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By Comments Online process at: <http://comments.cftc.gov>

April 11, 2011

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

Re: Notice of Proposed Rulemaking: Requirements for Processing, Clearing and Transfer of Customer Positions; RIN 3038-AC98

Dear Secretary Stawick:

Freddie Mac is pleased to submit these comments in response to the Notice of Proposed Rulemaking regarding the time frame for swap dealers (SDs) and major swap participants (MSPs) to submit swaps for clearing and obligations relating to the transfer of customer positions published by the Commodity Futures Trading Commission (the Commission) on March 10, 2011 (the Proposal)<sup>1</sup> pursuant to Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

Freddie Mac was chartered by Congress in 1970 with a public mission to stabilize the nation's residential mortgage markets and expand opportunities for affordable homeownership and rental housing. Our statutory mission is to provide liquidity, stability and affordability to the U.S. housing market. Freddie Mac uses swaps to hedge large-scale commercial risks on an ongoing basis. Freddie Mac currently operates under the direction of the Federal Housing Finance Agency as our Conservator.

### Summary and Recommendations

Freddie Mac supports the Commission's goal to reduce systemic risk through central clearing of swaps. We agree with the Commission that undue delays in submitting swaps to a derivatives clearing organization (DCO) diminish the credit-risk mitigation benefits of clearing. Provided that swaps subject to a clearing mandate are reasonably standardized products that may be confirmed through automated electronic processing facilities, we also agree that it is feasible in the normal course to submit such swaps for clearing on the same day as execution, even when they are not executed on a swap execution facility (SEF) or a designated contract market (DCM).

We are concerned, however, that the Commission's proposal to require SDs and MSPs to submit such swaps for clearing "as soon as technologically practical following execution" and no later than the close of business on the same day would impose unnecessarily rigid and tight

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<sup>1</sup> 76 Fed. Reg. 13101.

deadlines that would be impractical in certain circumstances. As these deadlines do not appear necessary to accomplish the public policy goals articulated by the Commission, we believe that a somewhat more flexible approach is warranted.

In addition, with respect to the Proposal's provision regarding obligations of market professionals to transfer customer positions from the futures commission merchant (FCM) carrying such positions to another FCM that is a clearing member of the relevant DCO, we believe that customers and the market in general would benefit from more concrete obligations than those proposed. Accordingly, Freddie Mac suggests that the Commission amend the Proposal consistent with the following recommendations, described further in our letter:

- Timely Submission for Clearing: A SD's or MSP's obligation to submit a swap subject to a clearing mandate to a DCO for clearing in a timely manner should be deemed satisfied when it is submitted as soon as commercially and operationally practicable given available technology and not later than within 24 hours of execution.
- DCO and FCM Transfer Obligations: In addition to obligating DCOs to transfer customer swap positions "promptly" on request (assuming a clearing member is willing to receive such positions) the Commission should set a hard deadline for such transfers of 24 hours. The Commission should also establish an affirmative regulatory obligation for FCMs that act as clearing members for swap customers to cooperate with DCOs to facilitate transfers of their customers' swaps on request.

#### Clearing Submission Deadlines

Freddie Mac has substantial experience in transacting both listed interest rate futures and options subject to existing Commission regulation, as well as over-the-counter (OTC) interest rate swaps that will become subject to Commission regulation under the Dodd-Frank Act. Freddie Mac uses interest rate derivatives exclusively as an end-user to hedge its interest rate risk and executes transactions exclusively with market intermediaries, including FCMs and SDs.

In the current market place, there is no single platform approach to the execution, matching, confirmation and clearing of interest rate (or other) swaps. In theory, in a full electronic straight-through processing environment, both parties could enter swap trade information for matching and submission for clearing, and an execution could be deemed to occur at the time of matching. In such a system, submission for clearing could be accomplished immediately after matching, and speed would merely be a matter of technology. However, in many contexts it would not be practical to transact in such a manner. It is frequently necessary and desirable for execution to precede matching and confirmation, and the matching and confirmation process may be more or less difficult depending on trade type. In such an environment, unless the mere entry of unmatched data by each party into a system that provides for matching and delivery to a DCO is deemed to be "submission for clearing" for purposes of proposed § 23.506 (and unless such a system is in fact available to the parties), it may be necessary to review and correct mismatched data prior to submission.

In Freddie Mac's experience, swap dealers periodically enter mismatched data into our matching services and send Freddie Mac swap confirmations that incorrectly reflect the principal terms of transactions. Such events require careful review, diagnosis of the error and an interactive process with the relevant dealer to correct the problem. Given that post execution processes are not strictly mechanical, a standard for clearing submissions that starts the clock



at "execution" (as defined by the Commission) and that is based merely on what is technologically practical fails to reflect the reality of the confirmation and clearing process. Such a standard is at best confusing and at worst impractical. Moreover, we believe that such a standard could result in market professionals exerting undue pressure on a counterparty to quickly assent to the terms of a trade as dictated by the market professional, whether or not such terms were incorrect or objectionable. SDs required to comply with such a standard might insist, as a condition of executing a trade, that its counterparty agree to accept the terms framed by the market professional in any post-trade communications for confirming and/or submitting a swap for clearing.

In addition, we note that establishing a "close of business" deadline for the submission of swaps for clearing would impair late day trading and potentially reduce market integrity. Outside of a fully automated processing environment, such a rule would obviously make compliance impractical for swaps executed very near the end of the business day. Even for swaps executed earlier in the day, the possibility of delays in the matching and submission process would create uncertainty. Such uncertainty would likely deter trading in the latter parts of the business day, creating illiquid and unpredictable markets.

To address the foregoing concerns, Freddie Mac recommends that the Commission modify proposed § 23.506(b)(1) to provide that SDs and MSPs are required to submit swaps that are not executed on a SEF or a DCM but that are subject to a clearing mandate as soon as commercially and operationally practical for both parties given available technology, but no later than within 24 hours of execution. Such a standard would provide assurance that the Commission recognizes that commercial and other non-technological considerations factor into the speed with which a swap can be submitted for clearing. We also believe such a standard would be entirely adequate to address concerns about credit risk created by material delays in clearing.

#### DCO and FCM Transfer Obligations

In the OTC derivatives market, swap customers manage credit risk to dealers through negotiation of collateral provisions and unilateral termination rights that permit such customers to close-out their swaps in the event of a problem. Due to the structural characteristics of clearing, it is expected to be difficult or impossible for swap clearing customers to negotiate similar termination rights with their FCMs. Consequently, the ability to transfer cleared swaps from an FCM that may be experiencing financial difficulties to a different FCM is a critical tool for swaps customers in managing their clearing counterparty credit risk.

Proposed § 39.15(d) would require a DCO to have rules providing that it will promptly transfer customer positions and related collateral from the FCM carrying the positions to another FCM on the customer's request. While Freddie Mac believes this is a helpful rule, we are concerned that "promptness" is a vague and malleable standard. Transfer times that would be deemed reasonably prompt in normal markets could impose very substantial risks on clearing customers of a deteriorating FCM. Moreover, it is unclear whether such a requirement would be adequate to ensure that DCOs invest sufficient resources into infrastructure to provide that portability is available under the full range of demand and market conditions that can reasonably be expected.

In light of these risks, Freddie Mac submits that the Commission should revise § 39.15(d) to establish that DCOs must provide for transfer as promptly as commercially practical, and in any

event not later than a specified deadline. Provided that it is operationally feasible given reasonable investment in infrastructure, we suggest a hard deadline of 24 hours. Additionally, the rule should provide that DCOs must ensure that they have the operational capability to provide such portability under a variety of market scenarios, such as when market volatility might cause a large number of customers to submit transfer instructions to a DCO at the same time.

In addition, we understand that the assistance of the clearing member carrying a customer's swap positions in verifying the positions subject to a transfer request and identifying appropriate collateral to be transferred is likely to be necessary to effectuate transfer by a DCO. This may raise barriers to portability in situations where it is most needed, as an FCM experiencing financial difficulties is likely to face multiple demands on scarce resources. In order to ensure that FCMs devote adequate resources and attention to portability and timeliness, we recommend that the Commission establish an explicit duty for FCMs to assist in the transfer of customer positions and related collateral, provided that the relevant customer is not in default of its obligations to the FCM.

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Freddie Mac appreciates the opportunity to provide our views in response to the Proposal. Please contact me if you have any questions or would like further information.

Sincerely,



Lisa M. Ledbetter