

**Congress of the United States**  
Washington, DC 20515

May 7, 2024

The Honorable Jerome H. Powell  
Chair  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Martin Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

Mr. Michael Hsu  
Acting Director  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

Dear Chair Powell, Chairman Gruenberg, and Acting Director Hsu:

We write regarding the Basel III Endgame proposal and the GSIB Surcharge proposal (“the proposals”). While we support strong bank capital standards, we are concerned the proposals may impact the derivatives markets, which have an essential risk management function for American businesses, farmers, and ranchers.

Congress was explicit in the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) that there is a public interest in “keeping the costs of end-user transactions low to provide consumers with stable, low prices, promote investment and create jobs.” That is why Congress provided commercial end-users with exemptions that allow them to pledge noncash collateral to secure their hedges and to do so bilaterally with their counterparts.

We are concerned that the Basel III Endgame proposal, through changes to the “Credit Valuation Adjustment” (“CVA”) and market risk (“Fundamental Review of the Trading Book”) frameworks, would apply capital charges to uncleared, unmarginated derivatives that are permissible for commercial end-users. This could increase hedging costs and undermine Congress’ policy directive to facilitate risk management and price stability. Based on a data study conducted by market participants, market risk capital is expected to increase by at least 73%, while CVA capital will be fully additive for most banks.<sup>1</sup>

We are also concerned that the Basel III Endgame proposal applies a higher capital charge for transactions involving privately held, investment grade companies. Based on the previously

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<sup>1</sup> Letter from ISDA and SIFMA to the Agencies (January 16, 2014), available at <https://www.isda.org/a/1ElgE/ISDA-and-SIFMA-Response-to-US-Basel-III-NPR.pdf>

mentioned study, this would increase capital requirements at the eight U.S. GSIBs by \$68 billion.<sup>2</sup> Not only are most U.S. farms operated as private companies, but critical rural stakeholders, including agricultural processing, marketing, and supply firms, as well as rural electric and telecommunications companies, are organized as cooperatives. Their private status has no bearing on their creditworthiness. Despite that, the proposal would penalize banks for trading with private, creditworthy agriculture companies and rural cooperatives simply because of the company's private status. We are concerned this disproportionate capital treatment may contribute to banks deciding to reduce counterparty exposure to private agriculture companies and rural cooperatives, hurting their ability to hedge.

In the spirit of harmonizing the Basel III Endgame proposal with congressional intent, we ask the agencies to exempt end-user transactions from the CVA requirement, consistent with the Dodd-Frank Act commercial end-user exemption.<sup>3</sup> We believe this would level the playing field for U.S. companies relative to their international counterparts exempt from the CVA requirement and would better recognize the importance of commercial hedging. We also ask that the agencies reconsider aspects of the proposal that impose new costs on nonfinancial end-users, including penalizing investment grade, privately held companies simply because of their private status.

Additionally, we are concerned about the proposals' impact on the liquidity, accessibility, and affordability of centrally cleared derivatives. Promoting central clearing is at the heart of the Dodd-Frank Act's derivatives reforms as a means of reducing risk in the financial system. We have witnessed a decline in the number of Futures Commission Merchants ("FCMs") that facilitate access for end-users and investors to cleared derivatives, which has led to most trading activity occurring through a relatively small number of FCMs, most of which are bank affiliates.

While well-capitalized FCMs are essential to the safety of centrally cleared derivatives markets, increased capital costs on banking parents can factor into bank-affiliated FCMs' decision to reduce or eliminate clearing services. Fewer firms offering clearing services could reduce end-user market access, increase transaction costs, and weaken market resiliency. Market participants estimate that the capital requirement for clearing businesses could increase by 80%, which would increase the costs of intermediation, risk management, and client clearing services and could reduce U.S. capital markets liquidity and increase costs for U.S. businesses to raise funding.<sup>4</sup>

The Basel III Endgame proposal would adjust the CVA framework for client clearing by FCMs, and the GSIB proposal would result in a higher GSIB surcharge for banks that have an FCM, raising capital requirements for the bank when providing clearing services. We believe this is unwarranted for FCM client clearing services that ultimately help reduce system risk and enhance market resiliency, and for which FCMs do not face CVA-related losses.

We are concerned the new capital requirements for FCMs would further constrain their ability to support central clearing for end-users. This would run counter to Congress' policy goals to reduce systemic risk through central clearing and would leave end-users with either fewer and more expensive hedging options, or to simply not hedge. We ask that you study the impact these proposals will have on CFTC-regulated markets and the requirements as they apply to FCMs,

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<sup>2</sup> *Id.* at pg. 129.

<sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 723, 124 Stat. 1675-1682 (2010).

<sup>4</sup> Letter from ISDA and SIFMA to the Agencies (January 16, 2024) (pgs. 81 and 120).

and we encourage you to coordinate with the CFTC to ensure there are no unintended or harmful consequences in the final rule for end-users that rely on hedging and derivatives markets.

Sincerely,



John Boozman  
Ranking Member  
Senate Committee on Agriculture,  
Nutrition, and Forestry



Glenn "GT" Thompson  
Chairman  
House Committee on Agriculture

**CC:**

The Honorable Philip N. Jefferson  
Vice Chair  
Board of Governors of the Federal Reserve  
System 20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Michael S. Barr  
Vice Chair for Supervision  
Board of Governors of the Federal Reserve  
System 20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Michelle W. Bowman  
Governor  
Board of Governors of the Federal Reserve  
System 20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Lisa D. Cook  
Governor  
Board of Governors of the Federal Reserve  
System 20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Adriana D. Kugler  
Governor  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Christopher J. Waller  
Governor  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Travis Hill  
Vice Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

The Honorable  
Jonathan McKernan  
Director  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G St. NW  
Washington, DC 20552