

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

November 4, 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: Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA (RIN 3038-AD60) (the “Clearing Proposed Rules”); Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA (RIN 3038-AC96; 3038-AC97) (the “Uncleared Swaps Proposed Rules”); and together with the Clearing Proposed Rules, the “Proposed Rules”)

Dear Mr. Stawick:

On behalf of the Federal Home Loan Banks (the “FHLBanks”), we appreciate this opportunity to comment on the Proposed Rules, 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”). The Proposed Rules set forth implementation schedules for new swap clearing requirements and new margin and documentation requirements for uncleared swaps promulgated by the CFTC under the Dodd-Frank Act.

For the reasons discussed below, the FHLBanks generally support the Proposed Rules because they seek to provide certainty for market participants currently entering into over-the-counter (“OTC”) swap transactions. However, the FHLBanks believe that in order to actually achieve such certainty, the Clearing Proposed Rules should apply each time the CFTC issues a mandatory clearing definition. In addition, the FHLBanks have a number of comments regarding the mechanics of the Proposed Rules.

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 (“OTC”) 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

A. The Clearing Proposed Rules

Under Section 2(h) of the Dodd-Frank Act and CFTC Reg. 39.5(a)-(d) (*Review of swaps for CFTC determination on clearing*), the CFTC will determine whether swaps or groups, categories, types or classes of swaps will be subject to mandatory clearing. The CFTC will make such determinations on an ongoing basis based on information submitted to the CFTC by derivatives clearing organizations (“DCOs”) that clear such swaps or groups, categories, types or classes of swaps. The CFTC’s determinations must be made within 90 days after it receives the requisite information from a DCO, unless the submitting DCO agrees to an extension.

1. Effective Dates for Mandatory Clearing Requirements

The Clearing Proposed Rules would add a clause (e) to CFTC Reg. 39.5. Pursuant to the proposed clause (e), each time that the CFTC issues a mandatory clearing determination under CFTC Reg. 39.5, the CFTC may determine that market participants would have to comply with such determination within 90, 180 or 270 days of the

effective date thereof, based on the type of market participant. Swap dealers, major swap participants and “active funds” (so-called “category 1 entities”) would have to comply within 90 days, most other financial entities (including the FHLBanks) (so-called “category 2 entities”) would have to comply within 180 days and financial entities whose positions are held in third-party sub-accounts and other entities (*e.g.*, non-financial entities entering into swaps that are ineligible for the end-user clearing exception) (so-called “category 3 entities”) would have to comply within 270 days. **The FHLBanks believe that, in order to provide certainty to the market, the CFTC should have the authority to extend the 90-, 180- and 270-day implementation periods for category 1, 2 and 3 entities, respectively, but should not have the authority to implement mandatory clearing determinations within shorter time periods.**

CFTC Reg. 39.5(b) requires the CFTC to make mandatory clearing determinations within a certain time period but does not provide market participants with any insight into when such determinations would actually take effect. The Clearing Proposed Rules provide insight into when such determinations may take effect, but given the steps that market participants will need to take to transition their swaps from the OTC market to the cleared swaps market, market participants need actual certainty regarding the minimum amount of time they would have to comply with a mandatory clearing determination. Based on the resources available to market participants in each of the three categories described above, and the types and volume of swap transactions typically entered into by market participants in each category, the FHLBanks generally agree with the CFTC’s proposed 90/180/270 day implementation schedule as affording different market participants with the minimum amounts of time that they would need to comply with mandatory clearing determinations.¹ The CFTC has not stated any rationale for why such implementation time periods would be suitable for certain swaps but not others. Accordingly, as noted above, the FHLBanks believe that such schedule is necessary for all swaps that are ultimately subject to mandatory clearing, not just certain swaps arbitrarily selected by the CFTC.

