, but rather is a hedge fund, investment fund, or other financial or nonfinancial firm. This deficiency leaves the entire financial system unnecessarily exposed to systemic risk that could otherwise be reduced if reform legislation simply requires that all clearable contracts be required to clear centrally.
- 2. All standardized and standardizable OTC derivative contracts that can be exchange traded should be required to trade on a regulated derivatives exchange.** While there may be some valid arguments for exempting truly customized contracts required to hedge business risk from central clearing requirements, we are unaware of any valid argument for exempting standardized and standardizable OTC derivative contracts from exchange trading. The transparency provided by exchange trading not only lowers systemic risk and strengthens regulatory oversight, but also, importantly for investors, enhances the price discovery function of derivatives markets. As the IWG concludes, “[a]lthough requiring central clearing alone would mitigate counterparty risk, it would not provide the essential price discovery, transparency and regulatory oversight provided by exchange trading.”

We note that a recent survey by the CFA Institute of its membership found significant support for the above principles of derivatives regulation. According to the survey, 68 percent of the CFA Institute’s members agree that all standardized derivative contracts that currently trade over the counter should be required to trade on regulated exchange, and 78 percent agree they should be required to clear centrally.¹ More details regarding the basis for the IWG’s findings and recommendations regarding OTC derivatives can be found on pages 10-12 of the IWG Report.²

¹ CFA Institute Member Poll: U.S. Regulatory Reforms, Feedback on the IWG Report 2 (Oct. 2009), http://www.cfainstitute.org/centre/news/surveys/pdf/us_iwg_poll_report.pdf.

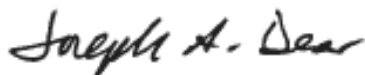
² Available online at www.cii.org/UserFiles/file/IWGreport.pdf.

Thank you for your leadership in connection with this critical area of financial regulatory reform. As always, we would welcome the opportunity to have one or more members of the IWG discuss these issues with you or your staff at your convenience. Please feel to contact Jeff Mahoney at (202) 261-7081 or jeff@cii.org to arrange for such a meeting or if you should have any questions or comments regarding this letter.

Sincerely,



Kurt Schacht, CFA
Managing Director, CFA Institute Centre for
Financial Market Integrity
Co-Sponsor, Investors' Working Group



Joe Dear
Chair, Council of Institutional Investors
Co-Sponsor, Investors' Working Group

cc: The Honorable Blanche L. Lincoln, Chairman, United States Senate Committee on
Agriculture, Nutrition and Forestry
The Honorable Saxby Chambliss, Ranking Member, United States Senate Committee
on Agriculture, Nutrition and Forestry

ANALYSIS OF COALITION FOR DERIVATIVES END-USERS' PROPOSALS

Reducing proposed capital requirements for swaps dealers

The Coalition for Derivatives End-Users (CDE-U) on page 4 of their comment letter regarding Senate bill 3217, propose "On page 555, delete line 16 and all that follows through line 2 on page 557" which would eliminate "Section 721(a)49(C) CAPITAL" which requires regulators to set capital requirements based on all a swaps dealers' swaps and not just one category of swaps.

In addition, CDE-U (on page 7 of their comment letter) proposes "On page 648, delete from the word "contain" on line 11 through line 2 on page 649" which they admit removes the directive to regulators to establish capital requirements for un-cleared swaps that are "substantially higher" than cleared swaps.

[NOTE: Treasury Secretary Geithner, House Financial Services Chairman Frank and Senate Banking Chairman Dodd have all stated their support for the policy that un-cleared swaps should face "substantially higher" capital charges because of their greater inherent risk and because the incentive should be to move swaps toward clearing (and not the reverse).]

CDE-U also proposes on page 7 (in the same section of their comment letter) that swaps dealers who are not banks should not face capital charges for cleared swaps.

Creating regulatory exemptions for insurance companies (like AIG), hedge funds (like Long Term Capital) and other financial players

In CDE-U's comment letter, on page 5, under their suggestion #3, they advocate creating an entire exemption for "Financial Entity End-Users" which would apply to every financial player who is not a swaps dealer, major swap participant or government-sponsored entity (like FNM or FRE).

