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February 7, 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 – Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19); Real-Time Reporting of Swap Transaction Data (RIN 3038-AD08); Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (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 (collectively, the “Proposed Rules”; the Proposed Rule on Swap Data Recordkeeping and Reporting Requirements is referred to herein as the “Recordkeeping and Reporting Proposed Rule,” the Proposed Rule on Real-Time Reporting of Swap Transaction Data is referred to herein as the “Real-Time Reporting Proposed Rule” and the Proposed Rule on Reporting, Recordkeeping and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants is referred to herein as the “SD/MSP Proposed Rule”).

While the FHLBanks are generally supportive of the Proposed Rules and the increased transparency that the Real-Time Reporting Proposed Rule in particular would bring to the swaps market, the FHLBanks have a number of comments regarding (1) the treatment of customized swap transactions, including large notional swaps, under the Proposed Rules, (2) the effects that the definition of block trades and the treatment of such transactions under the Real-Time Reporting Proposed Rule may have on the pricing of such transactions and (3) the obligations under the Proposed Rules of market participants that are not swap dealers or major swap participants.

In addition, as a general matter, the FHLBanks believe it is problematic for market participants to have to comment on the Proposed Rules, all of which deal with recordkeeping and reporting of *swap* data when the CFTC has not yet proposed a rule on the definition of “swap.” In the event that the CFTC’s proposed rule on this definition

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causes transactions that are not commonly known in the market as “swaps” to be regulated as “swaps,” the FHLBanks are likely to have additional comments on the Proposed Rules and would appreciate the opportunity to offer such comments to the CFTC.

I. 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 major swap dealers to facilitate their business objectives and to mitigate financial risk, primarily interest rate risk. As of September 30, 2010, the aggregate notional principal amount of OTC interest rate swaps held by the FHLBanks collectively was \$804.4 billion. At present, all of these swap transactions are entered into bilaterally and none of them are cleared. Certain transactions that the FHLBanks enter into with the major swap dealers may be treated as block trades and/or large notional swaps under the Real-Time Reporting Proposed Rule.

Certain of the FHLBanks also provide their member institutions with access to the swap market by intermediating swap transactions between the member institutions and the major swap dealers, thus allowing such members to hedge interest rate risk associated with their respective businesses. These swaps that certain FHLBanks offer to their members are incidental to the FHLBanks’ existing lending relationships with their members, are offered only as a service to their member institutions, are typically customized to meet the specific hedging needs of a particular member institution and constitute only a small percentage of the FHLBanks’ overall swap transactions.

II. The Proposed Rules

Reporting and Recordkeeping Proposed Rule. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) charges the Commodity Futures Trading Commission (the “CFTC”) with regulating the previously unregulated over-the-counter (“OTC”) derivatives market. Although the exact size of the OTC derivatives market is unknown, it is estimated that the notional amount of OTC derivative transactions outstanding in 2008 and 2009 was approximately \$600 trillion.¹ At present, the CFTC has only limited information about the individual derivatives transactions that make up this market. The Proposed Rules, and most specifically, the Recordkeeping and

¹ See Congressional Record at S.5878 (July 15, 2010).

Reporting Proposed Rule, are meant to provide the CFTC and other regulators with the comprehensive information that they need to regulate this market.

While the FHLBanks agree that it is imperative that the CFTC (and other regulators) obtain information about the transactions that comprise the OTC market and any potential systemic risk in connection therewith, the FHLBanks believe that the CFTC should do so in a way that does not unnecessarily burden, either financially or operationally, end-users and other market participants, particularly those that are not swap dealers or major swap participants.

Real-Time Reporting Proposed Rule. At present, the principal way in which end-user counterparties obtain pricing information for swap transactions is to contact one or more major swap dealers directly and obtain indicative pricing information on a transaction-by-transaction basis. Price information based on actual transactions is generally not publicly available for OTC swap transactions. In order to bring more transparency to the swaps market, the Dodd-Frank Act requires the CFTC to “promulgate rules that provide for the public availability of swap transaction and pricing data in real-time in such form and at such times as the CFTC determines appropriate to enhance price discovery.”² With respect to such rules, the Dodd-Frank Act provides that the CFTC shall (1) ensure that publicly disseminated information does not identify the counterparties to a swap transaction, (2) specify criteria for determining what constitutes a block trade/large notional swap for particular markets and contracts and specify time delays for publicly disseminating information about such transactions and (3) take into account whether public disclosure will materially reduce market liquidity.³

While the FHLBanks agree that enhanced transparency and price discovery in the swaps market would be beneficial for certain types of transactions, the FHLBanks are concerned about whether the Real-Time Reporting Proposed Rule’s treatment of uncleared customized swap transactions, including large notional swaps, is necessary to achieve such transparency and price discovery. The FHLBanks are also concerned about increased costs that swap dealers may transfer to and impose on their end-user counterparties if the reporting requirements for customized swap transactions and block trades alter the manner in which swap dealers hedge such transactions in the market.

