

April 29, 2010

The Honorable Christopher Dodd, Chairman,
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Blanche Lincoln, Chairman,
Senate Committee on Agriculture, Nutrition and Forestry
328A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Dodd and Chairman Lincoln:

Commercial end-users support transparency and efforts to control systemic risk in U.S. financial markets. As you know, commercial end-users use over-the-counter derivatives as a risk-management tool to hedge against fluctuations in commodity prices, interest rates, and currency exchange rates. This process creates market stability, and keeps costs down for businesses and for the consumers who use their products.

To that end, we would like to express our appreciation for your inclusion of a commercial end-user exemption in your compromise language. This exemption is critical to ensuring that end-users are not faced with the costly requirements of mandatory clearing and bilateral margining.

However, we remain concerned about the potential impact of proposed financial reform legislation on end-users. Due to the broad definition of "swap dealer," end-users may be ineligible for the end-user exemption if they engage in hedging business risks in the ordinary course of business.

To clarify and strengthen the exemption, we recommend the legislation define "Swap Dealer" as "any person who – (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly engages in the purchase and sale of swaps in the ordinary course of business; ~~or~~ **and** (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps" instead of as any person meeting any one of those criteria.

We would also ask that you include the following de minimis exception, which ensures that that end-users whose swap transactions are nominal will be exempt from the designation of "swap dealer." "De Minimis Exception. – The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers."

Our concerns can also be addressed by clarifying that commercial end-users are not swap dealers. This can be achieved in the following way: “In General. – The term ‘swap dealer’ means any person **(other than a commercial end-user)** who - ”

Again, thank you for the inclusion of an end-user exemption. We would ask that you carefully consider our suggestions. Clarification of the definition of “swap dealer” is critical to ensuring that end-users have access to the capital needed to remain competitive in the global marketplace and expand job growth in the U.S.

Sincerely,

American Petroleum Institute
National Association of Manufacturers
Natural Gas Supply Association
US Oil & Gas Association

c: The Honorable Richard Shelby, Ranking Member, Senate Committee on
Banking, Housing, and Urban Affairs

The Honorable Saxby Chambliss, Ranking Member, Senate Committee on
Agriculture, Nutrition and Forestry

Members of the U.S. Senate