SUTHERLAND

SUTHERLAND ASBILL & BRENNAN LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
202.383.0100 Fax 202.637.3593
www.sutherland.com

WARREN N. DAVIS
DIRECT LINE: 202.383.0133
E-mail: warren.davis@sutherland.com

April 11, 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 Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (RIN 3038-AC96) and Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants (RIN 3038-AC96) (together, the "Documentation Proposed Rules")

Proposed Rule – Requirements for Processing, Clearing, and Transfer of Customer Positions (RIN 3038-AC98) (the "Clearing Proposed Rule")

Dear Mr. Stawick:

On behalf of the Federal Home Loan Banks (the "FHLBanks"), we appreciate this opportunity to comment on the Documentation Proposed Rules and the Clearing Proposed Rule, which were issued by the Commodity Futures Trading Commission (the "CFTC") under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

With respect to the Documentation Proposed Rules, the FHLBanks support the CFTC's efforts to enhance legal certainty of swap terms and reduce counterparty credit risk by requiring standardization of swap documentation. However, the FHLBanks believe that the CFTC should exercise caution in applying "one-size-fits-all" solutions to issues that may not lend themselves to such an approach and instead should defer to ongoing industry efforts seeking to standardize swap documentation. Additionally, given that the existing over-the-counter swap market includes approximately $600 trillion in swap transactions, the FHLBanks believe that the CFTC should adopt extended

implementation periods for the Documentation Proposed Rules to prevent market disruption and limit potentially negative impacts on existing netting arrangements.

With respect to the Clearing Proposed Rule, the FHLBanks support the CFTC's acknowledgment that customers should be able to quickly transfer their positions and related funds from one clearing member to another clearing member without economic or operational obstacles. The ability of a market participant to "port" (*i.e.*, transfer) its trades if it has concerns about the financial strength of its clearing member is one of the primary benefits of clearing because it reduces systemic risk. Notwithstanding the foregoing, the FHLBanks do have a few technical comments to the procedures and timelines set forth in the Clearing Proposed Rule.

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, and structured as cooperatives. Each is independently chartered and managed, but the FHLBanks issue consolidated debt obligations for which each is jointly and severally liable. 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 as end-users with swap dealers to facilitate their business objectives and to mitigate financial risk, primarily interest rate risk. As of December 31, 2010, the aggregate notional amount of over-the-counter interest rate swaps held by the FHLBanks collectively was $787.1 billion. At present, all of these swap transactions are entered into bilaterally and none of them are cleared. Certain of the FHLBanks also provide their member institutions, particularly smaller, community-based institutions, with access to the swap market by intermediating swap transactions between the member institutions and the large swap dealers, thus allowing such members to hedge interest rate risk associated with their respective businesses.

The FHLBanks do not believe that they should be regulated as swap dealers or major swap participants under the Dodd-Frank Act but cannot be certain that they will not be regulated as such until the CFTC proposes and finalizes its rules further defining the term "swap" as well as its rules further defining the terms "swap dealer" and "major swap participant." In the event that the CFTC's definition of "swap" includes transactions that are not commonly known in the market as "swaps," and/or the CFTC's rules defining the terms "swap dealer" and "major swap participant" cause the FHLBanks to be regulated as such, the FHLBanks would strongly urge the CFTC to reopen the comment period for the Documentation Proposed Rules and the Clearing Proposed Rule.

II. The Documentation Proposed Rules

As noted above, except to the extent that some FHLBanks intermediate swaps for their member institutions as part of their federally mandated mission,[1] each FHLBank is an end-user of over-the-counter derivatives in that they do not act as swap dealers with respect to their swaps transactions. However, the Documentation Proposed Rules' requirements on swap dealers could nevertheless adversely impact end-users such as the FHLBanks in a number of ways.

A. Valuation Methodologies[2]

The Documentation Proposed Rules require swap dealers and major swap participants and their counterparties (regardless of whether such counterparties are swap dealers or major swap participants) to agree on and document the methods, procedures, rules and inputs for determining the value of each swap they enter into at any time throughout the life of the swap. The FHLBanks are concerned about whether such a requirement is realistically practical and whether the benefits of such requirement outweigh the costs of complying with it. The FHLBanks believe that deference to industry dispute resolution procedures, together with required disclosure of inputs in connection with such dispute resolution procedures and in connection with the CFTC's proposed portfolio reconciliation requirements, are more effective and efficient ways to address valuation disputes related to swap transactions.