On page 2, under comment #1, when CDE-U eliminates the category of "Major Swap Participant" they replace it with a much weaker category of "Swap Principal" where they define "Bona Fide Hedging" as entering a derivative to hedge the risk arising from "the potential change in the value of assets that such person owns . . . or *anticipates* owning." The net effect of this change is that nearly all derivatives transactions would be considered hedging transactions. Under this change, a hedge fund that anticipates that Lehman Brothers' bonds will drop sharply in value and therefore anticipates that the hedge fund will want to buy those bonds at that lower price, can short Lehman Brothers credit default swaps today to hedge that anticipated purchase. This will allow nearly every financial player to escape the definition of "Swap Principal" (formerly "Major Swap Participant").

Exempting up to two-thirds (66%) of all over-the-counter (OTC) derivatives from clearing, trading and margin requirements.

As mentioned above, the CDE-U's proposed legislative changes would dramatically reduce the number of financial players that would be considered major swaps participants. As detailed it would also allow all financial players to get an exemption from the clearing and trading requirements when they are "hedging" (which is a classic misnomer because all sorts of speculation would be considered "hedging.")

Further the CDE-U has proposed on pages 7-8 of their comment letter under comment #8, that swaps dealers should not be required to make or receive initial or variation margin payments when they trade with financial players or end-users. That means that just like today, these swaps would not be cleared through an exchange, would not be traded on an exchange and would not have any margin required by regulators to ensure that counterparties can pay off their bets.

The Bank for International Settlements has released statistics from June 2009 that show the outstanding notional derivatives exposures for swaps dealers, non-dealer financial players and non-financial end-users.

CATEGORY	SWAPS DEALERS	FINANCIAL PLAYERS	END-USERS	FINANCIALS + END-USERS
Foreign Exchange	39%	44%	17%	61%
Interest Rates	34%	57%	9%	66%
Equity & Commodity	40%	50%	10%	60%

The figures in this table come from the Chairman of the Commodity Futures Trading Commission, Gary Gensler, who has given many speeches regarding the need for extremely tight end-user exemptions in which he uses these figures.¹

Since the combined changes mentioned above would allow almost all financial players that are not dealers to avoid clearing, trading and margin requirements the CDE-U's proposed changes would allow up to two-thirds of derivatives to go free from these requirements.

Stripping the “too big to fail” provisions that ensure that swaps dealers are not bailed out by taxpayers

CDE-U proposes striking out these provisions on page 6 of their comment letter under comment #4.

¹ Remarks of Chairman Gary Gensler, Over-the-Counter Derivatives Reform, Institute of International Bankers Washington Conference, March 1, 2010

Coalition for Derivatives End-Users

Coalition for Derivatives End-Users
Comments to Title VII of the Lincoln/Dodd Substitute to S. 3217,
The Wall Street Transparency and Accountability Act of 2010

April 29, 2010

Introduction

The Coalition for Derivatives End-Users (the “Coalition”) supports Congressional efforts to draft legislation that brings transparency to the over-the-counter (OTC) derivatives market, contains systemic risk and restores stability to the financial system. Business end-users rely on OTC derivatives to manage the risks associated with daily operations—from cost fluctuations in materials and commodities that go into making products, to the foreign currency they are exposed to when they buy or sell products overseas, to the interest rates they pay when they finance projects, investments and operations. When end-users enter into OTC derivative contracts, they do so primarily to manage risk. End-users seek to lock in prices and eliminate volatility and uncertainty due to fluctuations in interest rates, foreign currency exchange rates, and commodity prices. Removing this uncertainty allows end users to focus on growing and investing in their core businesses and creating jobs. While the Coalition supports enhanced transparency for all derivatives transactions and the reduction of systemic risk, efforts to reform the OTC derivatives markets should preserve affordable access to these critical risk management tools for the thousands of companies whose derivatives transactions did not cause the recent financial crisis.

New regulations that impose central clearing and margin requirements also should not be applied retroactively. These are contracts that were entered into often well before new regulation was contemplated, let alone passed, and the terms and economics of arms-length agreements, entered into between two parties seeking particular risk exposure and mitigation, should be respected, not altered after-the-fact.

