

Coalition for Derivatives End-Users

February 22, 2018

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate
Room S-128, The Capitol
Washington, D.C. 20510

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate
Room S-128, The Capitol
Washington, D.C. 20510

The Honorable Rodney Frelinghuysen
Chairman
Committee on Appropriations
United States House of Representatives
Room H-305, The Capitol
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
United States House of Representatives
Room H-305, The Capitol
Washington, DC 20515

Re: End-User Support for Inclusion of Inter-affiliate Swap Transaction Relief in Appropriations Bill

Dear Chairman Cochran and Frelinghuysen, Vice Chairman Leahy, and Ranking Member Lowey:

The Coalition for Derivatives End-Users (the “Coalition”)¹ writes to urge the inclusion, in an FY 2018 appropriations bill, of section 320 of the House-passed version of H.R. 238, the “Commodity End-User Relief Act” (the “Amendment”). The Amendment would be aimed at providing much needed relief to commercial end-users in connection with their use of inter-affiliate trades. Such trades are an efficient mechanism for centralized risk management and to reduce market risk by decreasing the number of external transactions companies enter into with third parties. The Amendment would appropriately distinguish between inter-affiliate transactions—which are not market-facing and, therefore, do not create systemic risk—and those swaps that are executed between unaffiliated parties.

Currently, U.S. Prudential Regulators’ rules on margin and capital requirements for uncleared swaps require swap dealer counterparties of commercial end-users to exchange initial margin for their inter-affiliate transactions, including those entered into to hedge risks associated with transactions executed on behalf of commercial end-users. Accordingly, swap dealer counterparties pass along the corresponding costs of inter-affiliate initial margin to commercial end-users, ultimately resulting in

¹ The Coalition represents the views of hundreds of companies employing derivatives primarily to manage various risks associated with operating their businesses. These companies and several business associations have been active in the Coalition’s efforts to seek strong, effective and fair regulation of derivatives markets, which appropriately balance the goals of promoting transparency and mitigating the risk of another systemic collapse while not unduly burdening American businesses and irreparably harming job growth.

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higher prices for consumer goods and services and creating a financial drag on the overall U.S. economy without any corresponding benefit.

End-users also are concerned that, by their terms, certain reporting requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) apply to commercial end-users’ inter-affiliate transactions in the same manner as external swaps executed with unaffiliated counterparties. While the CFTC staff has issued no-action letters to provide relief for inter-affiliate transactions, complying with the no-action letters is complex, burdensome and inefficient. Additionally, no action relief, while welcome, does not afford corporate treasurers the certainty that fixing the problem at its statutory root would provide and is troublesome for end-users’ boards of directors, which are required to certify annually full compliance with the law. The Amendment would provide the certainty end-users seek.

Throughout the legislative and regulatory process surrounding Dodd-Frank, the Coalition has supported efforts to increase transparency in the derivatives markets and enhance financial stability for the U.S. economy through thoughtful new regulation while avoiding needless costs. We ask that you support adding an inter-affiliate transactions relief provision to an FY 2018 appropriations bill in order to further these important regulatory principles.

Thank you for your consideration of our request.

Sincerely,

Coalition for Derivatives End-Users