

From: Engledow, Wells M <wells_m_engledow@fanniemae.com>
Sent: Monday, September 20, 2010 5:28 PM
To: secretary <secretary@CFTC.gov>
Subject: Fannie Mae Comment Letter on Definitions, File No. S7-16-10
Attach: Fannie Mae Comment Letter File S7 16 10.pdf

Dear Mr. Stawick:

Attached please find comments from Federal National Mortgage Association (Fannie Mae) to the advance notice of proposed rulemaking, Release No. 34-62717, File No. S7-16-10, on definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Best regards,

Wells M. Engledow
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3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

BY EMAIL

September 20, 2010

Dave A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Comments of Federal National Mortgage Association ("Fannie Mae") to the advance notice of proposed rulemaking on definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-62717, File No. S7-16-10

Dear Mr. Stawick and Ms. Murphy:

Fannie Mae appreciates the opportunity to comment on the advance notice of proposed rulemaking regarding key definitions contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") issued by the Commodity Futures Trading Commission ("CFTC") and the Securities Exchange Commission ("SEC" and, collectively with the CFTC, the "Commissions"). We commend the Commissions for their thoughtful leadership on this important topic.

Fannie Mae is a government-sponsored enterprise that was chartered by Congress in 1938 to support liquidity, stability and affordability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold. As our strategy for managing the duration and prepayment risk of our mortgage portfolio, Fannie Mae supplements our issuance of debt by entering into interest-rate related derivatives transactions.

Fannie Mae's comments relate to the definitions of "swap" and "swap dealer" contained in Section 721(a)(21) of the Act.

Definition of "Swap"

Section 721(a)(21) defines "swap" to include, among other things, any agreement, contract or transaction that is "an option of any kind" for the purchase or sale of "securities" or "instruments of indebtedness." "Security futures products" are expressly excluded from this definition.

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Secretary Elizabeth M. Murphy
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In the mortgage market, forward or future delivery contracts (and related options) regarding mortgage loans and mortgage-backed securities are common. These agreements have been structured to provide liquidity to mortgage originators and the secondary mortgage market. While we believe that these contracts are outside of the scope of Section 721(a)(21), we request that the Commissions provide clarity in their rules that such forward, future and similar contracts are not “swaps” for purposes of Section 721(a)(21), or that such contracts fall within the statutory exclusion for “security futures products.”

In addition, Section 721(a)(21) defines a “swap” as any agreement that provides for, among other things, a payment that is dependent on the occurrence of an event associated with a potential financial consequence. There are a host of agreements that provide for funding in the event of a payment or other default, such as corporate guarantees, intra-day loan agreements, credit agreements, stand-by liquidity agreements and similar agreements. We request that the Commissions clarify in their rules that such agreements are not “swaps” for purposes of Section 721(a)(21).

Definition of “Swap Dealer”

Section 721(a)(21) defines “swap dealer” to include any entity that “regularly enters into swaps ... as an ordinary course of business for its own account.” This language could be read to include swap end-users that enter into swap trades solely for risk mitigation and/or commercial purposes. However, such a reading would be in contrast to the balance of the “swap dealer” definition that focuses on those entities that are customarily recognized by the market as swap dealers – namely, entities that hold themselves out as dealers and swap market-makers. We request that the Commissions clarify in their rules that end-users entering into trades for risk mitigation and/or commercial reasons, but without the intent to deal or create markets in swaps, are not swap dealers. Such clarification would not preclude the CFTC from determining that certain end-users of swaps are major swap participants for purposes of Section 721(a)(16) of the Act.

Thank you for the opportunity to comment on this advance notice of proposed rulemaking.

Sincerely,



Stephen H. McElhennon
Vice President & Deputy General Counsel
Fannie Mae