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January 18, 2011

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

RE: Proposed Rules – CCO Designation (RIN 3038-AC96); Duties of Swap Dealers and Major Swap Participants (RIN 30308-AC96); and SD-MSP Conflicts of Interest (RIN 3038-AC96)

Dear Mr. Stawick,

On behalf of the Federal Home Loan Banks (the “FHLBanks”), we appreciate this opportunity to comment on the above-referenced proposed rules (the “Internal Business Conduct Proposed Rules”). Specifically, we believe that the Internal Business Conduct Proposed Rules should differentiate between swap dealers and “limited” swap dealers to account for the fact that the swap dealing business of certain entities is merely incidental to such entities’ primary business activities. As discussed in more detail below, the Commodity Futures Trading Commission (the “CFTC”) has introduced the concept of a “limited” swap dealer whose swap dealing activities are incidental to the entity’s primary business. We endorse this concept and believe that the CFTC should incorporate this concept into each of its proposed rules regulating the activities of swap dealers.

Limited swap dealers that are already subject to regulation by a prudential regulator should be subject to those requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) that provide protection to the limited swap dealers’ swap customers and the overall financial system but should not have to comply with internal requirements that are duplicative of regulations to which they are already subject. Compliance with such duplicative regulations would not provide any additional protection to customers, would not reduce systemic risk and would not bring transparency to the market. Instead, the FHLBanks believe that requiring compliance with these regulations may only cause a number of limited swap dealers (including some or all of the FHLBanks) to discontinue a valuable risk-mitigation service that they provide to their customers on a cost-effective basis.

I. Background

Entity Definitions. Subject to certain enumerated exceptions, the CFTC's proposed rule defining the terms swap dealer and major swap participant (the "Entity Definitions Proposed Rule") defines the term swap dealer very broadly to include any person who makes a market in swaps or engages in any sort of swap dealing activities. The Entity Definitions Proposed Rule contemplates, however, that certain swap dealers will be designated and regulated as "limited" swap dealers, *i.e.*, swap dealers for only specified categories of their activities or swaps. Limited swap dealers are those entities whose swap dealing business is more than *de minimis* but is nevertheless incidental to their primary business activities.

In the preamble to the Entity Definitions Proposed Rule, the CFTC states that if an entity's swap dealing activities are not a core component of the entity's overall business, the CFTC anticipates that certain swap dealer requirements would apply to the division of that entity engaging in swap dealing activities but not necessarily to all of the entity's business or even all of the entity's swap activities. Despite this language in the Entity Definitions Proposed Rule and the CFTC's clear intention in that proposed rule, the Internal Business Conduct Proposed Rules do not contemplate such a limited designation or any limited regulation.

The FHLBanks. The 12 FHLBanks are government-sponsored enterprises of the United States, organized under the authority of the Federal Home Loan Bank Act of 1932, as amended (the "FHLBank Act"), and structured as cooperatives. The FHLBanks serve the general public interest by providing liquidity to approximately 8,000 member institutions, thereby increasing the availability of credit for residential mortgages, community investments, and other services for housing and community development. Specifically, the FHLBanks provide readily available, low-cost sources of funds to their member institutions.

The FHLBanks are subject to a system of comprehensive prudential regulation by the Federal Housing Finance Agency ("FHFA"), a primary federal regulator under the FHLBank Act. A substantial portion of the FHFA's activities are focused on the prudential supervision of the FHLBanks, which ensures careful scrutiny and diligent regulatory oversight over each of these entities at all times.

The FHLBanks enter into swap transactions with traditional swap dealers to facilitate their business objectives and to mitigate financial risk, primarily interest rate risk. Certain of the FHLBanks also provide their members with access to the swap market by intermediating swap transactions between their member institutions and traditional swap dealers, thus allowing such members to hedge their interest rate risk and other risks associated with their respective businesses. These swaps that certain FHLBanks offer to their members are incidental to the FHLBanks' lending business

described above and constitute only a small percentage of the FHLBanks overall swap transactions.

As of the date hereof, the CFTC has not issued a proposed rule further defining the term “swap” under the Dodd-Frank Act and has not finalized the Entity Definitions Proposed Rules. The FHLBanks do not believe that their swap activities should cause them to be regulated as swap dealers or even limited swap dealers under the Dodd-Frank Act. However, until the CFTC promulgates final definitions with respect to the term “swap” and the term “swap dealer,” the FHLBanks cannot be assured that they will not be classified as such. The FHLBanks are specifically concerned that some of their incidental activities will cause them to be regulated as limited swap dealers.

