

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

September 30, 2011

VIA ELECTRONIC SUBMISSION

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

Re: Clearing Member Risk Management (RIN 3038-AD51)

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 (the "Proposed Rules") issued by the Commodity Futures Trading Commission (the "CFTC") under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The FHLBanks believe that the Proposed Rules will help to reduce risk and protect the integrity of the financial market, the clearing system and customer funds and, as such, support their adoption. The FHLBanks also urge the CFTC to adopt several additional risk management requirements that will help to further the Dodd-Frank Act's goals.

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 financial 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 financial institutions through loans referred to as "advances."

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 June 30, 2011, the aggregate notional amount of over-the-counter interest rate swaps held by the FHLBanks collectively was approximately \$729 billion. At present, all of these swap transactions are entered into bilaterally and none of them are cleared. While it is impossible to predict the percentage of the FHLBanks' swaps that will ultimately be subject to mandatory clearing under the Dodd-Frank Act, the FHLBanks expect that over time many of the swaps they enter into for risk mitigation purposes will be 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.

II. The Proposed Rules

The FHLBanks support the adoption of the Proposed Rules because the CFTC's establishment of risk management standards, at both the derivatives clearing organization ("DCO") and clearing member levels, is critical to achieving the Dodd-Frank Act's goals of reducing risk and promoting market integrity in the U.S. financial system.¹ In particular, the FHLBanks support the adoption of the Proposed Rules because they establish baseline risk management standards for all clearing members, irrespective of size or DCO membership.

The CFTC's proposed rules pertaining to DCO risk management requirements prohibit DCOs from establishing minimum capital requirements for membership that exceed \$50 million; they also afford DCOs discretion to adopt risk management standards that are specifically tailored to their businesses.² As a result, there will likely be significant differences between clearing members both in terms of size and, more importantly, risk management systems. The Proposed Rules address this issue by establishing minimum risk management standards for all clearing members, irrespective of size or DCO membership, thereby providing minimum safeguards for all market participants.

III. Additional Clearing Member Risk Management Requirements

The FHLBanks urge the CFTC to adopt four risk management requirements in addition to those contained in the Proposed Rules. Three of the four additional requirements pertain to the public availability of information about clearing members and would further the Dodd-Frank Act's goal of increasing transparency in the swaps market.

¹ The FHLBanks generally support the CFTC's proposed risk management requirements for DCOs, as noted in a comment letter to the CFTC dated March 21, 2011.

² Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 3,698 (Jan. 20, 2011) (to be codified at 17 C.F.R. pt. 39).

The fourth additional requirement would more closely align the handling of margin collected by a clearing member in excess a DCO's requirements with the CFTC's proposed rules on the treatment of customer collateral for uncleared swap transactions.

First, the FHLBanks suggest that the results of any stress tests that a clearing member conducts pursuant to the Proposed Rules be publicly disclosed. Public disclosure of stress test results would offer insight into a clearing member's financial condition and provide early indications if that clearing member is experiencing, or is about to experience, financial distress. This information would allow market participants, particularly a clearing member's customers, to take appropriate steps to mitigate the risk of the clearing member's default. Specifically, customers could avoid having to close out open positions by entering into risk-reducing trades or porting positions to a financially stable clearing member.

Second, the FHLBanks suggest that the CFTC impose a requirement that clearing members provide customers with periodic reports regarding their financial condition. Such reports should be publicly available and may be posted to the clearing member's website. While some financial information about futures commission merchants ("FCM"), in the form of financial reports, is already publicly available on the CFTC's website,³ such reports are very limited in scope. The current FCM financial reports primarily focus on compliance with the CFTC's adjusted net capital requirements for FCMs and do not contain the breadth of information regarding an FCM's assets and liabilities that would be included in a full financial statement. As an alternative, the FHLBanks urge the CFTC to adopt a requirement that clearing members deliver a statement of financial condition to customers, on a monthly basis, that presents a more complete picture of the FCM's business than that reflected in the FCM financial data reports.⁴ These statements of financial condition should be prepared on a monthly basis and delivered as soon as practicable following their completion. The FHLBanks believe that clearing member statements of financial condition would be of great use to customers in monitoring and assessing the financial condition of their clearing members.

Third, the FHLBanks believe that a clearing member's written risk management policies and procedures, adopted pursuant to the Proposed Rules, should be subject to review and approval by the CFTC. As noted above, there will likely be significant

³ FCM financial data reports are required by Part I of the CFTC's regulations and are available at <http://www.cftc.gov/marketreports/financialdataforfcms/index.htm>.

⁴ The FHLBanks would support the inclusion of any information that a clearing member is required to provide to the CFTC, other than information about specific customers; at a minimum, such statements of financial condition should include a balance sheet and applicable footnotes. The CFTC may wish to look to the statements of financial condition that broker-dealers are required to prepare and deliver to customers pursuant to Securities and Exchange Commission Rule 17a5(c), 17 C.F.R. § 240.17a-5. The FHLBanks do not necessarily believe that the CFTC should adopt the same requirements as those contained in Rule 17a5(c) with respect to the contents or timing of delivery of clearing member statements of financial condition, but they do believe that the format of the broker-dealer statements would be more useful than that of the current FCM financial data reports required by the CFTC.

differences between clearing members both in terms of size and risk management systems – a review and approval process would ensure some minimum level of consistency among all clearing members. Also, once approved, a clearing member's written risk management policies and procedures should be made publicly available or, at the very least, disclosed to a clearing member's prospective and existing customers. This would not only increase transparency, but it would also (1) act as a means of verifying a clearing member's compliance with the proposed clearing member risk management requirements, and (2) greatly assist prospective and existing clearing customers in evaluating and monitoring the strength of a clearing member's risk management processes and protections.

Finally, the FHLBanks believe that the CFTC should afford cleared swaps customers the right to have any margin required by a clearing member in excess of a DCO's requirements held by a third-party custodian, and that clearing members should be required to inform prospective customers of this right. Providing that excess margin may be held by an independent custodian and requiring that clearing members disclose this right to customers would further the Dodd-Frank Act's goal of reducing risk in the swaps market and would more closely align with the CFTC's proposed requirements regarding segregation of customer collateral for uncleared swaps.⁵ Customers should also have the right to access information about any excess margin held by a third-party custodian directly from the third-party custodian.

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⁵ Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 Fed. Reg. 75,432 (Dec. 3, 2010) (to be codified at 17 C.F.R. pt. 23 and 100).

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The FHLBanks 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,

A handwritten signature in black ink that reads "Warren Davis /re". The signature is written in a cursive style.

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP

cc: FHLBank Presidents
FHLBank General Counsel