SD/MSP Proposed Rule. All of the Proposed Rules impose heightened and/or more onerous requirements on those market participants that fall within the definitions of “swap dealer” and “major swap participant” under the Dodd-Frank Act and the CFTC’s rule further defining such terms. The SD/MSP Proposed Rule specifically imposes increased recordkeeping requirements on swap dealers and major swap participants.

² See Section 727 of the Dodd-Frank Act (§ 2(a)(13) of the Commodity Exchange Act (the “CEA”), as amended by the Dodd-Frank Act).

³ See Section 727 of the Dodd-Frank Act (§ 2(a)(13)(E) of the CEA, as amended by the Dodd-Frank Act).

While the FHLBanks agree that such recordkeeping requirements make sense for swap dealers and major swap participants whose primary business involves making a market for and entering into swap transactions, as discussed below, the FHLBanks believe that such requirements should be tailored for those market participants that are swap dealers for a limited purpose (“limited swap dealers”) under the CFTC’s recently proposed rule further defining the terms swap dealer and major swap participant (the “Entity Definition Proposed Rule”). Specifically, the FHLBanks believe that such recordkeeping requirements should only apply to transactions entered into by such a market participant in its capacity as a limited swap dealer.⁴

III. Treatment of Customized Swaps

Relevance of Pricing Data for Uncleared Customized Swaps. The FHLBanks do not believe that real-time data dissemination should be required for those swaps, including large notional swaps, that are not accepted for clearing by any derivative clearing organizations (“DCOs”). By definition, such swap transactions would be customized transactions tailored for a specific market participant and not readily comparable to other swap transactions. As a result, the benefits of such price transparency would be limited and would not outweigh the burdens of real-time reporting.

The Real-Time Reporting Proposed Rule requires that all pricing and other primary economic data for a swap transaction be reported to a swap data repository (“SDR”) or other real-time disseminator “as soon as technologically practicable.” The preamble to the Real-Time Reporting Proposed Rule acknowledges that “as soon as technologically practicable” will equate to a longer time period for transactions entered into bilaterally than for swap transactions entered into on a designated contract market (“DCM”) or swap execution facility (“SEF”).

By virtue of the Dodd-Frank Act’s requirement that market participants execute all trades that are subject to mandatory clearing on DCMs or SEFs (with certain exceptions such as the end-user exception), trades that are not entered into on a DCM or SEF will generally constitute non-standard/customized trades. For the reason stated above, the price and other transaction information for these trades will most likely not be publicly available as quickly as price and other transaction information for standard trades executed on a DCM or SEF. As also stated above, with respect to trades that are not clearable by any DCO due to their customized terms, the pricing data for such transactions would only be relevant to a very small number of market participants. Accordingly, real-time dissemination of pricing information for such customized swap transactions would not actually enhance transparency in the swaps market more than a

⁴ The FHLBanks are specifically referring to those transactions that certain of the FHLBanks enter into with their member institutions as opposed to the majority of the FHLBanks’ swap transactions, which are entered into with the major swap dealers for hedging purposes.

marginal amount or even provide the market with meaningful information.⁵ Meanwhile, the real-time reporting requirements for such transactions would increase the burdens on market participants who will already be subject to separate reporting requirements under the Reporting and Recordkeeping Proposed Rules and possibly under the SD/MSP Proposed Rule. Furthermore, for the reasons discussed below for block trades, real-time public dissemination of data for large notional swaps would most likely either limit the availability of such transactions or significantly increase the costs of entering into such transactions.

Whether Public Dissemination of Data for Customized Swaps Will Reveal The Identities of the Counterparties. As an additional point, the FHLBanks are concerned about whether public dissemination of data for uncleared customized swap transactions would be possible without revealing the identities of the swap counterparties. As stated above, the Dodd-Frank Act requires the CFTC to ensure that publicly disseminated information about swap transactions does not identify the parties to the swap transactions. Certain swap transactions that the FHLBanks enter into are very unique to the business and funding activities of the FHLBanks. To the extent that information about such swap transactions is publicly available, sophisticated market participants may not only be able to identify an FHLBank as a party to the swap, but they may also identify the underlying hedged asset or liability, and glean information regarding the FHLBank's hedging strategy.