The Coalition appreciates efforts to exempt end-users from new regulatory regimes that could stifle risk management efforts, including those that are part of the Wall Street Transparency and Accountability Act (“WSTA”). Nevertheless, the WSTA does not adequately protect end-users from regulation that should apply only to swap dealers and entities that do not use derivatives primarily to manage risk. Hence, we propose changes to WSTA to ensure that it accomplishes the goals of bringing additional transparency to the derivatives markets and mitigating risks to financial stability without discouraging end-users from entering into derivatives contracts that tend to stabilize – not introduce risk – into the economy. We suggest changes to WSTA that provide:

- Clear exemptions from central clearing, bilateral margining and exchange-trading requirements for business end-users;
- An end-user exemption that is as objective and predictable and that appropriately exempts from the regulatory scheme applicable to swap dealers those businesses that use OTC derivatives primarily to hedge business risk and, thereby, do not pose a threat to financial stability;
- Clarification that capital requirements should not be imposed on end users and that any capital requirements authorized by the Title should not be assessed to penalize the use of

Coalition for Derivatives End-Users

OTC derivatives or otherwise create an incentive to centrally clear transactions and should be based on actual risk of loss and aimed at promoting the safety and soundness of the financial system; and

- Prospective application of new requirements recognizing that market participants negotiated current trades with an understanding as to their potential obligations based on the laws and market practices in place at that time.

The comments below are not exhaustive and have been provided on an expedited timetable. Hence, the Coalition may modify or add to the comments as we examine the bill further. Moreover, the comments may not fully reflect the views of each entity that has been associated with the Coalition.

The comments in the balance of this memo are designed to suggest changes to WSTA so that it better accomplishes the goals noted above. The Coalition understands that there are multiple ways to draft a robust end-user exemption and is supportive of efforts designed to achieve this goal. The Coalition notes that one such effort, Amendment 192 filed by Senators Shelby and Crapo to the Senate Finance Committee Print, adopts a strong, objective framework for reform that provides predictable standards that recognize end-users should not face financial disincentives for attempting to manage their risk.

Specific Comments

1) Swap Principal (Page 539-541)

Purpose of proposed change: Only 10-20% of the OTC derivatives market is comprised of trades in which one of the counterparties is a business end-user. Moreover, the credit risk associated with this relatively small subset of trades is spread across thousands of businesses. The purpose of the proposed language is to ensure that business end-users that primarily use derivatives for hedging are not deemed included in all of the components of the new regulatory scheme.

Suggested change:

On page 539, delete line 14 and all that follows through line 24 on page 541 and insert the following:

(39) SWAP PRINCIPAL.—

(A) IN GENERAL.--The term "swap principal" means any person--

(i) who engages in swap transactions and is otherwise not a swap end user; or

(ii) who engages in swap transactions, is a regulated entity (as defined in section 1303(2)) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20), and is a government-sponsored enterprise.

(B) EXEMPTION.—The Securities Exchange Commission and the Commodity Futures Trading Commission may, by rule, regulation, or order, as necessary or appropriate in

Coalition for Derivatives End-Users

the public interest or for the protection of investors, exempt any person or category of persons from the definition of ‘swap principal.’

(C) A person shall not be deemed to be a swap principal pursuant to subparagraph (A)(i) solely because that person buys or sells swaps for such person’s own account or the account of any person under common control with such person, either individually or in a fiduciary capacity.

(40) SWAP END USER.—The term ‘swap end user’ means any person the gross aggregate notional value of whose outstanding swaps that do not qualify as bona fide hedging swap transactions—

(A) is 5 percent or less of the gross aggregate notional value of the person’s outstanding swaps; or

(B) is 7 percent or less of the gross aggregate notional value of the person’s outstanding swaps, provided that the percentage in excess of 5% of the aggregate notional value of the person’s outstanding swaps that do not qualify as bona fide hedging transactions were executed in connection with the person’s business transactions.

(41) BONA FIDE HEDGING SWAP TRANSACTION.—

(A) IN GENERAL.—The term ‘bona fide hedging swap transaction’ means a purchase or sale by any person of a bona fide swap that is economically appropriate to the reduction or offsetting of risks arising from the operation of a business, including, but not limited to—

- (i) the potential change in the value of assets that such person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;
- (ii) the potential change in the cost or value of liabilities that such person owns, has incurred, or anticipates incurring; or
- (iii) the potential change in the cost or value of goods or services that such person provides, purchases, or anticipates providing or purchasing.

(B) PREVENTION OF EVASION.—A swap transaction that is undertaken solely for the purpose of avoiding registration as a swap provider shall not constitute a bona fide hedging swap transaction.

(C) For purposes of this paragraph, the term ‘person’ shall include any person under common control with that person.

Note: All instances of the term “major swap participant” should be stricken and replaced with the term “swap principal”.