If the CFTC determines at a later date that the implementation schedules for its mandatory clearing determinations are no longer necessary because, for example, the majority of swap market participants have moved into clearing and established the appropriate connectivity and infrastructure, then the CFTC could amend its rules to

¹ The FHLBanks’ support for the implementation schedule in the Clearing Proposed Rules assumes that the CFTC’s mandatory clearing determinations will be made after full consideration of the factors set forth in the letter dated September 14, 2011 from the FHLBanks to Commissioner Scott D. O’Malia. The FHLBanks’ support also assumes that (1) the final rules promulgated by the CFTC and the Securities and Exchange Commission further defining the terms “swap dealer” and “major swap participant” are no broader than the proposed rules further defining such terms and (2) any entities that are deemed to be “limited” swap dealers for certain swaps that they enter into with customers are not subject to regulation as swap dealers when entering into swaps with “traditional” swap dealers. For the avoidance of doubt, based on the second part of this assumption, a swap between a limited swap dealer and a swap dealer would not be required to be cleared until at least 180 days after the effective date of a mandatory clearing determination for such swap.

provide for shorter time periods. However, at this time it is impossible to predict when, and how many swap market participants will ultimately move into clearing. Accordingly, the FHLBanks believe that the implementation time periods in the Clearing Proposed Rules should apply universally until the CFTC determines that they are no longer necessary and amends its rules with market input in accordance with the Administrative Procedures Act.

2. CFTC Rules That Must Be Adopted Prior to Mandatory Clearing

In the preamble to the Clearing Proposed Rules, the CFTC states that market participants could not be required to comply with any mandatory clearing determinations until the CFTC adopts final rules related to the end-user exception to mandatory clearing; the further definitions of “swap,” “swap dealer” and “major swap participant”; and segregation of customer collateral for cleared swaps. The FHLBanks note that the CFTC has already adopted final rules regarding general requirements and core principles for DCOs. In addition to the foregoing rules, the FHLBanks believe that the CFTC should not require market participants to comply with mandatory clearing requirements until it adopts final rules regarding customer clearing documentation; the timing of acceptance of swaps for clearing; and clearing member risk management.

With respect to the CFTC’s final rules regarding customer clearing documentation, the FHLBanks are currently negotiating agreements with futures commission merchants (“FCMs”) who will clear the FHLBanks’ swaps. In addition, the FHLBanks will need to negotiate, and enter into, execution agreements with their cleared swap counterparties. If the FHLBanks finalize these agreements prior to the CFTC’s adoption of final rules related thereto, the FHLBanks may then have to amend the agreements once the CFTC does finalize its rules. Amending these agreements could be very disruptive if the FHLBanks were already required to clear swaps pursuant to such agreements. Accordingly, the FHLBanks believe that the CFTC should adopt its final rules regarding customer clearing documentation prior to requiring any market participants to clear their swap transactions.

The CFTC’s final rules regarding timing of acceptance of swaps for clearing and clearing member risk management will have a direct impact on the risks associated with the FHLBanks’ cleared swaps. The FHLBanks do not believe that market participants should be required to clear their swaps until they are aware of the risks that would be associated with such swaps. In some instances, the FHLBanks may wish to negotiate additional protections in their clearing documentation to address risks that they do not believe are covered adequately by the CFTC’s rules. **In order to give market participants sufficient time to analyze and address all of the risks associated with cleared swaps, the FHLBanks believe that the CFTC should adopt its final rules regarding timing of acceptance of swaps for clearing and clearing member risk management prior to implementing any mandatory clearing determinations.**

Based on the preamble to the Clearing Proposed Rules, the FHLBanks assume that the CFTC would not issue a mandatory clearing determination with an effective date

prior to the CFTC's adoption of the applicable final rulemakings. The FHLBanks agree with such an approach and believe that it should be clarified in the CFTC's final rules. As discussed above, the purpose behind the 90-, 180- and 270-day time periods in the Clearing Proposed Rules is to provide market participants with the time they need to transition their swap trading and servicing from the OTC market to the cleared swap market, including implementation of numerous legal and operational adjustments. Certain aspects of such transition depend on the CFTC's final rulemakings related to clearing, DCOs and clearing members. Accordingly, it would undermine the Clearing Proposed Rules if the preamble to the Clearing Proposed Rules were interpreted to mean that the CFTC could adopt final rulemakings related to clearing, DCOs and clearing members during the 90-, 180- or 270-day periods in the Clearing Proposed Rules.