Internal Business Conduct Standards. The Dodd-Frank Act imposes a multitude of requirements on swap dealers and major swap participants including registration requirements, internal business conduct standards, external business conduct standards, reporting and recordkeeping obligations and capital and margin requirements. The Internal Business Conduct Proposed Rules implement certain of the internal business conduct standards to which swap dealers and major swap participants will be subject.

Specifically, the Internal Business Conduct Proposed Rules require swap dealers and major swap participants to designate a chief compliance officer, prepare and submit to the CFTC an annual compliance report, establish an extensive risk management program (including adoption of written policies and procedures, establishment of a risk management unit and preparation of periodic risk exposure reports), establish comprehensive business continuity and disaster recovery policies and procedures and implement conflicts of interest policies and procedures. While we agree that the foregoing requirements constitute prudent business practices and may reduce systemic risk when applied to entities that are not currently regulated, we think that they are highly duplicative and, accordingly, unreasonable for entities that are already subject to extensive prudential regulation.

II. Internal Business Conduct Standards Should Not Apply to Limited Swap Dealers That Are Subject to Regulation By A Prudential Regulator

As noted above, by definition the swap dealing business of “limited” swap dealers is merely incidental to the overall business activities of such entities. Compliance with the requirements imposed by the Internal Business Conduct Proposed Rules would not further the purposes of the Dodd-Frank Act by reducing systemic risk or enhancing transparency in the market, but could instead drive out of the market those FHLBanks who enter into swaps to provide a valuable risk mitigation service to their members on a cost effective basis. So long as limited swap dealers (i) comply with those requirements of the Dodd-Frank Act that directly benefit their customers and reduce overall systemic risk (e.g., external business conduct standards) and (ii) comply with other requirements imposed by their prudential regulators, compliance with additional internal business conduct standards would be unreasonable and should not be required.

The Internal Business Conduct Proposed Rules are different from certain of the CFTC's other proposed rules for swap dealers and major swap participants in that the Internal Business Conduct Proposed Rules do not directly benefit the counterparties of swap dealers and major swap participants. For example, the CFTC's proposed rules on external business conduct standards will directly benefit swap dealers' and major swap participants' customers by placing "know your counterparty" and diligence burdens on the swap dealers and major swap participants and requiring swap dealers and major swap participants to make certain disclosures to their counterparties. Because of these direct benefits, we believe that it makes sense for such requirements to apply to the swap dealing activities of limited swap dealers. However, we do not see comparable benefit to swap customers resulting from the Internal Business Conduct Proposed Rules.

The Internal Business Conduct Proposed Rules are also different from certain of the Dodd-Frank Act's other requirements for swap dealers and major swap participants (e.g., capital and margin requirements) because, to the extent the Internal Business Conduct Proposed Rules are imposed upon an entity that is already subject to extensive regulation, the Internal Business Conduct Proposed Rules will not necessarily reduce systemic risk. With respect to capital and margin requirements, the Dodd-Frank Act recognizes that the prudential regulators are in a better position than the CFTC to set capital and margin requirements for those swap dealers and major swap participants for which the prudential regulators are the primary regulator. We believe this makes sense because the prudential regulators are much more familiar with the business models and specific risks associated with the entities they oversee. For the same reason, we also believe that the prudential regulators, and not the CFTC, should set the internal business conduct standards for at least limited swap dealers.

By definition, the business activities of a limited swap dealer are much broader than such entity's swap dealing activities. Accordingly, whereas the CFTC may be in the best position to determine how all swap dealers (including limited swap dealers) should interact with their counterparties and the overall market, the prudential regulators will be in a much better position to determine what risk management and other internal standards to impose upon the entity as a whole. The prudential regulators will be able to take into account all of the limited swap dealer's business activities, including its swap dealing activities and will be able to consider how such swap dealing activities fit into and affect the entity's overall risk profile.

