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VIA EMAIL TO: dfdefinitions@cftc.gov (Definitions) and
rule-comments@sec.gov (File Number S7-12-10)

Mr. David A. Stawick, Secretary
Commodities Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: CFTC Definitions/SEC File Number S7-12-10

Dear Mr. Stawick and Ms. Murphy:

I appreciate the opportunity to comment on the Key Definitions in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act on behalf of The Northwestern Mutual Life Insurance Company. As a mutual company, Northwestern Mutual exists for the benefit of its policyowners and clients. Begun in 1857, the company had approximately 3.3 million policyowners holding 5.1 million policies at the end of 2009. Northwestern Mutual uses swaps and security-based swaps to manage the risks associated with its obligations to its policyowners and the investments that enable us to meet those obligations. As a member of the American Council of Life Insurers, we endorse the comments the ACLI has made on the definitions of Major Swap Participant and Major Security-Based Swap Participant. We are submitting this letter to offer additional comments on five aspects of the Major Swap Participant and Major Security-Based Swap Participant definitions and one aspect of the Swap Dealer and Security-Based Swap Dealer definitions.

Designation of a person as a Major Swap Participant, Major Security-Based Swap Participant, Swap Dealer, or Security-Based Swap Dealer imposes heavy burdens on both the regulated entity and the regulator. Those burdens are appropriate where the person's swap or security-based swap activities pose potential systemic risk, but are inefficient otherwise. We believe that implementing the comments below will enhance regulation of swaps and security-based swaps.

Major Swap Participant and Major Security-Based Swap Participant

1. Substantial position definition. (§ 33(A)(i), (A)(iii)(II), & (B) & § 67(A)(ii)(I), (A)(ii)(III)(bb), & (B)).*

- a. As Chairman Gensler said in his speech last week to the ISDA Regional Conference, “[t]he major swap participant category is comprised of entities that are not swap dealers but whose participation in the swaps market is substantial enough to be relevant to the economy or the financial system as a whole.” The way that this participation is relevant, for most swaps, is potential exposure, the amount which their counterparties would lose if the major swap participant defaulted. The measure of substantial position should be potential exposure --- the net amount which the person would owe if all of its swaps were terminated on the day that exposure is being valued, plus an allowance for short term volatility during the short time it takes to terminate the swap.
- b. In evaluating whether a buyer of options holds a substantial position, options on swaps should be valued differently. From the standpoint of the option seller and, indirectly, the financial system, the only exposure is that the premium will not be paid during the few days after the trade is executed and that the buyer may not return excess collateral. Accordingly, the potential exposure attributable to that buyer should be the premium during the short time between the trade date and payment date and a portion (the amount it might potentially be obliged to return in the case of its failure) of the collateral posted to that option buyer.
- c. However exposure is defined, the amount which constitutes a substantial position should be of an order of magnitude indicating systemic importance, definitely in the billions of dollars range. The statutory provision that requires CFTC or SEC definitions of this term requires that it be set “at the threshold the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.” Exposure is the measure of how much loss the financial system would bear if a person failed to perform under its swap agreements. The amount of exposure that constitutes a substantial position should be the amount that the system could not easily bear.

2. Major swap categories definition. (§ 33(A)(i) & (A)(iii)(II)). The statute provides a good list of swap categories. In the interest of regulatory consistency, each swap listed in § 47(A)(iii) and options on each of those swaps should be considered a major swap category.

3. Definition of “highly leveraged.” (§ 33(A)(iii)(I) & § 67(A)(ii)(III)(aa)). Northwestern Mutual is known for its financial strength and has outstanding debt that is less than 2% of its assets so it clearly should not be considered highly leveraged. Our concern is that the definition of “highly leveraged” should take into account the difference between financial and non-financial firms and recognize that liabilities such as deposits for banks and policy reserves for insurers are not leverage. Also, since financial firms are able to match their assets

* All section references in this letter are to section 1a of the revised Commodities Exchange Act (7 U.S.C. 1a) except for references to sections 67 and 71 which refer to parallel provisions of the revised Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

and liabilities closely, they require less of an equity cushion than non-financials. We ask the Commission to recognize these important distinctions.

4. **Meaning of “the Commission shall consider the person’s relative position in uncleared as opposed to cleared [security-based] swaps.” (§ 33(B) & § 67(B)).** As suggested by the statute, cleared swaps should not count toward the definitions of substantial position in the Major Swap Participant and Major Security-Based Swap Participant definitions. The posting of initial and variation margin following effective CFTC/SEC regulations will completely cover the systemic risk posed by the swap positions.
5. **Meaning of “the Commission ... may take into consideration the value and quality of collateral held against counterparty exposures.” (§ 33(B) & § 67(B)).** We suggest a statement such as: “Swaps shall only count toward the definition of Major [Security-Based] Swap Participant to the extent they are inadequately collateralized.” Again, posting of collateral reduces the systemic risk posed by over the counter swap positions. For example, if a person has potential counterparty exposure of \$10 billion, but has posted collateral valued at \$8 billion with counterparties, the net potential counterparty exposure of \$2 billion should be used to determine whether the person has a substantial position.

Swap Dealer and Security-Based Swap Dealer

Third definition (§ 49(A)(iii) & § 71(A)(iii)). Read by itself, the third definition (“The term ‘[security-based] swap dealer’ means any person who – [r]egularly enters into [security-based] swaps with counterparties as an ordinary course of business for its own account;”) sounds overbroad since any frequent participant could be considered to be regular and acting in its own course of business. Fortunately, the statute provides exceptions (§ 49(C) & § 71(C)) for “a person that enters into [security-based] swaps for such person’s own account, either individually or in a fiduciary capacity, but not as part of a regular business.” The regulatory definitions of Swap Dealer and Security-Based Dealer should make clear that regular [security-based] swap participants who participate in certain sectors of the [security-based] swaps market to manage business risk as part of a regular non-swap business are not [security-based] swap dealers. This could be clarified by saying: “A person who regularly enters into [security-based] swaps with counterparties for its own account, either individually or in a fiduciary capacity, primarily to hedge the risks associated with its products, services, or cash market investments shall not be considered a [security-based] swap dealer.”

Thank you for this opportunity. Please contact me if I may be of any assistance.

Sincerely,

Signed//

Steve Martinie