1. One Size Does Not Fit All. Although the FHLBanks recognize the benefits of increased standardization in swap transactions, the FHLBanks encourage the CFTC to exercise caution in applying "one-size-fits-all" solutions to issues, such as valuation methodologies, that do not lend themselves to such an approach. Although the FHLBanks engage almost exclusively in interest rate swaps, they appreciate that other types of swap transactions, such as credit default, equity, and commodity swaps, can be more complex and are valued based on customized models that are dynamic and equally as complex. Accordingly, procedures that are appropriate for "vanilla" interest rate swaps may be inappropriate for other types of swaps and vice versa. Indeed, even interest rate swaps range from very vanilla standardized swaps to highly structured customized swaps. Examples of more complex interest rate swaps include basis swaps that are tied to the relationship between two or more rates and interest rate swaps with embedded options. For complex and customized swaps, documentation of valuation models in a manner that adequately describes the details necessary to achieve a "substantially similar" valuation

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[1] In describing the FHLBanks' mission to provide financial products and services to their member institutions, the Federal Home Loan Bank Act of 1932 lists "intermediary derivatives contracts" as a core mission activity. *See* 12 U.S.C. §1265.3(d).

[2] Unless otherwise noted, terms used in this section have the meanings assigned to such terms in the International Swaps and Derivatives Association ("ISDA") 1994 Bilateral Credit Support Annex ("CSA").

(as required by the Documentation Proposed Rules) would likely require voluminous documentation and an inordinate amount of time for *each individual* swap transaction.[3]

2. Disclosure in Connection with Actual Disputes. As an alternative to upfront documentation (and continuous re-documentation) of valuation methods and procedures, the CFTC should strive for greater disclosure between counterparties in connection with dispute resolution and portfolio reconciliation. Specifically, the FHLBanks believe that upon any dispute over valuation or any dispute arising out of portfolio reconciliation exercises, the CFTC should require each counterparty to disclose on a confidential basis to the other counterparty (and, where appropriate, to the CFTC and other regulators) the inputs that it used to value the swap at issue for collateral purposes. The FHLBanks believe that requiring such disclosure in these instances, together with adherence to the industry dispute resolutions procedures discussed below, would create more legal certainty and reduce counterparty risk in the swap market by shortening the amount of time required to resolve disputes and therefore reducing the periods of time in which a counterparty is not fully collateralized. These objectives would be achieved without requiring market participants to expend large amounts of time and resources to document technical and dynamic valuation procedures at the outset of, and throughout the life of, a swap transaction.

3. Market Practices and Initiatives. The valuation of complex, long-term swaps is not necessarily amenable to the ministerial application of valuation procedures. More specifically, although one can value swaps using models, as the complexity and terms of a swap increase, the assumptions driving valuation models become increasingly subjective and the range of reasonable models grows. Ultimately, it is the market, not models, that will determine the value of complex, long-term swaps.

The market for long-term swaps is not static, but instead it evolves over time based on numerous economic and other factors, including whether the swap is eligible to be cleared through a derivatives clearing organization ("DCO"). For example, two counterparties may enter into a swap transaction bilaterally because it is not eligible to be cleared. In this situation, the Documentation Proposed Rules would require the counterparties to expend what could be inordinate time and resources documenting complex valuation procedures and models for the swap transaction. If the swap subsequently becomes eligible for clearing, the FHLBanks believe that the transparent market value of the cleared swap would provide a better measure of the swap's value than outdated methodologies based on procedures and models that pre-date the standardization of such swap.

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[3] The potentially extraordinary cost of this requirement should not be ignored. Complex swaps are generally priced with multiple dealers. For a complex swap, an FHLBank would effectively be required to negotiate valuation documentation with each potential dealer counterparty even though it would only enter into the swap with one such dealer counterparty.

When no active or liquid market exists for a particular type of swap, counterparties can certainly and justifiably differ on the question of how the transaction should be valued day-to-day.[4] Even if a swap transaction does not become standardized as described in the example above, requiring swap counterparties to re-document changes in valuation methods, procedures and inputs as markets evolve over the life of a swap places an unnecessary burden on such counterparties. As a result, the FHLBanks are concerned that the burdensome valuation requirements in the Documentation Proposed Rules may discourage, and in some cases could preclude, market participants from entering into certain swaps that fulfill legitimate and economically beneficial hedging needs.