With respect to the FHLBanks, the FHFA already imposes a multitude of internal business conduct standards, through both regulations and other requirements. By regulation, the FHFA determines what investments are permissible for the FHLBanks, determines whether an FHLBank may engage in a new business activity, imposes counterparty risk and exposure requirements, and has extensive authority to examine and take enforcement actions against the FHLBanks. In addition, the FHLBanks have risk

committees and engage in practices that are substantively similar to certain requirements in the Internal Business Conduct Proposed Rules.¹ Finally, with respect to disaster recovery, the FHLBanks are required to have in place a contingency plan² (which has been interpreted by the FHFA as requiring a disaster recovery plan) and the FHLBanks are required to maintain “partnering” relationships with other FHLBanks to avoid disruption of business activities in the event of an emergency with respect to one or more for the FHLBanks.

As noted above, while the swap dealing activities of certain of the FHLBanks may be more than *de minimis*, such activities are nevertheless incidental to the overall business activities and statutory mission of the FHLBanks. Taking into account the requirements described above that are already imposed upon the FHLBanks by the FHFA, together with the very limited amount of swap dealing activities in which certain of the FHLBanks engage, the costs of strict compliance with the Internal Business Conduct Proposed Rule greatly outweigh any benefits that such compliance would bring to the financial markets.

In light of the foregoing, we believe that the CFTC should include an exemption in each of the Internal Business Conduct Proposed Rules stating that the requirements of the proposed rules “*shall not apply to those limited swap dealers that are subject to regulation and oversight by a prudential regulator, provided that such regulation includes business conduct requirements that are substantially similar to the requirements of the proposed rule, as determined by the prudential regulator after consultation with the CFTC.*”

III. Internal Business Conduct Standards Should Only Apply To The Swap Dealing Activities of Limited Swap Dealers

If the CFTC determines to apply some or all of the Internal Business Conduct Proposed Rules to limited swap dealers, then such rules should only apply with respect to the “swap dealing” activities of such entities’ businesses. The Internal Business Conduct Proposed Rules contain several references to the “*business* of the swap dealer or major swap participant.” Based upon the intent of the limited swap dealer designation, as discussed in the preamble to the Entity Definitions Proposed Rule, and the reality of a limited swap dealer’s overall business activities, we believe that such references should be to the “*swap dealing business* of the swap dealer or major swap participant.” Specifically, the chief compliance officer, the annual report, the counterparty risk policies and the new product policies required by the Internal Business Conduct Proposed Rules should only apply to a limited swap dealer’s swap dealing activities. Additionally,

¹ See 12 C.F.R. 917.3 (requiring each of the FHLBanks to adopt a risk management policy) and 12 C.F.R. 917.6 (imposing internal control system requirements on each of the FHLBanks).

² See 12 C.F.R. 917.3.

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limited swap dealers should be permitted to use existing personnel and infrastructure to the extent possible in implementing the Internal Business Conduct Proposed Rules. For example, we believe that an existing officer of a limited swap dealer should be permitted to serve as the chief compliance officer.

IV. In No Event Should Internal Business Conduct Standards Imposed on Limited Swap Dealers Duplicate Regulations Already Imposed By Prudential Regulators For Such Entities

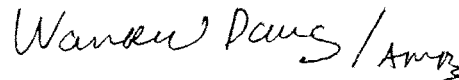
To the extent that a limited swap dealer is subject to requirements imposed by its prudential regulator that are substantially similar to and duplicative of, or in inconsistent with, those set forth in the Internal Business Conduct Standards Proposed Rules, we believe that the requirements imposed by the prudential regulator should prevail. If limited swap dealers are required to establish and adopt the policies and procedures required by the Internal Business Conduct Proposed Rules, then they should be able to reference in these policies compliance with any applicable regulation to which they are already subject by their prudential regulator without having to elaborate on such regulations or such compliance. Alternatively, as a replacement for the policies and reports required by the Internal Business Conduct Proposed Rules, limited swap dealers should be able to make an annual representation that to their knowledge they are in substantial compliance with all regulations imposed on them by their prudential regulator.

V. Technical Point

Finally, as a technical point, proposed Reg. 23.605(d)(1)(vi) prohibits a swap dealer or major swap participant from directly or indirectly interfering with or attempting to influence the decision of any affiliate clearing member with respect to the setting of fees for clearing services. We request clarification that this provision does not prevent an affiliated FCM from offering discounts to end-user customers of affiliated swap dealers.

We appreciate the opportunity to comment. Please contact Warren Davis at (202) 383-0133 or warren.davis@sutherland.com with any questions you may have.

Respectfully submitted,

A handwritten signature in black ink that reads "Warren Davis" followed by a stylized flourish that appears to be "ASB/B".

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP