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Washington, DC 20016-2892

BY COMMENTS ONLINE PROCESS AT <http://comments.cftc.gov>

February 7, 2011

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

Re: Comments of Federal National Mortgage Association (“Fannie Mae”) to the proposed rulemaking on Real-Time Public Reporting of Swap Transaction Data, RIN 3038-AD08

Dear Mr. Stawick:

Fannie Mae appreciates the opportunity to comment on the proposed rulemaking regarding Real-Time Public Reporting of Swap Transaction Data issued by the Commodity Futures Trading Commission (the “Commission”) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). We commend the Commission for its 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 part of 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.

### **Background and Summary of Comments**

Section 727 of the Dodd-Frank Act created Section 2(a)(13) of the Commodity Exchange Act (“CEA”) and authorizes the Commission to “make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.”<sup>1</sup> The language of the Dodd-Frank Act provides the Commission with flexibility in establishing the terms of reporting block trades.<sup>2</sup> Legislative history demonstrates that Congress wanted the Commission to use its discretion in a careful manner to promote liquidity in the derivatives markets and prevent derivatives speculators from unnecessarily benefiting at the expense of derivatives end-users.<sup>3</sup>

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<sup>1</sup> Commodity Exchange Act § 2(a)(13).

<sup>2</sup> 156 Cong. Rec. S5921-S5922 (statement of Sen. Lincoln).

<sup>3</sup> See, e.g., Letter from Chairman Dodd and Chairman Lincoln to Chairman Frank and Chairman Peterson dated June 30, 2010 (“[S]tandards should be set to mitigate risk in our financial system,

We offer the following comments, which will be developed in greater detail below:

- The proposed tests for calculating minimum block trade sizes are likely to yield excessively large sizes, and the mean transaction size should not be factored into the “social size multiple test;”
- The proposed time delays are insufficient to preserve market liquidity and should be extended; and
- The proposed thresholds for masking notional amounts should be lowered.

### **Block Trade Requirements**

The proposed rules require registered swap data repositories to calculate the appropriate minimum block size for a swap instrument based upon two tests. The first test is the “distribution test” – namely, whether the notional amount is greater than 95% of the transactions of that swap instrument. The second test is the “(social size) multiple test.” The result of this test is determined by multiplying a block multiple by the social size of the swap instrument. The proposed block multiple is 5, and the proposed social size is the largest of the swap instrument’s mode, median or mean. After making those calculations, the appropriate minimum block trading size is the greater of the results produced by each test. We appreciate the Commission’s thoughtful and flexible proposal on this central topic.

We believe that the 95% threshold in the distribution test is set too high. Additionally, we believe that the mean calculation would, by including block trades themselves, skew block size calculations excessively high under the social size multiple test.<sup>4</sup> Similarly, the median calculation is not a fair indicator of social size as it does not account for possible variations in notional sizes both above and below the mean. Therefore, we support J.P.Morgan’s proposal of using only the mode calculation for the social size test.<sup>5</sup> Without these modifications, these tests would likely impact liquidity and pricing of derivatives trades for end-users of derivatives. We agree with J.P.Morgan’s statement that the analogy to the futures market is not conclusive as it fails to account for the effect of the over-the-counter (“OTC”) derivatives market. Currently, end-users of futures can elect private negotiation to seek superior pricing and execution through the OTC market and thus the incidence of block trades in the futures markets is not a reliable

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not punish those who are trying to hedge their own commercial risk. It is imperative that these standards are not punitive to the end users, that we encourage the management of commercial risk....”); 156 Cong. Rec. S5905 (statement of Sen. Stabenow); *id.* at S5915 (statement of Sen. Reed); Markup of the Wall Street Transparency and Accountability Act of 2010 (S. 3217), Senate Agriculture, Nutrition, and Forestry Committee (April 21, 2010) (statement of Sen. Roberts).

<sup>4</sup> See also Comment Letter from Goldman, Sachs & Co. filed January 18, 2011, at 4-5.