ISDA Dispute Resolution Working Group. The FHLBanks believe that "best practices" in the areas covered by the Documentation Proposed Rules are evolving through industry initiatives such as the ISDA Dispute Resolution Working Group (which is addressing the valuation of exposure and collateral for transactions subject to an ISDA CSA). Existing ISDA procedures regarding valuation disputes (which are discussed below) and procedures that are currently being developed by this initiative rely on market quotations to resolve disputes. In light of currently developing practices, the FHLBanks urge the CFTC to exercise caution in adopting overly prescriptive rules that may hinder the development of "best practices" in the swaps market. Instead, the FHLBanks hope that the CFTC's final rules in this area will encourage and facilitate these developments.

Valuation for Collateral Transfer Purposes. Requiring an up-front agreement with respect to valuation methods and procedures for collateral transfer purposes represents a paradigm shift for the over-the-counter derivatives market. Under the standard terms of the ISDA CSA, either party to an over-the-counter swap could be

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[4] Perhaps this is no more clearly illustrated than in the discussion found in two recent annual shareholder letters of Warren Buffett where he questions reliance on the Black-Scholes approach to valuing long-term equity put options entered into by Berkshire Hathaway. In his most recent letter he writes:

> Both Charlie and I believe that Black-Scholes produces wildly inappropriate values when applied to long-dated options. We set out one absurd example in these pages two years ago. More tangibly, we put our money where our mouth was by entering into our equity put contracts. By doing so, we implicitly asserted that the Black-Scholes calculation used by our counterparties or their customer were faulty.
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> ...
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> Part of the appeal of Black-Scholes to auditors and regulators is that it produces a precise number. Charlie and I can't supply one of those. We believe the true liability of our contracts to be far lower than that calculated by Black-Scholes, but we can't come up with an exact figure—anymore than we can come up with a precise value for GEICO, BNSF, or for Berkshire Hathaway itself. Our inability to pinpoint a number doesn't bother us: We would rather be approximately right than precisely wrong.

Warren Buffett Letter to the Shareholders of Berkshire Hathaway Inc dated February 26, 2011 at p. 21. *See also* Warren Buffett Letter to Shareholders of Berkshire Hathaway dated February 27, 2009 at pp. 20-21.

responsible for valuing the swap for collateral transfer purposes.[5] While end-users may cede the daily responsibility for valuations to their swap dealer counterparty, under the standard ISDA documentation for collateral arrangements, end-users retain the right to perform their own valuation and use such valuation to challenge the valuation provided by their swap dealer counterparties.[6] And if the two counterparties cannot reconcile their differences in valuation, the matter is resolved by polling other dealers.[7] Unless separately negotiated by the counterparties to a swap, neither counterparty is required to disclose its valuation methodology or reach agreement with its counterparty regarding how the swap will be valued.

In many cases, the methodology used to value swaps is straightforward and will be freely shared between counterparties. In these situations, the valuation requirements in the Documentation Proposed Rules are probably acceptable, but are unnecessary. The overwhelming majority of swap transactions (which includes tens of thousands of swaps) are routinely and uneventfully valued everyday for collateral transfer purposes. However, when markets experience stress and trading is disrupted, valuations may become more problematic; not because the methods and procedures are at issue, but because the inputs for determining value may not be available or, when available, may be less reliable. For example, where trading has materially diminished, reliance on inputs from a few trades that may have been undertaken at "fire sale" prices may not be warranted. This is why the over-the-counter market has traditionally fallen back on the

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[5] Under the CSA , the "Valuation Agent" is the party responsible for determining the value (mark-to-market) of the swap. *See* CSA ¶ 4(c).

[6] The default provision of the CSA provides that the Valuation Agent is the counterparty demanding the transfer of collateral. *See* CSA ¶13(c)(i). Thus, for example, if the swap dealer determines that the value of a swap is $5 million in-the-money to the swap dealer and demands that the end-user transfer $5 million of collateral, the end-user must either transfer the $5 million or dispute the demand. If the end-user believes the value of the swap is only $4 million in-the-money to the swap dealer rather than $5 million, it has two choices. First, it can transfer the $5 million to the swap dealer and then immediately demand the return of $1 million. At this point, the end-user is the Valuation Agent under the CSA and the swap dealer must either return the $1 million or dispute the end-user's valuation. Alternatively, the end-user can transfer the $4 million "undisputed amount" and dispute the transfer of the remaining $1 million pursuant to the dispute resolutions procedures contained in the CSA. Under such procedures, the dispute is to be resolved by polling "Reference Market-makers." The quotes obtained from the Reference Market-makers are averaged to determine the valuation to be used for collateral transfer purposes. *See* CSA ¶ 5(i)(B). The point is that both counterparties are authorized to act as Valuation Agent and value the swap. In doing so, the counterparties are not required to utilize the same methodology or information sources.