Coalition for Derivatives End-Users

2) Swap Dealer (Page 555-557)

Purpose of proposed change: To clarify that the term “swap dealer” does not include an affiliate of a company that enters into swaps on behalf of the company or its affiliates but does not hold itself out as a dealer or make a market in swaps.

Suggested change:

On page 555, delete line 16 and all that follows through line 2 on page 557 and insert the following:

“(50) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person (other than a commercial end user or financial entity end user) who—

“(i) holds itself out as a dealer in swaps;

“(ii) makes a market in swaps;

“(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of business; and

“(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

(B) EXCEPTION.—The term “swap dealer” does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person but —

(1) not as part of a regular line of business; or

(2) does not hold itself out as a dealer in swaps and does not make a market in swaps.

“(C) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a deminimis quantity of swap dealing in connection with transactions with or on behalf of its customers.

3) Commercial End User (p. 578–582)

Purpose of proposed change: The definition of commercial end user is expanded to include those parties, like commercial real estate and hospital owners, that own or manage physical assets. Additionally, a Financial Entity End User definition should be added to the bill to allow entities that engage in financial activities, but who are not major swap participants or swap dealers, to receive the same protections afforded to commercial end users. Such protections, however, are not extended to Fannie Mae and Freddie Mac or to those financial entities that use derivatives for speculative purposes.

Suggested change:

Delete line 9 on page 578 through line 6 on page 582 and insert the following:

Coalition for Derivatives End-Users

“(10) END USER CLEARING EXEMPTION.—

“(A) DEFINITIONS.—In this paragraph:

“(i) COMMERCIAL END USER.— IN GENERAL.—In this paragraph, the term ‘commercial end user’ means any person, other than a financial entity end user, who, as its primary business activity, owns, operates, uses, produces, processes, manufactures, develops, distributes, leases, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, ethanol, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

“(ii) FINANCIAL ENTITY END USER.— FINANCIAL ENTITY END USER.—

“(I) IN GENERAL.—The term ‘financial entity end user’ means any person predominantly engaged in activities that are financial in nature.

“(II) EXCLUSIONS.—The term financial entity end user does not include—

“(aa) any person who is a swap dealer, security-based swap dealer, swap principal, major security-based swap principal;

“(bb) a commercial end user

“(cc) who is a regulated entity (as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20) and a government-sponsored enterprise.

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

“(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

“(bb) may elect to require clearing of the swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating or balance sheet risk.

“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a commercial end user or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge, reduce or otherwise mitigate the commercial risk, including operating and balance sheet risk, of the commercial end user or the financial entity end user parent or other affiliates of the commercial end user or financial entity end user parent.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a swap dealer;

Coalition for Derivatives End-Users

- “(II) a security-based swap dealer;
- “(III) a major swap participant;
- “(IV) a major security-based swap participant;
- “(V) a commodity pool;
- “(VI) a bank holding company with over \$50,000,000,000 in consolidated assets

4) Amendment to Federal Assistance for Swaps Entities (p. 513-515)

Purpose of proposed change: To ensure that commercial end users have adequate potential counterparties with which to hedge risk by permitting swap dealers to remain as regulated depository institutions. Separating swap dealing entities from depository institutions presents a number of practical problems for end users, including reducing or eliminating available counterparties, increasing the cost to hedge and possibly preventing some end users from hedging certain risks. Such problems would result from a swap dealer’s limited ability to gain access to non-cash collateral pledged to a lender and a borrower’s inability to net exposures between derivatives and loans. Such a requirement could exacerbate a problem many end users already face, as fewer banks will offer derivatives, including many community and regional banks, thereby eliminating the only counterparties with which many smaller businesses hedge risk.

Suggested change:

Strike Sec. 716 of Subtitle A by deleting line 21 on page 513 through line 11 on page 515.

5) Prospective Application – No Retroactivity (p. 706)

Purpose of proposed change: The language below would ensure that regulations relating to central clearing and margin requirements are applied prospectively and not retroactively.

Suggested change:

Insert the words “or margin” in between “clearing” and “requirements” on line 19 of page 706.

6) Foreign Exchange Swaps and Forwards (p. 552-555)

Purpose of proposed change: The purpose of this change is to exempt foreign exchange swaps and foreign exchange forwards from regulation. This change recognizes that most foreign exchange forwards and swaps have short-dated maturities and that a large percentage of these trades are already settled through a global multi-currency cash settlement system. The trades would still be subject to the reporting requirement. The Secretary of the Treasury would have the ability require foreign exchange swaps and foreign exchange forwards to be regulated as swaps by making a written determination.