IV. Real-Time Dissemination of Pricing Data for Block Trades and Large Notional Swaps

The Real-Time Reporting Proposed Rule sets forth a framework for determining which swaps constitute "block trades" or "large notional swaps." In general, pricing information for swaps with notional amounts above a certain amount (which amount will depend on the subcategory of "swap instrument" in which the swaps fall) will not be publicly disseminated for a set time period after such swaps are executed. As discussed below, the FHLBanks cannot be certain at this time which of their swap transactions will constitute block trades or large notional swaps because the definitions of these terms depend on currently unknown information about existing OTC transactions. However, the FHLBanks believe that a portion of the swap transactions that they enter into with the

⁵ Under the Real-Time Reporting Proposed Rule, if a reportable swap transaction has one or more additional terms or provisions (other than those listed in the real-time data fields described in Annex A to new Part 43 of the CFTC's Regulations) that materially affect the price of the reportable swap transaction, then the swap transaction is reported to the public with an asterisk (but without disclosure of such additional terms or provisions). Accordingly, when market participants see the pricing information for these customized swap transactions, they will not know (and will have no way of finding out) which other swap transactions should be similarly priced. In fact, public dissemination of this relatively meaningless information may actually contribute to increased confusion in the market. What possible benefit can be expected, for example, from making publicly available the pricing of thousands of swaps denoted with an asterisk?

major swap dealers as an important part of their hedging strategies may constitute block trades and large notional swaps. Accordingly, the FHLBanks believe it is important for the CFTC to properly define such terms and to allow for sufficient delays in the public dissemination of data for these transactions. At a minimum, for the reasons stated above with respect to all customized trades, the FHLBanks believe that real-time reporting should not apply to large notional swaps, which by definition cannot be cleared by any DCO due to their customized terms.

Under the Real-Time Reporting Proposed Rule, information for “block trades” (those swaps with large notional amounts that are traded or eligible to be traded on a DCM or SEF) is to be publicly disseminated 15 minutes after such trades are executed, and information for “large notional swaps” (those swaps that are not yet eligible to be traded on a DCM or SEF) is to be publicly disseminated after a time to be determined by the CFTC pursuant to a final rulemaking. In the Real-Time Reporting Proposed Rule, the CFTC specifically asks for comments on the appropriate time delay for public dissemination of data related to large notional swaps and whether the 15 minute time delay is appropriate for block trades.

At this time, the FHLBanks do not have the information necessary to comment on such appropriate time delays. In addition to not having information about the time it would take a major swap dealer to effectively hedge such transactions, the FHLBanks cannot be sure of what transactions will constitute block trades. The Real-Time Reporting Proposed Rule sets a framework for, but does not actually define, the categories of swaps that the CFTC will use in setting the minimum sizes for block trades.⁶

If real-time reporting is required for customized swaps including large notional swaps, then the FHLBanks believe that the guidelines in the Real-Time Reporting Proposed Rule for determining whether a swap transaction is a large notional swap would be difficult to implement. For instance, market participants would not be able to compare a large notional swap (that by definition is customized and unique) to standard and regularly traded swaps in a specific category of swap instruments.

In order to definitively comment on the CFTC’s specific questions in the Real-Time Reporting Proposed Rule, among other things, the FHLBanks would need to consider whether the real-time reporting requirements imposed on the major swap dealers with which the FHLBanks enter into swap transactions would cause such dealers to

⁶ The Real-Time Reporting Proposed Rules sets forth five categories of swap asset classes (interest rate, currency, equity, credit and other commodity) and defines the term “swap instrument” as a group of swaps within an asset class that has the same or similar characteristics. The categories of block trades and large notional swaps will be a subset of swap instruments.

significantly increase the pricing of such transactions.⁷ The preamble to the Real-Time Reporting Proposed Rule specifically states that “the ability for market participants to trade in large notional or principal amounts without market prices moving significantly against them is a vital component of any vibrant and liquid marketplace.” Such pricing considerations must be carefully balanced against the need for enhanced price transparency in the swaps market. Given the importance of preserving market liquidity and not adversely affecting pricing, the FHLBanks believe that the CFTC should err on the side of longer time delays for public dissemination of data for block trades and customized swaps.⁸

In addition to considering the concerns of the major swap dealers who frequently offer block trades and large notional swaps to their counterparties, the FHLBanks believe that the CFTC should further analyze the existing OTC swap market before setting the minimum sizes for block trades (and possibly large notional swaps, to the extent real-time reporting is required for such transactions). It is unclear how the CFTC will effectively set these levels (or how the swap dealers will be able to effectively comment on these levels) without more information about outstanding swap transactions. It seems that whether a time delay for public dissemination of pricing information for a particular swap is appropriate depends on the specific characteristics and specific size of the swap. As such, the FHLBanks do not believe that the CFTC will have the information it needs to set the minimum sizes for block trades (or possibly large notional swaps) until it receives the information to be reported pursuant to the Recordkeeping and Reporting Proposed Rule. The FHLBanks therefore believe that the effective date for the Real-Time Reporting Proposed Rule should be later than the effective date for the Recordkeeping and Reporting Proposed Rule.

