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January 24, 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 Rule – Registration of Swap Dealers and Major Swap Participants (RIN 3038—AC95)

Dear Mr. Stawick,

On behalf of the Federal Home Loan Banks (the “FHLBanks”), we appreciate this opportunity to comment on the above-referenced proposed rule (the “Registration Proposed Rule”). 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. Specifically, we believe that the Registration Proposed Rule should include an abridged registration process for limited swap dealers.

I. Background

Limited Swap Dealers. 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.

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 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.

II. Limited Swap Dealers Should Be Able to Register As Such Pursuant to the Registration Proposed Rule

Pursuant to the Registration Proposed Rule, each person who comes within the definition of a swap dealer or a major swap participant is subject to the registration provisions in Part 3 of the CFTC’s Regulations. The Registration Proposed Rule amends Part 3 to provide for registration of swap dealers and major swap participants but the amendments do not provide for registration of limited swap dealers. In order to give meaning to the limited swap dealer concept, the FHLBanks believe that limited swap dealers should be added as a separate category of CFTC registrants under Part 3 of the CFTC’s Regulations.

Additionally, we believe that just as current CFTC registrants determine themselves whether they are required to register in a certain capacity (and just as swap dealers and major swap participants will determine themselves whether they are required to register as such), limited swap dealers should determine themselves whether they need to register as a limited swap dealer (as opposed to a swap dealer). As such, the

Registration Proposed Rule should clarify that when an entity registers as a limited swap dealer, such entity will only have to demonstrate compliance with and/or ability to comply with the requirements imposed on limited swap dealers.¹ The purpose of the limited swap dealer concept is to address (1) those entities whose swap dealing activities, while more than *de minimis*, are nonetheless incidental to the entities' overall business activities and (2) the need for those entities to be regulated differently than other swap dealers. It would be inconsistent with this purpose for a limited swap dealer to have to comply with the requirements imposed on swap dealers until the CFTC makes a decision that the entity is in fact a limited swap dealer.

III. Principals of Limited Swap Dealers

While we generally believe that filing a Form 7-R with the National Futures Association (the "NFA") is an appropriate way for limited swap dealers to register as such, we believe that the definition of "principal" as such term is used in Form 7-R should be modified for limited swap dealers. CFTC Reg. 3.1 defines the term "principal" to generally include (1) officers, directors, partners or similar persons exercising control over an entity's regulated activities; (2) individuals who own or have power to vote ten percent or more of the entity's securities and non-individual persons that are the direct owner of ten percent or more of any class of securities; and (3) persons who have contributed ten percent or more of the entity's capital. By definition, the swap dealing activities of a limited swap dealer are merely incidental to such entity's primary business activities. As such, it would be unreasonable for a limited swap dealer to have to list on its Form 7-R all of its officers, all of its directors and certain other individuals, many of whom have no connection to the limited swap dealer's swap dealing activities.

As discussed above, the primary business of the FHLBanks is to extend low-cost loans to their member institutions, which advances are secured primarily by mortgage loans and securities pledged by the member institutions. Accordingly, a substantial majority of those persons who would be included in the definition of "principal" for each FHLBank do not have any connection to or involvement with such FHLBank's limited swap dealing activities. Moreover, the FHLBanks are cooperatives and the FHLBank Act imposes a statutory cap on the number of voting shares that a member institution may vote in an election of the applicable FHLBank's directors.² Consequently, no member institution will ever be able to exercise "control" over an FHLBank and it would therefore be unreasonable for a member institution to have to register as a "principal."

¹ See the FHLBanks' comment letter dated January 18, 2011 regarding the CFTC's proposed rules on Chief Compliance Officer Designation (RIN 3038-AC96); Duties of Swap Dealers and Major Swap Participants (RIN 3038-AC96) and Swap Dealer and Major Swap Participants Conflicts of Interest (RIN 30308-AC96) for a discussion of how the CFTC's internal business conduct rules should apply to limited swap dealers. The FHLBanks intend to file similar comment letters regarding other CFTC proposed rules imposing requirements on swap dealers and major swap participants.

² 12 U.S.C. 1427(b).

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For the foregoing reasons, we believe that limited swap dealers should have to disclose as “principals” on their Form 7-R only those persons who control the limited swap dealer’s swap dealing activities, which must include at least one officer of the limited swap dealer who reports to the limited swap dealer’s board with respect to the limited swap dealer’s swap dealing activities.

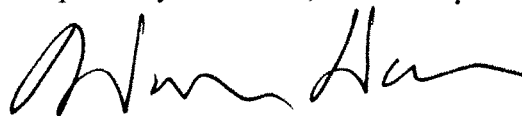
The Registration Proposed Rule also requires that all principals of swap dealers and major swap participants register with the CFTC by filing a Form 8-R with the CFTC. Consistent with our comment above, and for the reasons stated above, we believe that for limited swap dealers only those persons who control the limited swap dealer’s swap dealing activities (including at least one officer who reports to the limited swap dealer’s board with respect to the limited swap dealer’s swap dealing activities) should have to register with the CFTC. The information required by Form 8-R is not necessary for all of a limited swap dealer’s officers and directors, the majority of which do not engage in any activities that will be regulated by the CFTC.

IV. Associated Persons

Consistent with our comments above, we believe that the Registration Proposed Rule should clarify that associated persons of limited swap dealers consist only of “those persons associated with the limited swap dealer as a partner, officer, employee or agent (or any person occupying a similar status or performing similar functions), in a capacity that involves (i) the solicitation or acceptance of swaps *for which the limited swap dealer is the “swap dealer” counterparty* and (ii) the supervision of any person or persons so engaged.”

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,



Warren Davis, Of Counsel
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CC: FHLBank Presidents
FHLBank General Counsel