100 Glenborough Drive
Suite 100
Houston, TX 77067-3610

Tel: 281.872.3100
Fax: 281.872.3111
www.nobleenergyinc.com

Kenneth M. Fisher
Senior Vice President and
Chief Financial Officer

November 26, 2012

VIA Electronic Submission

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Regs.comments@occ.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov

Alfred M. Pollard
General Counsel
Attention:
Comments / RIN 2590-AA45
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
RegComments@fhfa.gov

Gary K. Van Meter
Acting Director
Office of Regulatory Policy,
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
Reg-comm@fca.gov

Re: Margin and Capital Requirements for Covered Swap Entities; Reopening of Comment Period

OCC: Margin and Capital Requirements for Covered Swap Entities [Docket No. OCC-2011-0008] (RIN 1557-AD43)
Board: Margin and Capital Requirements for Covered Swap Entities [Docket No. R-1415] (RIN 7100 AD74)
FDIC: Margin and Capital Requirements for Covered Swap Entities (RIN 3064-AD79)
FCA: Margin and Capital Requirements for Covered Swap Entities (RIN 3052-AC69)
FHFA: Margin and Capital Requirements for Covered Swap Entities (RIN 2590-AA45)

Noble Energy, Inc. ("Noble Energy") appreciates this additional opportunity to comment on the Prudential Regulators' proposed regulations relating to Margin and

Capital Requirements for Covered Swap Entities.[1] The Prudential Regulators extended the comment period for their proposed rule to November 26, 2012, in light of the July 6, 2012 publication by the Basel Commission on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") of a consultative paper prepared by the Working Group on Margin Requirements concerning margin requirements for non-centrally-cleared derivatives ("WGMR Paper").[2]

Noble Energy fully supports domestic and international regulatory efforts to harmonize margin standards for uncleared swaps. Noble Energy strongly encourages the Prudential Regulators to add an explicit statement in the final version of the Margin Rule confirming their intent to align with these other regulatory bodies by permitting non-financial parties to enter into uncleared swaps that require no margin. In addition, Noble Energy recommends that the Prudential Regulators add to the final version of the Margin Rule a "safe harbor" provision that clearly defines the term "credit support arrangement."

I. Description of Noble Energy

As described in our earlier comment letter on the Margin Rule,[3] Noble Energy is an independent U.S. company engaged in worldwide oil and natural gas exploration and production. Noble Energy uses commodity swaps and other derivative contracts to hedge price risks related to its physical positions and commercial activities. Noble Energy's commodity hedging program benefits its operations in many ways: enabling the company to reduce exposure to price volatility; ensuring predictability of cash flow and earnings; securing revenue to support acquisition and major project economics; and, protecting its balance sheet and multi-year investment programs for oil and natural gas exploration and production. The company does not engage in speculative or proprietary trading, and the nature and scale of its hedging activity do not pose any "systemic risks."

Noble Energy is neither a bank nor other type of financial entity; it is a commercial energy corporation. Consequently, when Noble Energy enters swaps and other derivatives to offset price fluctuations in its inventory and commercial transactions, the OTC hedging contracts are offset by tangible oil and gas production and assets. Noble Energy's OTC swap activities are a component of its broader credit relationships with banks. The foundation of these relationships is the investment grade quality and liquidity of Noble Energy's balance sheet. The preamble to the Margin Rule acknowledges that such credit activity is appropriate and permissible for regulated financial institutions, concluding that "[w]hen well managed, taking on credit exposure

---

[1] Margin and Capital Requirements for Covered Swap Entities; Proposed Rule, 76 Fed. Reg. 27,564 ("Margin Rule" or "proposed rule").

[2] Margin requirements for non-centrally-cleared derivatives - consultative document (July 2012), available at http://www.bis.org/publ/bcbs226.htm.

[3] A copy of our June 29, 2011 comment letter is attached as an appendix to this letter.

does not automatically lead to unacceptable levels of systemic risk." [4] Indeed, Noble Energy's activities do not pose systemic risks of any kind.

Noble Energy's OTC hedging relationships with banks have worked well for many years including throughout the volatile oil and gas price environment of 2004 to 2008, as well as during the 2008-2009 global financial crisis. Unfortunately, as currently drafted, the Margin Rule threatens to prohibit this proven business practice.

II. Explicit Recognition of Broad Consensus Not To Impose Margin

The WGMR Paper notes that there was a broad consensus within the BCBS and IOSCO that there is no need to impose margin requirements on "non-financial entities that are not systemically-important." The CFTC earlier came to a similar conclusion in its proposed margin rule for uncleared swaps, acknowledging that it was the intent of Congress that non-financial entities participating in uncleared swaps should not be required to post margin.[5] In the Dodd-Frank Act, Congress explicitly sought to ensure this harmonization among U.S. regulators and between U.S. regulators and international regulators.[6]

The CFTC has noted that the Prudential Regulators' Margin Rule is out of step with the consensus that non-financial entities which use uncleared swaps to hedge commercial risks should not be required to post margin.[7] Unless this disparity is eliminated from the Margin Rule, commercial entities like Noble Energy, although posing no systemic risk, nonetheless could then have to set aside large amounts of cash to meet margin requirements as well as incur additional substantial costs, for example, to build teams and procedures to manage margin flows and to develop IT systems and modeling analytics, thereby further limiting available liquidity.

