



Via Email

January 27, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: *File Number S7-43-10—End-User Exception to Mandatory Clearing of Security-Based Swaps*¹

Dear Ms. Murphy:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion dollars. Member funds are major shareowners with a duty to protect the retirement savings of millions of American workers.² Deeply affected by the financial crisis, Council members have a strong interest in meaningful regulatory reform. We appreciate the opportunity to provide our views on the above referenced proposed rule governing the exception to mandatory clearing of security-based swaps.

The large role unregulated trading in over-the-counter (OTC) derivatives contracts played in the global financial crisis is well known. Despite serious problems plaguing the market—lack of transparency and price discovery, excessive leverage, rampant speculation and lack of adequate prudential controls—it was left exempt from virtually all federal oversight and regulation by the Commodity Futures Modernization Act of 2000 (CFMA).³

¹ End-User Exception to Mandatory Clearing of Security-Based Swaps, 75 Fed. Reg. 79,992 (Dec. 21, 2010), available at <http://sec.gov/rules/proposed/2010/34-63556fr.pdf>.

² For more information about the Council of Institutional Investors (Council) and its members, please visit the Council's website at <http://www.cii.org>.

³ Investors' Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 10 (July 2009), [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors'%20Working%20Group%20Report%20(July%202009).pdf). [Following its issuance, the IWG Report was reviewed and subsequently endorsed by the Council board and membership. For more information about the Investors' Working Group, please visit the Council's website at <http://www.cii.org/iwglInfo>.]

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To help close this critical gap in regulation, the Investors' Working Group (IWG) recommended in its July 2009 report that, among other things, Congress should "enact legislation overturning the exemptive provisions of the CFMA and requiring all standardized and standardizable derivatives contracts be traded on regulated derivatives exchanges and cleared through regulated derivatives clearing operations."⁴ Consistent with this recommendation, during the development of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Council strongly opposed exemptions to exchange trading and central clearing requirements for any issuer or user of standardized or standardizable OTC derivatives, as such exemptions would preserve a gaping hole in regulation likely to be exploited by those intent on dodging oversight.⁵ As stated in the Report of the Senate Committee on Banking, Housing and Urban Affairs, "exceptions should be crafted very narrowly with an understanding that every company, regardless of the type of business they are engaged in, has a strong commercial incentive to evade regulatory requirements."⁶

For all of the above reasons, the Council opposes the Securities and Exchange Commission's proposed rule to grant an exemption from mandatory clearing requirements for small banks, savings associations, farm credit system institutions and credit unions with total assets of \$10 billion or less. We believe those financial institutions should remain under the definition of "financial entity" in the Dodd-Frank Act and be required to follow the same clearing requirements as other financial entities. In addition, we believe that any entity designated as a swap dealer, security-based swap dealer, major swap participant or major security-based swap participant for any of its swaps or security-based swaps should also be treated as a financial entity and prohibited from using the end-user clearing exception for *all* of its security-based swaps.

We appreciate the opportunity to share our concerns with you. Please feel free to contact me at (202) 261-7086 or laurel@cii.org, or General Counsel Jeff Mahoney at (202) 261-7081 or jeff@cii.org if you should have any additional questions or comments.

Sincerely,



Laurel Leitner
Senior Analyst

⁴ *Id.* at 11.

⁵ See, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to The Honorable Christopher Dodd, Chairman, U.S. Senate Committee on Banking, Housing, and Urban Affairs et al. 2 (April 15, 2010), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/04-15-2010-DoddLincolnLetter\(1\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2010/04-15-2010-DoddLincolnLetter(1).pdf).

⁶ S. Rep. No. 111-176, Report of the Senate Committee on Banking, Housing and Urban Affairs regarding the Restoring American Financial Stability Act of 2010 at 34 (2010).