3. *Effective Dates for Mandatory Execution Requirements*

The Clearing Proposed Rules provide that swaps must be executed on a swap execution facility ("SEF") or designated contract market ("DCM") upon the later of (1) the date on which the swap is required to be cleared pursuant to final CFTC Reg. 39.5(e) or (2) 30 days after the swap is "made available for trading" on a SEF or DCM.² As noted in the preamble to the Clearing Proposed Rules, executing swaps on SEFs and DCMs will require substantial new infrastructure and new procedures to ensure that such swaps are properly submitted to a counterparty's FCM and ultimately to a DCO. For entities such as the FHLBanks that currently enter into all of their swap transactions in the OTC market and do not enter into exchange-traded futures, implementing such infrastructure and procedures would likely be time-consuming and complex. In addition, many issues associated with executing swaps on SEFs (e.g., how customer position limits will be monitored, managed and enforced, the request-for-quote process and connectivity between market participants, FCMs, SEFs and DCOs) have yet to be resolved. Market participants cannot fully develop new infrastructure and procedures until these issues are resolved.

Based on the foregoing, the FHLBanks do not believe that mandatory execution requirements should apply until the later of (1) the date on which the swap is required to be cleared pursuant to final CFTC Reg. 39.5(e) or (2) **180** days after the swap is "made available for trading" on a SEF or DCM. At a minimum, such longer time-period should apply to category 2 and 3 entities, which generally do not engage in futures or other cleared transactions and therefore are not as likely as category 1 entities to have the requisite infrastructure and resources to execute their swaps on SEFs or DCMs.

² This comment letter does not address the determination of whether swaps have been "made available for trading" but assumes that the CFTC will consider the FHLBanks' comments on this issue on pages 13-14 of the letter dated June 3, 2011 from the FHLBanks to the CFTC. For the avoidance of doubt, the FHLBanks do not believe that any swaps should be considered "made available for trading" currently because the FHLBanks are not aware of any existing platforms that currently trade swaps in accordance with the CFTC's proposed rules for SEFs.

B. The Uncleared Swaps Proposed Rules

1. Effective Date of Documentation and CFTC Margin Requirements

The Uncleared Swaps Proposed Rules set forth implementation schedules for the CFTC's rules regarding (1) uncleared swap documentation between a swap dealer or major swap participant and its counterparties (proposed CFTC Reg. 23.504) and (2) margin requirements imposed by swap dealers and major swap participants for their uncleared swaps (proposed CFTC Regs. 23.150-23.158). Swap dealers, major swap participants and "active funds" (so-called "category 1 entities") would have to comply with such requirements within 90 days after publication of such requirements, most other financial entities (including the FHLBanks) (so-called "category 2 entities") would have to comply within 180 days after publication of such requirements, financial entities whose positions are held in third-party sub-accounts (so-called "category 3 entities") and non-financial entities (so-called "category 4 entities") would have to comply within 270 days after publication of such requirements.

The FHLBanks support the Uncleared Swaps Proposed Rules and believe that the implementation time periods contained therein are absolutely necessary to afford market participants adequate time to revise their OTC swap documentation and to address liquidity concerns associated with the proposed margin requirements for uncleared swaps.³ Given the multitude of new requirements that end-users of derivatives (such as the FHLBanks) will have to implement in the near future, and the resources that will be required to do so, the FHLBanks also believe that it would be appropriate to extend the time periods within which category 2, 3 and 4 entities would have to comply with new documentation and margin requirements for uncleared swaps. **The FHLBanks believe it would be appropriate to require category 2 entities to comply with such requirements within 270 days (at a minimum) and category 3 and 4 entities to comply with such requirements within one year (at a minimum).**

The preamble to the Uncleared Swaps Proposed Rules states that before market participants could be required to comply with final CFTC Reg. 23.504, the CFTC must adopt its final rules related to confirmation of swap transactions; protection of collateral for uncleared swaps; the further definitions of "swap," "swap dealer" and "major swap participant"; and registration of swap dealers and major swap participants. However, proposed CFTC Reg. 23.575 sets forth an implementation schedule based on the

³ As noted above regarding the proposed implementation schedule for mandatory clearing determinations, the FHLBanks' support assumes that (1) the final rules promulgated by the CFTC and the Securities and Exchange Commission further defining the terms "swap dealer" and "major swap participant" are no broader than the proposed rules further defining such terms and (2) any entities that are deemed to be "limited" swap dealers for certain swaps that they enter into with customers are not subject to regulation as swap dealers when entering into swaps with "traditional" swap dealers. For the avoidance of doubt, based on the second part of this assumption, an uncleared swap between a limited swap dealer and a swap dealer would not be subject to the new documentation and margin requirements until at least 180 days after adoption of the applicable final rulemakings).