To avoid these significant drains of liquid resources, which otherwise could be invested in exploration and production activities to the benefit to U.S. energy consumers, Noble Energy urges the Prudential Regulators to consult with the CFTC to ensure that the final version of the Margin Rule and CFTC Margin Rule are equal in their treatment of non-financial entities. Furthermore, we urge the Prudential Regulators to state expressly in the final version of the Margin Rule that non-financial entities are permitted to enter into uncleared swaps, free from any regulatory mandated margin, in alignment with the CFTC Margin Rule, WGMR Paper, and Congressional intent.

---

[4] See supra n1 at 27,574.

[5] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23,732, 23,736 ("CFTC Margin Rule").

[6] Dodd-Frank Act, § 752(a) directs the Prudential Regulators to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps [and] swap entities..." Similarly, § 712 directs the CFTC, Securities and Exchange Commission, and the Prudential Regulators to consult and coordinate rulemakings for the purposes of assuring regulatory consistency and comparability.

[7] See supra n5.

Such harmonization with respect to the rules for margin for non-centrally-cleared derivatives would be a critical boost to the U.S. economic recovery, by both creating a level international playing field for American companies and regulated financial institutions and creating certainty for non-financial entities which must turn federal regulations into operational reality, as well as would assure full conformity with the intent of the Dodd-Frank Act .

III. Documentation Safe-Harbor

The Margin Rule requires trading documentation that includes a "credit support arrangement" which grants a regulated financial institution the contractual right to collect initial margin and variation margin. [8]

The meaning of the term "credit support arrangement" as used in the Margin Rule, however, is not entirely clear. Standing alone, the term could be interpreted as meaning the margin agreement used by dealers in the OTC derivatives market, the ISDA 1994 Credit Support Annex, which was designed for financial entities with easy access to cash reserves and liquid securities.

By contrast, in its final customer trading documentation rule (with which "credit support arrangements" must comply under Section 23.151(a) of the CFTC Margin Rule) the CFTC explained that written margin terms were necessary only if margin requirements were imposed by regulations or otherwise agreed between the parties, concluding that parties can enter into uncleared swaps that require no margin.[9]

The CFTC extended this logic in its final rule on the end-user exception to clearing. In this rule the CFTC offers a non-exclusive "safe-harbor" list of various forms of non-margin credit support upon which a non-financial entity could transact uncleared swaps, a list that includes an entity's "available financial resources."[10]

Noble Energy urges the Prudential Regulators to consult with the CFTC to ensure that the term "credit support arrangement" in the final Margin Rule is broadened to include forms of credit support other than margin agreements in general and other than the ISDA 1994 Credit Support Annex in particular.

---

[8] See supra n1 at 27,589.

[9] Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants; Final Rule, 77 Fed Reg. 55, 904, 55, 910 and 55, 964.

[10] End-User Exception to the Clearing Requirements for Swaps, 77 Fed. Reg. 42,500 (July 19, 2012). This rule states that a party which elects to use the clearing exception must report the swap to a data repository or to the CFTC and provide information regarding how it generally will meet its financial obligations associated with entering into uncleared swaps, listing as examples a written support agreement; pledged or segregated assets (including pursuant to a credit support agreement); a written third-party guarantee; <u>its available financial resources, or other means</u> (emphasis added).

Most importantly, Noble Energy recommends that the Prudential Regulators include a safe-harbor when broadening the term "credit support arrangement" to recognize that taking unmargined credit exposure to counterparties is a long established business practice at the firms regulated by the Prudential Regulators. As noted in its earlier comment letter, Noble Energy understands that it is ***not*** the Prudential Regulators' intent to either mandate any particular form of documentation or limit the appropriate form of collateral where a regulated entity has calculated that its exposures to a non-financial commercial firm are within the enterprise-wide credit exposure limits that are established and monitored under appropriate credit processes.

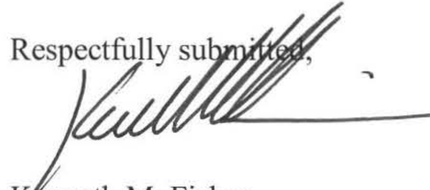
In the final version of the Margin Rule, Prudential Regulators should state that current credit underwriting practices by its regulated entities with respect to the OTC activities of a non-financial counterparty are sufficient to evidence "available financial resources or other means" as used in Section 39.6(b)(iii)(C) of the final CFTC rule on the end-user exception to clearing, thereby satisfying the need for credit support documentation under the Margin Rule.

Conclusion

Noble Energy commends the Prudential Regulators for their commitment to harmonize their margin rules for uncleared swaps with international regulators. Moreover, Noble Energy strongly urges the Prudential Regulators to seek common ground with the CFTC on margin requirements for non-financial entities to avoid imposing costs and obligations that are overly burdensome and unnecessary and contrary to Congressional intent that commercial entities are permitted to enter into uncleared swaps that require no margin.

Please contact the undersigned at (281) 872-3150, if you have any questions regarding these comments.

Respectfully submitted,



Kenneth M. Fisher
Noble Energy, Inc.
Senior Vice President,
Chief Financial Officer
100 Glenborough Dr # 100
Houston, TX 77067-3618

Appendix:

Noble Energy June 29, 2011 comment letter to Prudential Regulators