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August 4, 2011

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

Re: Protection of Cleared Swaps Customer Contracts and Collateral; Conforming
Amendments to the Commodity Broker Bankruptcy Provisions; RIN 3038-AC99

Dear Mr. Stawick:

Freddie Mac is pleased to submit these comments in response to the Notice of Proposed Rulemaking regarding Protection of Cleared Swaps Customer Contracts and Collateral, published by the Commodity Futures Trading Commission (the Commission) on June 9, 2011 (the Proposal).¹ The Proposal would carry out Section 724 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The Commission previously published an advance notice of proposed rulemaking (ANPR) in connection with this rulemaking, in response to which Freddie Mac submitted a comment letter (ANPR Comment Letter) in which we recommended a requirement that derivatives clearing organizations (DCOs) provide for full individual segregation.²

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 (FHFA) as our Conservator.

As discussed in our ANPR Comment Letter, Freddie Mac believes that requiring DCOs to provide individual segregation of customer collateral for cleared swaps without cross-collateralization (whether at the "back of the waterfall" or otherwise) provides the best method to protect customers of futures commission merchants (FCMs) and achieve the goals of the Dodd-Frank Act. Permitting DCOs to access the collateral of non-defaulting customers to cover losses of defaulting customers would pose unacceptable, non-transparent risks to customers, putting them in a worse position than what they can achieve today with respect to OTC derivatives. Given the structure and heterogeneity of the swaps market and the likelihood that the shift to clearing will encourage the concentration of customer swap positions at one or two FCMs, these risks could be very significant for individual buy-side institutions and for the market as a whole.

Moreover, of the choices provided by the ANPR and the Proposal, we believe that individual segregation will best balance costs and benefits by allocating risks to the parties most able to manage

¹ 76 Fed. Reg. 33,818.

² "Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies," 75 Fed. Reg. 75,162; see Letter from Freddie Mac, dated Jan. 18, 2011.

them. Risk mingling among customers under the "Legal Segregation with Recourse Model" and the "Futures Model" would permit FCMs to take on high risk customers and shift the default risk of those customers to other, less risky customers. In effect, these models would provide a subsidy to DCOs, FCMs and their riskiest customers at the expense of customers that present less risk. Besides potentially increasing systemic risk, this non-transparent shifting of risk would create moral hazard and inefficient credit decisions. By allocating risk to the entities that have the information and tools needed to manage it, we believe the Complete Legal Segregation Model will foster efficient decision making and economic allocations.

In our ANPR Comment letter, Freddie Mac recommended adoption of the Physical Segregation Model rather than the Complete Legal Segregation Model on the ground that the former was likely to be more operationally resilient in the face of the extreme circumstances that could arise in connection with an FCM insolvency. In the preamble to the Proposal, the Commission indicated that the Physical Segregation Model currently would be unduly expensive from an operational standpoint, and therefore it proposed the Complete Legal Segregation Model.³ Freddie Mac supports adoption of the Complete Legal Segregation Model until such time as the operational costs for full physical segregation are adequately reduced. However, we strongly oppose any outcome that does not at least make the Complete Legal Segregation Model widely available.

In the Proposal, the Commission also asks for responses to a variety of questions regarding the practicability of the "Optional Approach." We note that while the Commission cited to Freddie Mac's ANPR Comment Letter as support for the Optional Approach, Freddie Mac did not (and does not) support giving DCOs the option to choose not to provide individual segregation.⁴ In Freddie Mac's view, such an approach could lead to sub-optimal results because DCOs as a group may have incentives to protect themselves and the interests of their FCM members over those of customers. Rather, we supported (and do support) requiring DCOs to provide individual segregation as an option that customers could choose.

While we still support this approach, we acknowledge that the benefits of optional individual segregation would be undermined if risk continued to be shared with defaulting customers in a single "account class" for purposes of the Bankruptcy Code and the commodity broker bankruptcy provisions at Part 190. We are not aware of any reason why the Commission could not choose to amend the Part 190 rules under authority granted by the Commodity Exchange Act to treat the accounts of segregated customers as a separate account class from the accounts of customers who choose a different model. However, if the Commission believes that it cannot do so, we believe that the Complete Legal Segregation Model would be preferable.

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

Sincerely,



Lisa M. Ledbetter

³ 76 Fed. Reg. 33,823 and 33,826.

⁴ 76 Fed. Reg. 33,825.