<sup>5</sup> Comment Letter from J.P.Morgan filed on January 12, 2011, at 8.

indicator when applied to the swaps markets.<sup>6</sup> After the effective date of the Dodd-Frank Act, major swap participants and financial entities will not have similar flexibility for certain swap instruments. Therefore, it is imperative to establish minimum block size requirements that will not impede liquidity or encourage front-running. While we have not fully assessed J.P.Morgan's proposal, our initial impression is that their proposal is reasonable.<sup>7</sup>

### **Timing of Public Dissemination of Trade Data for Block Trades**

The proposed rules require public dissemination of block trade data no later than 15 minutes after the time of execution. This 15-minute delay proposal was based, at least in part, on FINRA's TRACE system for corporate and agency debt securities.<sup>8</sup> By contrast, the Securities and Exchange Commission ("SEC") proposes that all block trade data will be made publicly-available immediately, excluding the notional amount (which will be made publicly-available 8-26 hours after the time of execution).

Making trade data public too quickly will preclude swap dealers from being able to trade out of positions and/or allow front-running by speculators.<sup>9</sup> The mere specter of those risks will cause costs to be passed to end-users of derivatives in the form of increased bid-ask spreads, diminished liquidity and increased volatility.<sup>10</sup>

SIFMA and certain users of derivatives propose a 24-hour delay for publicly reporting block trade transaction and pricing data.<sup>11</sup> In contrast, J.P.Morgan proposes an approach based on London Stock Exchange practice.<sup>12</sup> Fannie Mae believes that the existence of any meaningful

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<sup>6</sup> Comment Letter from J.P.Morgan, *supra* note 5, at 6-9.

<sup>7</sup> Given the difficulty of calibrating these minimum block size requirements, the Commission and the industry may find it beneficial to evaluate and reconsider these standards after an initial compliance period and/or periodically.

<sup>8</sup> Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140, at 76,166 (proposed Dec. 7, 2010) (amending 17 CFR Pt. 43).

<sup>9</sup> See also Comment Letter from The Asset Management Group ("AMG") of the Securities Industry and Financial Markets Association ("SIFMA") filed January 18, 2011, at 4.

<sup>10</sup> As previously observed, unlike the current climate for futures, certain end-users of derivatives will not be able to achieve superior pricing through the OTC derivatives markets after the effective date of the Dodd-Frank Act. See *supra* note 5 and accompanying text.

<sup>11</sup> Comment Letter from the AMG of SIFMA, *supra* note 9, at 3-6. Separately, we agree with SIFMA that the reporting party always should be the swap dealer, even when the swap dealer is a non-U.S. person. Comment letter from SIFMA, at 2-3; see also Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574, at 76,593 (proposed Dec. 8, 2010) (amending 17 CFR Pt. 45). Swap dealers are best situated to develop the lowest cost technological infrastructure to comply with any such regulations. Market-share should cause non-U.S. swap dealers to develop this technology and comply with applicable regulations.

<sup>12</sup> Comment Letter from J.P.Morgan, *supra* note 5, at 10-12.

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delay – meaning a delay that allows swap dealers to offset their risks so as to preserve best execution and pricing for end-users – is preferable to the proposals offered by the Commission and the SEC. The 24-hour delay recommendation benefits from its simplicity and the fact that such a lag will allow swap dealers the time that they require to make markets and offset risk. From the perspective of Fannie Mae, as a party that uses derivatives solely to hedge and not to speculate, changing the proposed dissemination delay from 15 minutes to 24 hours:

- would not serve to obscure our understanding of the market; and
- would not increase risk or materially impede price discovery (when such is balanced against potential pricing and liquidity costs).

Therefore, we believe that using a 24-hour delay strikes a better balance between liquidity concerns and the goal of promoting transparency to the public.

### **Reporting of Notional Amounts**

The proposed rules regarding public dissemination of trade data require rounding of the notional amount of trades in excess of \$250 million to “\$250+.” We appreciate the Commission’s focus on masking notional amounts to preserve proper levels of liquidity. However, we believe that the upper threshold of \$250+ should be lowered in a meaningful manner.<sup>13</sup> This view is based upon our belief – as mentioned above – that bid-ask spreads, market liquidity and volatility could be negatively impacted.

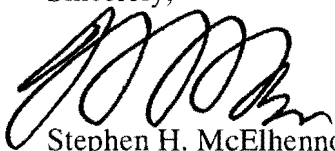
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Thank you for the opportunity to comment on this proposed rulemaking.

Sincerely,



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

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<sup>13</sup> J.P.Morgan has proposed an extension of TRACE’s notional size masking system to this context. Comment Letter from J.P.Morgan, supra note 5, at 12-14. Such an approach may serve as a good starting point for the Commission.