[7] ISDA has worked for the past several years, with input from both the sell-side and the buy-side, to develop a more robust valuation dispute resolution procedure. The end result now being readied for implementation in the market is actually a refinement on the current market polling process in the existing Para. 5 of the CSA. The new procedure addresses perceived weaknesses in the current provision, such as the failure to distinguish between indicative and executable quotes, and seeks to address the inadequacy of the current procedure in situations where no executable third party quotes are available. Although other dispute resolution options were explored, market participants were unable to agree upon a new dispute resolution mechanism that did not, at the end of the day, fall back on market-polling. *See* ISDA's proposed "2010 Formal Market Polling Procedure."

prices quoted by active dealers (and certain other significant market participants) rather than the mechanical application of models and limited pricing inputs.

Valuation for Purposes Other than Collateral Transfer. The Proposed Documentation Rules provide that swap counterparties must agree on the methods, procedures and inputs for determining the value of each swap "at any time from execution to the termination, maturity, or expiration of such swap." Current market practice appropriately distinguishes between swap valuations made at different times for different purposes. The valuation of swaps for collateral purposes (*i.e.*, calculation of "Exposure") requires the valuation agent to use "its estimates at mid-market of the amounts that would be paid for replacement transactions." On the other hand, for purposes of closing out a swap upon early termination due to a default or other early termination event, existing industry practices generally involve valuation at the non-defaulting counterparty's (or the non-affected counterparty's) side of the market.[8]

It is not clear whether the detailed procedures currently set out in the 1992 and 2002 ISDA Master Agreements for valuing swaps on early termination would satisfy the new requirements of the Documentation Proposed Rules.[9] The procedures set forth in the definition of "close-out amount" contained in the 2002 ISDA Master Agreement are consistent with the Documentation Proposed Rules' objective of obtaining valuations based on "objective criteria."[10] However, the close-out amount procedures also recognize that, with respect to certain swaps and in certain market conditions, such an objective may be difficult to achieve. Specifically such methodology recognizes that valuation procedures that are entirely reasonable during normal market conditions may not be reasonable in times of market stress. Even without changes in market conditions, the best methods for valuing a swap may change over time. Requiring re-documentation of such methods would only discourage market participants from entering into customized swap transactions for legitimate and economically beneficial hedging purposes.

Additionally, with respect to valuations at the maturity/termination of the swap, the FHLBanks do not believe further documentation is needed. The economic terms of a swap, including periodic payments to be made throughout the life of a swap and upon

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[8] See 1992 and 2002 ISDA Master Agreement at Section 6(e). Under the 1992 ISDA Master Agreement, the counterparties elect whether the close-out valuation will be carried out under the "Market Quotation" method or the "Loss" method. Under the 2002 ISDA Master Agreement, all close-outs are to follow the procedures specified under "Close-out Amount"

[9] Specifically, CFTC Proposed Reg. § 23-504(b)(4).

[10] With respect to the 1992 ISDA Master Agreement, the parties select between two close-out methodologies—Market Quotation and Loss. Market Quotation certainly seeks to determine value based on objective criteria, namely market quotes from dealers. There is a "fallback" to the Loss method if a sufficient number of quotations are not available or if using quotations would not produce a commercially reasonable result.

final maturity/termination, are typically set forth in the swap confirmation.[11] Moreover, pursuant to the Documentation Proposed Rules themselves, swap confirmations must include all terms, including economic terms, of a swap. Accordingly, it is not necessary to document models or methods for valuing a swap upon final maturity because the payment obligations, if any, of the counterparties at such time will already have been specifically agreed to in the swap confirmation.

B. Non-compliant Documentation

In response to a question specifically raised by the CFTC, the FHLBanks believe that the Documentation Proposed Rules could create uncertainty regarding the enforceability of swaps transacted under non-compliant swap documentation. Especially given the prescriptive nature of the Documentation Proposed Rules, the FHLBanks do not think that a counterparty should be able to walk away from its obligations under a swap because the relationship documentation for such swap contains a minor, immaterial violation of the CFTC's requirements. The Documentation Proposed Rules require documentation of "*all terms* governing the trading relationship" between the counterparties. Allowing a counterparty to walk away from its obligations under a swap by arguing that one minor term is missing from the swap documentation would create an unacceptable amount of uncertainty in swap transactions. The FHLBanks enter into swap transactions for very specific hedging purposes and cannot afford the risk of their swaps being deemed unenforceable because of minor technicalities.

