

**TESTIMONY OF BRANDON BECKER
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SEC/CFTC JOINT MEETING ON HARMONIZATION OF REGULATION

SEPTEMBER 2, 2009

Good afternoon. I am Brandon Becker, Chief Legal Officer for TIAA-CREF, an organization dedicated to serving those who work in the academic, research, medical and cultural fields. Previously I served as Director of the Division of Market Regulation at the SEC. I would like to thank the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) for affording us this opportunity to share our views regarding how to harmonize the current regulatory structure to facilitate more efficient trading by investors and improve market integrity.

TIAA-CREF is one of the world's largest retirement systems, with \$363 billion in combined assets under management and 3.6 million participants. TIAA, as an insurance company, is regulated by New York State Insurance Department among others. CREF is a registered investment company. As a large institutional investor and provider of defined contribution retirement plans for over 90 years, TIAA-CREF is an active participant in the derivative markets in the United States.¹

We support efforts to harmonize the regulatory structure for derivatives markets because we believe it will not only enhance market efficiency but, more importantly, it will strengthen market integrity and assist in mitigating potential systemic risk. As noted

¹ A more comprehensive overview of TIAA-CREF is available at our website, www.tiaa-cref.org.

this morning², harmonization efforts have been ongoing for decades. In the Futures Trading Act of 1982 (P.L. 97-444), Congress called for a joint study of derivatives markets by the SEC, CFTC and Federal Reserve³. The study, completed in December of 1984, concluded that “there is need for close harmonization of federal regulation of [derivatives] markets.” Accordingly, we welcome the current efforts by the CFTC and the SEC to address these issues.

Nevertheless, in view of the difficulties in achieving meaningful progress toward harmonization over the last 25 years, we believe future progress will require the sustained and detailed attention of the Commissions in order to make the difficult decisions necessary to find a way forward. In this regard, while there are many significant issues concerning intra- and inter-industry competition that arise under the harmonization rubric, we urge the Commissions to concentrate their time and energy on those issues that address systemic risk (such as margin, clearing and bankruptcy).

As an institutional investor we use derivatives markets for a variety of purposes, but most commonly for managing a range of financial risks such as market and credit risks. We find the customization and flexibility provided by over-the-counter (OTC) products to be very valuable. The individualized tailoring that OTC products allow for makes them enormously valuable for various portfolio management purposes. The ability to customize these products provides significant benefits for investors.

² “Testimony of Annette L. Nazareth Concerning the Harmonization of Futures and Securities Regulation.” Joint Public Meeting of the CFTC and SEC. September 2, 2009.

³ “A Study of the Effects on the Economy of Trading in Futures and Options.” U.S. House of Representatives Committee on Agriculture. January 1985.

Accordingly, while we support efforts to mitigate systemic risk and enhance transparency, we believe it is important to maintain the benefits that investors receive through the customization of OTC products and believe the various prudential reforms under discussion (such as enhanced transparency and clearing) can be achieved without precluding the use of OTC products.

More broadly, as an investor we find the inefficiencies that result from market disparities largely a cost of doing business. We believe efforts to minimize these disparities will enhance market efficiency. More importantly, however, from an investor protection perspective, we generally expect intermediaries to provide a comparable level of service. As the events of the last two years have highlighted, clarifying margin and bankruptcy regimes not only will improve prudential oversight but will also mitigate systemic risk.

TIAA-CREF, on behalf of its participants, appreciates the opportunity to participate in this hearing. I would be happy to answer any questions.