March 25, 2011

The Honorable William C. Dudley
President
Federal Reserve Bank of New York
33 Liberty Street, 10F
New York, NY 10045

Re: **Concerns and Questions Regarding the Pending Commitment Letter from Dealers and Certain Asset Managers to the Federal Reserve Bank of New York Regarding Derivatives Activities**

Dear Mr. Dudley:

The American Benefits Council (the "Council") and the Committee on Investment of Employee Benefit Assets ("CIEBA") are concerned about a pending commitment letter ("Commitment Letter" or "Letter") from swap dealers and certain other swap market participants to the Federal Reserve Bank of New York.

The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

CIEBA represents more than 100 of the country's largest pension funds. Its members manage more than $1 trillion of defined benefit and defined contribution plan assets on behalf of 15 million plan participants and beneficiaries. CIEBA members are the senior corporate financial officers who manage and administer ERISA-governed corporate retirement plan assets. CIEBA's recent annual survey of members showed an increased emphasis on managing and reducing plan risks and a corresponding increase in the usage of swaps to address those risks.

The Council and CIEBA understand that the Federal Reserve Bank of New York ("Federal Reserve") has been working with a discrete group of swap market participants, including the majority of the dealer community, on a Commitment Letter with respect to the swap market. It is our understanding that this Letter will be signed by the discrete group of market participants and is intended to reflect commitments by the signatories with respect to the trading, confirmation, clearing, and reporting of their future swap transactions.

We have seen a draft of the Commitment Letter, but we do not know if the draft is up to date. Our purpose for writing is not, however, to address the substance of the Commitment Letter; our purpose is to ask questions regarding the process and regarding the effects of the Letter.

**Interaction with the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC").** The CFTC and SEC have exclusive jurisdiction over the rulemaking process under Dodd-Frank with respect to swaps. How does the Commitment Letter relate to the CFTC's and the SEC's regulatory processes? For example, the draft of the Commitment Letter we have seen addresses electronic confirmation and sets objective targets regarding achieving widespread use of electronic confirmation. At the same time, the CFTC is reviewing comments it has received on issues related to electronic confirmation, including whether market participants should have a right to determine whether their swaps are electronically confirmed.

If the CFTC determines that market participants that are not swap dealers or major swap participants should have a right not to have their swaps electronically confirmed, we would request that the Federal Reserve confirm that the Commitment Letter will not indirectly affect that right by requiring dealer-signatories to attempt to achieve certain electronic confirmation targets.

This is just one example of the potential conflict between the Commitment Letter and regulations being developed by the CFTC. We are concerned about a secondary regulatory process that could undermine the public regulatory process which is open to all and is subject to public comment.

**Effect on Non-Signatories.** We understand that the signatory dealers to the Commitment Letter are making a commitment with respect to their future swap transactions. How will this affect non-signatories to the Letter who are counterparties to such dealers? It is our understanding that dealer signatories to prior similar commitment letters have in numerous cases cited those commitment letters as "regulatory obligations" in light of the Federal Reserve's involvement in drafting the commitment letters. Further, many dealer signatories have felt that these "regulatory obligations" compelled them to structure their swap trading in accordance with such letters, even when such dealer signatories were entering into swaps with non-signatories. It has been reported to us that in certain cases, this was done to the detriment of non-signatories. Are steps being taken to prevent that from happening again?

**Process.** If the Commitment Letter could directly or indirectly affect non-signatories, we believe that all interested parties should have an opportunity to comment. We represent the largest private pension plans in the country and many of the largest private pension plans in the world, and accordingly we and our members have a vital interest in any material developments regarding swaps. We believe that our members, and all other market participants, should be included in discussions regarding how the swap markets should function.

In short, we would like to understand the Commitment Letter more fully. We believe that if the Letter can affect non-signatories in any material way, we believe that the use of a private commitment letter process that is closed to most market participants needs to be examined very closely.

We look forward to a constructive dialogue on these important issues.

American Benefits Council Committee on Investment of Employee Benefit Assets

cc: Board of Governors of the Federal Reserve System
Commodity Futures Trading Commission
Connecticut State Banking Department
Federal Deposit Insurance Corporation
New York State Banking Department
Office of the Comptroller of the Currency
Securities and Exchange Commission