On the other hand, the FHLBanks support the objectives of the Proposed Documentation Rules and understand that the CFTC needs some means of ensuring compliance with such rules. The FHLBanks believe that the CFTC should have the right to impose penalties on swap dealers and major swap participants that enter into swap documentation lacking material terms or otherwise violating the Documentation Proposed Rules. The severity of any such penalties should be based on the severity and/or frequency of the violations. Swaps entered into pursuant to non-compliant documentation should nevertheless be enforceable provided that the documentation is sufficient to create a binding contract under applicable contract law.

C. Timing of Implementation

The FHLBanks believe that swaps between swap dealers or major swap participants and counterparties that are not swap dealers or major swap participants (*i.e.*, "end-users") should not have to comply with the requirements of the Documentation Proposed Rules until six months at an absolute minimum, and more realistically, one year, after the effective date of the CFTC's final rules. As discussed below, in some

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[11] Additionally, if a swap is documented using standard ISDA documentation, ISDA definitions often provide fallback procedures that apply if the underlying reference data used to determine payment obligations is unavailable. *See, e.g.,* Section 7.5 of the 2005 ISDA Commodity Definitions.

cases, longer time periods may be necessary. Requiring compliance within a shorter time frame could result in swap dealers and major swap participants forcing their end-user counterparties to agree to commercially unreasonable, non-negotiable, standard terms. Currently, the FHLBanks negotiate many aspects of their swap documentation to accomplish uniformity across their swap agreements with the various dealers, limit their counterparty credit risk, limit their liquidity risk and achieve certain other objectives. Forcing market participants such as the FHLBanks to enter into swap agreements without such negotiated provisions would contradict the purpose and intent of the Dodd-Frank Act.

In principal, the FHLBanks do not believe that the Documentation Proposed Rules should apply to swaps that counterparties enter into before final versions of such rules take effect. However, the FHLBanks are concerned about the effects that such grandfathering for pre-existing swaps could have on netting arrangements. As the CFTC notes in the preamble to the Proposed Documentation Rules, bilateral close-out netting reduces a swap counterparty's overall exposure and accordingly, "it is critical that the netting provisions between the parties are legally enforceable and that the collateral may be used to meet the net exposure." If counterparties leave their existing master swap documentation (*e.g.,* ISDA Master Agreement and corresponding CSA) in place for their pre-effective swap transactions and enter into new master swap documentation that complies with the Documentation Proposed Rules for their future swap transactions, the counterparties could lose some of the benefits of close-out netting (*i.e.,* netting between their pre-effective trades under one master agreement and their future trades under a second master agreement).

As a result of the foregoing concerns, the FHLBanks believe that the CFTC's proposed rules should encourage market participants to amend their existing swap documentation even if this means that the Documentation Proposed Rules would apply to pre-effective swaps. To account for the enormous undertaking that such amendments will involve, the FHLBanks believe that if a swap dealer or major swap participant and an end-user counterparty have swaps outstanding under existing documentation, such counterparties should have one year at an absolute minimum, and more realistically, two years, to bring such documentation into compliance with the Documentation Proposed Rules.

D. Title II of the Dodd-Frank Act

The Documentation Proposed Rules require swap dealers and major swap participants to include provisions in their swap documentation (including swap documentation that they enter into with counterparties that are not swap dealers or major swap participants) acknowledging how the new orderly liquidation authority under Title II of the Dodd-Frank Act and the Federal Deposit Insurance Act ("FDIA") may affect their portfolios of uncleared over-the-counter, bilateral swaps. The FHLBanks understand and accept that by law, such orderly liquidation authority could apply to their swap dealer counterparties and could therefore affect their rights with respect to such

counterparties. However, the FHLBanks do not believe it is necessary to include an acknowledgement of such legal regime in their swap documentation. Currently, the FHLBanks and their swap counterparties are subject to numerous laws, including liquidation regimes, that are not enumerated in their swap documentation but that could affect the rights of such counterparties vis-a-vis each other. It would be impractical to list all of the laws that apply to the relationship between two counterparties, and listing one particular legal regime but not others would seem to create legal uncertainty rather than legal certainty.