⁷ Note that as discussed in Section II above regarding customized swap transactions, the FHLBanks believe that real-time reporting may not be necessary at all for certain customized large notional swap transactions.

⁸ The FHLBanks understand that certain of the major swap dealers with whom they enter into swap transactions have serious concerns about both the definitions and the time delays for block trades and large notional swaps, as set forth in the Real-Time Reporting Proposed Rules. Specifically, the FHLBanks understand that certain of the dealers believe that the 95% level in the distribution test, the inclusion of “mean” in the multiple test and the five-times multiplier in the multiple test will exclude a number of transactions that the swap dealers consider to be “market moving” transactions. With respect to time delays for public dissemination of swap transactions, the dealers have told the FHLBanks that 15 minutes is too short and would cause the dealers to either significantly change the way that they price such transactions or to stop entering into these transactions altogether. One dealer has told the FHLBanks that the time delay for block trades should start around 75 minutes and possibly be decreased to between 15 and 45 minutes based on the type of swap transaction and that the time delay for large notional swaps should be at least 24 hours.

V. Obligations of Market Participants That Are Limited Swap Dealers or End-Users

Limited Swap Dealers. As noted in previous comment letters, the FHLBanks believe that the CFTC's proposed rules should account for the differences between swap dealers and "limited" swap dealers, as contemplated under the Entity Definition Proposed Rule. 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 Definition Proposed Rule. The FHLBanks do not believe that their swap activities should cause them to be regulated as swap dealers. At most, the FHLBanks believe that their derivatives activities with their member institutions may result in certain of the FHLBanks being regulated as 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 with their member institutions will cause them to be regulated as limited swap dealers.

With respect to those swaps that the FHLBanks enter into with the major swap dealers to facilitate their business objectives and to mitigate financial risk, the FHLBanks should not be the "reporting counterparty" under any of the Proposed Rules. The major swap dealers should be the reporting entity for these transactions. The FHLBanks believe that this makes sense given the infrastructure and technology that will have to be put in place by swap dealers and major swap participants in order to fulfill their obligations as reporting counterparties under the Proposed Rules. If the FHLBanks are determined to be limited swap dealers, the FHLBanks are concerned about the costs and timing issues involved in implementing the infrastructure required to comply with the Proposed Rules.

Specifically, the FHLBanks believe that the reporting time periods for end-users as opposed to the reporting time-periods for swap dealers should apply to limited swap dealers. The FHLBanks also believe that the SD/MSP Proposed Rule should clarify that the additional recordkeeping requirements for swap dealers should only apply to the swap dealing activities of limited swap dealers. In addition, if the FHLBanks are determined to be swap dealers and are required to submit an application to the CFTC to be designated as limited swap dealers, we believe that the foregoing modified requirements should apply while any such application is pending.⁹ It would be extremely burdensome for limited swap dealers to have to comply with requirements that are meant for entities whose primary business is to make a market for swap transactions (*i.e.*, swap dealers) when by definition, the swap dealing activities of a limited swap dealer are merely incidental to the entity's primary business activities.

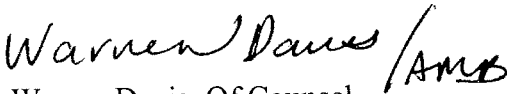
⁹ In their comment letter on the Entity Definition Proposed Rule, the FHLBanks will suggest that those swap dealers who believe they should be regulated as limited swap dealers should be able to designate themselves as such and not be subject to burdensome regulation as swap dealers while the CFTC decides whether such entities are in fact limited swap dealers.

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End-Users. Even if the FHLBanks are not designated as swap dealers, they may still be designated as the “reporting counterparty” with respect to those swap transactions that the FHLBanks enter into with their member institutions. The Recordkeeping and Reporting Proposed Rule poses a question about the appropriate time periods for reporting confirmation data and valuation data if the reporting party in a swap transaction is an end-user. With respect to confirmation data, the FHLBanks believe that electronically confirmed swaps should be reported within 24 hours of confirmation and that manually confirmed swaps should be reported within 5 business days of confirmation. With respect to valuation data, the FHLBanks believe that end-user reporting parties should report such information on a weekly basis. Such time periods would provide the regulators with access to information in a timely manner while also preventing end-users from having to implement costly infrastructure or add additional personnel to report a relatively small number of swap transactions.

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,


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CC: FHLBank Presidents
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