Suggested change:

Delete line 17 on page 552 through line 6 on page 553 and insert the following:

Coalition for Derivatives End-Users

- (i) IN GENERAL.—Notwithstanding subparagraph A, foreign exchange swaps and foreign exchange forwards shall only be considered swaps under this paragraph if the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act.

On page 554, delete line 16 and all that follows through the “(ii)” on line 3 on page 555.

7) Amendment to Capital and Margin Requirements (p. 646-649)

Purpose of proposed change: To ensure that regulators are directed to consider actual risks when determining capital requirements – not artificially increasing capital charges to create an incentive to centrally clear transactions, or otherwise penalizing OTC derivatives. This is done by removing the language instructing regulators to require “substantially higher” capital requirements for uncleared swaps and by directing regulators to consider capital and margin that are appropriate for the risk associated with swaps.

Suggested change:

On page 646, insert the following in between the word “participant” and the period on line 20:

“and that are appropriate for the risk associated with the with the swaps held as a swap dealer or major swap participant”

On page 647, insert the following in between the word “participant” and the period on line 8:

“and that are appropriate for the risk associated with the with the swaps held as a swap dealer or major swap participant”

On page 648, delete from the word “contain” on line 11 through line 2 on page 649 and insert the following:

“be established at a level appropriate for the risk associated with the cleared and non-cleared swaps held as a swap dealer or major swap participant.”

On page 649, delete from the word “be” on line 8 through line 12 and insert the following:

“established at a level that is appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.”

8) Amendment to Applicability of Margin Provision (p. 653)

Purpose of proposed change: To exempt commercial end users and financial entity end users from the margin requirement for uncleared trades.

Suggested change:

Coalition for Derivatives End-Users

On page 653, delete all that follows the word “is” on line 18 through line 24 and insert the following:

“a commercial end user or financial entity end user and the commercial end user or financial entity end user is using the swap to hedge its commercial risk.”

9) Amendment to Include Exemptive Authority for International Harmonization (p. 762)

Purpose of proposed change: To provide the Treasury Secretary with the authority to exempt any swap, class of swaps, entity or class of entities from a requirement of this bill if the Secretary deems it necessary to ensure the U.S. remains globally competitive in financial markets.

Suggested change:

Insert the following after line 5 on page 762:

“Sec. 753 Exemptive Authority for International Harmonization.

In General. — The Secretary may exempt any swap, class of swaps, entity or class of entities from a requirement of this bill if the Secretary deems it necessary to ensure U.S. global competitiveness in financial markets. In order to make such an exemption, the Secretary shall –

(A) submit a written determination to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition and Forestry of the Senate, the Committee on Banking, Housing and Urban Affairs of the Senate, the Committee on Agriculture of the House of Representatives, and the Committee on Financial Services of the House of Representatives. Any such written determination shall not be effective until it is submitted to the appropriate committees in Congress.

(B) include, in its written determination, a finding that such exemption would not create serious adverse affects on the financial stability of the United States banking system or financial markets.”

Strike “Sec. 753” in line 6 of page 762 and insert “Sec. 754”

10) Amendment to Remove Audit Committee Approval Requirement (p. 583-584)

Purpose of proposed change: End users that are public companies are currently subject to significant disclosure requirements. Since January 1, 2008, FAS 161 (ASC 815) significantly increased disclosure requirements for those companies that apply generally accepted accounting principles. Additionally, most public companies implement hedging policies that clearly define roles and responsibilities for derivatives transactions, including roles deemed appropriate for senior management, the audit committee and the board of directors. Adding an audit committee approval requirement creates an unnecessary process step that may restrict an end user’s ability to mitigate its risks on a timely basis. Though companies often gain board approval for large transactions, some

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transactions are of an inconsequential size and thus do not warrant board or audit committee attention.

Suggested change:

Delete line 22 on page 583 through line 7 on page 584.

11) Amendment to Extend Effective Date (p. 762)

Purpose of proposed change: To move back the effective date of the legislation from 180 days following enactment to 360 days, the amount of time provided in the House bill. This legislation represents a transformation of the largest financial market in the world and market participants will need adequate time to prepare.

Suggested change:

Strike “180” in line 8 of page 762 and insert “360”