III. The Clearing Proposed Rule

A. Transfer of Customer Positions and Related Funds

As noted in the introduction, the FHLBanks strongly agree with the Clearing Proposed Rule's requirement that a DCO transfer a customer's positions and related funds from one clearing member to another clearing member, without closing-out or rebooking such positions, promptly upon the request of the customer and consent of the receiving clearing member. As the CFTC acknowledges in the preamble to the Clearing Proposed Rule, this ability to quickly port swaps from one clearing member to a more financially sound clearing member in periods of financial downturn or distress is one of the greatest benefits of central clearing. Among other things, it provides a potential remedy for customers concerned about "fellow-customer" risk. Additionally, the Clearing Proposed Rule's requirement that the DCO transfer all funds related to a customer's positions to the receiving clearing member ensures that a customer does not have to post additional margin to the receiving clearing member before that clearing member receives the customer's margin from the carrying clearing member. Not requiring immediate transfer of related funds in connection with the transfer of a customer's positions could create serious liquidity issues for the customer.

In response to one of the CFTC's specific questions, the FHLBanks do not believe that there are distinctions between futures and cleared swaps positions that would require cleared swaps positions (and not futures positions) to be closed-out and rebooked prior to transfer.[12] Variation margin will be posted for cleared swaps in the same manner that it is posted for futures and therefore, assuming that the funds related to futures positions are portable without close-out or rebooking, the funds related to cleared swaps should be similarly portable. In response to another question specifically asked by the CFTC, the

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[12] By making this statement with respect to portability of a customer's positions and related funds, the FHLBanks do not mean to imply that futures and swaps should always be treated the same. On the contrary, the FHLBanks believe that there are many differences between the existing futures market and the existing over-the-counter swaps market that should be accounted for in other CFTC proposed rules pertaining to swaps. For examples of some of these differences, see the comment letter submitted by Sutherland Asbill & Brennan LLP on behalf of the FHLBanks on January 18, 2011 regarding the CFTC Advanced Notice of Proposed Rulemaking – Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies.

FHLBanks would support a rule obligating DCOs to require their clearing members to facilitate prompt transfer of customer accounts. Obviously DCOs cannot require a clearing member to accept a customer's positions but, to the extent a clearing member does accept positions, both the carrying clearing member and the receiving clearing member should be required to facilitate the transfer as soon as technologically practicable.

The FHLBanks' concern with the transfer provisions of the Clearing Proposed Rule relates to the use of the word "promptly." In the preamble to the Clearing Proposed Rule, the CFTC notes that it interprets "promptly" to mean as soon as possible and within a reasonable period of time, which would be no more than two business days based on current standards in the futures industry. Accordingly, the FHLBanks believe that transfer provisions of the Clearing Proposed Rule should be revised to require DCOs to establish rules providing that "upon the request of a customer and the consent of the receiving clearing member, the DCO will transfer all or a portion of such customer's portfolio of positions and related funds without requiring close-out and rebooking, *with such transfer to take effect as soon as technologically practicable but in no event later than two business days after the later of the customer's request or the receiving clearing member's consent*.

B. Time Periods for Submission of Swaps for Clearing

The Clearing Proposed Rule[13] requires swaps that are not executed on a swap execution facility or designated contract market, but that are subject to mandatory clearing, to be submitted to a DCO as soon as technologically practicable after execution but no later than the close of business on the day of execution. If counterparties execute a swap bilaterally and the swap is not required to be cleared but the counterparties elect to submit it for clearing, the swap must be submitted to a DCO no later than the business day after execution (or after the decision to submit such swaps for clearing).

The FHLBanks believe that the foregoing time frames are appropriate provided that the CFTC establishes a cut-off time for determining the day on which a swap is executed. It may not be "technologically practicable" for a swap that is executed very close to the end of the day to be submitted for clearing that day. Accordingly, the FHLBanks believe that the Clearing Proposed Rule should specify that swaps executed after 4 p.m. New York time shall be deemed to be executed on the following business day for purposes of determining when such swaps must be submitted for clearing. If a swap is executed after the cut-off time and it was required to be cleared, it would have to be submitted for clearing as soon as technologically practicable (which may still be on the same business day as execution) but no later than the close of business on the following business day. If the same swap was not required to be cleared but the counterparties elect

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[13] More specifically, proposed CFTC Reg. §23.506(b).

to clear it, the swap would have to be submitted for clearing no later than the second following business day.

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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 /AMB

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP

CC: FHLBank Presidents
FHLBank General Counsel