publication of final CFTC Reg. 23.504, without reference to the other CFTC rules listed in the preamble. Similarly, the preamble to the Uncleared Swaps Proposed Rules states that before market participants could be required to comply with final CFTC Regs. 23.150-23.158, the CFTC must adopt its final rules related to the further definitions of “swap,” “swap dealer” and “major swap participant”; registration of swap dealers and major swap participants and swap trading documentation. However, proposed CFTC Reg. 23.175 sets forth an implementation schedule based on the publication of final CFTC Regs. 23.150-23.158, without reference to the other CFTC rules listed in the preamble. **In both instances, in order to effectuate the CFTC’s statements regarding other rules that must be finalized, the FHLBanks believe that the Uncleared Swaps Proposed Rules should clarify that the implementation time periods do not begin until all of the applicable rules have been published in the Federal Register.**

The FHLBanks also believe market participants should not be required to comply with final CFTC Reg. 23.504 until both CFTC Regs. 23.150-23.158 and the “prudential regulators’”⁴ margin rules for uncleared swaps have been finalized. It would be difficult for market participants to comply with CFTC Rule 23.504(b)(3), which requires uncleared swap documentation to include documentation of such margin requirements, until the CFTC and prudential regulators have finalized such requirements.

With respect to final CFTC Regs. 23.150-23.158, in addition to the rules listed in the preamble to the Uncleared Swaps Proposed Rules, the FHLBanks do not believe that market participants should be required to comply with such requirements until the CFTC has adopted final rules related to protection of collateral for uncleared swaps. Otherwise, swap dealers and major swap participants could be required to collect initial margin from their counterparties without having final rules regarding the segregation of such initial margin.

2. *Prudential Regulators’ Margin Requirements*

CFTC Regs. 23.150-23.158 would apply to margin for uncleared swaps collected by swap dealers and major swap participants that are not regulated by a prudential regulator (*i.e.*, non-bank swap dealers and major swap participants). The prudential regulators have proposed separate regulations regarding margin for uncleared swaps collected by swap dealers and major swap participants that they regulate.⁵ **While the FHLBanks understand that the CFTC cannot propose or enforce an implementation schedule for the prudential regulators’ margin requirements, the FHLBanks believe that the CFTC should coordinate with the prudential regulators to ensure that CFTC Regs. 23.150-23.158 and the prudential regulators’ proposed margin requirements are implemented as close to simultaneously as possible,**

⁴ Under the Dodd-Frank Act, the prudential regulators include the Federal Deposit Insurance Commission; the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency; the Farm Credit Administration and the Federal Housing Finance Agency.

⁵ See 76 Fed. Reg. 27564.

provide for the same implementation schedule and take into account the additional requirements imposed by the Farm Credit Administration (the “FCA”) and the Federal Housing Finance Agency (the “FHFA”).

If the prudential regulators and the CFTC do not coordinate regarding the implementation of their margin requirements, the cost of entering into a swap with a swap dealer or major swap participant regulated by a prudential regulator could be very different than the cost of entering into exactly the same swap with a swap dealer or major swap participant not regulated by a prudential regulator. Such discrepancies could arise, for example, if one swap dealer is required to collect initial margin from its counterparties before another swap dealer is required to collect initial margin from the same counterparties.

Particularly with respect to swaps between a swap dealer or major swap participant regulated by the CFTC and a swap dealer, major swap participant or an entity regulated by the FCA and the FHFA (such as the FHLBanks),⁶ one counterparty will be required to collect margin pursuant to CFTC Regs. 23.150-23.158 and one counterparty will be required to collect margin pursuant to regulations promulgated by the applicable prudential regulator. The FHLBanks believe that the pricing and other terms of such swaps could be negatively impacted if one counterparty were required to impose new margin requirements but the other counterparty were not.

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⁶ The margin requirements for uncleared swaps proposed by the FCA and the FHFA would require all entities regulated by the FCA and the FHFA to collect margin from their swap dealer and major swap participant counterparties, regardless of whether the regulated entities are themselves swap dealers or major swap participants.

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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, appearing to read 'Warren Davis', with the initials 'AMB' written in a larger, stylized font to the right of the signature.

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP

cc: FHLBank Presidents
FHLBank General Counsel
FHFA