March 27, 2013

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Office of the Secretariat

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

COMMENT

Re: Capital Requirements of Swap Dealers and Major Swap Participants
RIN 3038–AD54

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants
RIN 3038–AC97

Dear Ms. Jurgens:

MBIA Insurance Corporation ("MBIA") appreciates the opportunity to comment on the proposed rules published by the Commodity Futures Trading Commission (the "CFTC") regarding capital and margin requirements for swap dealers and major swap participants[1] issued pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). MBIA is provisionally registered with the National Futures Association as a Major Swap Participant ("MSP") due to MBIA's guarantee of credit default swaps ("CDS") sold by an affiliate of MBIA as part of a business that has been in run-off since 2008, as more fully described below.

Background

Our financial guarantee insurance generally provides investors with an unconditional and irrevocable guarantee of the payment of the principal, interest or other amounts owing on insured obligations when due or, in the event that we have the right at our discretion to accelerate insured obligations upon default or otherwise, upon our election to accelerate. The MBIA group of companies conducts financial guarantee

[1] Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. 27802 (proposed May 12, 2011); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (proposed Apr. 28, 2011).

business, as well as related reinsurance, advisory and portfolio services, through National Public Finance Guarantee ("National"), a United States public finance-only financial guarantee company, and through MBIA, which together with its subsidiaries, has written global structured finance and non-U.S. public finance financial guarantee insurance.

As noted in earlier comment letters, MBIA also guaranteed the obligations of an affiliate, LaCrosse Financial Products ("LaCrosse") under CDSs it entered into, predominantly with large, money center banks and financial institutions. These CDSs were generally complex, bespoke and subject to significant negotiation between LaCrosse, MBIA and the bank counterparty. Consistent with the principles governing financial guarantee insurance policies, the swap contracts were not subject to collateralization provisions. Absent a termination event as defined in the contracts, payments made by MBIA as the credit support provider to LaCrosse were structured to mirror payments that would be due under a traditional financial guarantee insurance policy resulting from insurable losses.

In early 2008, MBIA permanently ceased the execution of new credit derivative transactions except in the limited circumstances relating to restructuring or amendment of existing exposures as part of our risk reduction efforts. Since 2008, a significant part of MBIA's strategy has focused on the commutation and termination of its most volatile CDS positions to limit or reduce potential future economic losses. As of December 31, 2012 MBIA's notional amount of the insured CDS portfolio (which includes both security-based swaps and swaps as defined under the Dodd-Frank Act) was $47.3 billion, down from $171.0 billion as of December 31, 2007, a reduction which reflects the bilateral risk mitigation efforts noted.

National's insured portfolio does not include any guarantees of CDSs issued by affiliates or other entities. National's insured portfolio includes guarantees of third-party interest rate swaps that guarantee the obligations of the issuers in floating rate public finance transactions where the issuer entered into a swap to hedge its interest rate exposure. As of December 31, 2012, National did not have a "substantial position" by virtue of its guarantee of such third party interest rate swaps, as it has a small potential outward exposure with a de minimis mark-to-market value. MBIA also guarantees a small amount of third party interest rate swaps with a de minimis mark-to-market value at December 31, 2012.

Application of MSP Tests to MBIA and its Affiliates

Given that MBIA and its affiliates no longer execute new CDS or guarantees of third-party swaps, it does not believe that it or any of its affiliates is a "swap dealer" as defined under Section 1.3(ggg) of the CFTC regulations. Based on an analysis of December 31, 2012 financial information, MBIA believes that it is captured within the definition of an MSP as set forth in Section 1.3(hhh)(1)(ii)(A) of the CFTC regulations, because the outward potential exposure of the CDS attributed to MBIA exceeds $2

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billion,[2] and therefore constitutes a "substantial position"[3] in CDS under Section 1.3(jjj) of the CFTC regulations. As of December 31, 2012, the mark-to-market value of MBIA's swaps calculated in accordance with Generally Accepted Accounting Principles ("GAAP") consistent with the public financial reporting of MBIA's parent is estimated to be in excess of $1 billion, which also constitutes a "substantial position" in CDS under Section 1.3(jjj). US GAAP calls for this calculation to include certain market value adjustments, including credit valuation adjustments for counterparty and company credit risk. As described above, National does not have a "substantial position" in CDS.

Capital

While the CFTC's proposed capital requirements for MSPs have not been finalized, we would like to bring to your attention the particular challenges that the proposed requirements will present to us due to the current state of our business and our obligations under state insurance regulations.

As currently proposed, the capital requirements for MSPs would call for the maintenance of "tangible net equity" equal to $20 million (as determined under U.S. GAAP, minus intangibles such as goodwill and equity in subsidiaries), plus additional amounts for market risk and over-the-counter derivatives credit risk.[4] MBIA has limited and volatile "tangible net equity" as defined in the proposed regulations, which, depending on mark-to-market and other factors, may result in negative "tangible net equity" in any given quarter. For example, as of September 30, 2012, MBIA had negative GAAP "tangible net equity" under the proposed framework, but as of December 31, 2012, that figure was positive. Because MBIA cannot control or hedge that volatility, MBIA's capital position may slip into and out of compliance on a frequent basis.

On February 27, 2013, MBIA announced that while management believes it is more likely than not that a settlement will be reached with a particular counterparty related to pre-2008 insured transactions which would alleviate MBIA's liquidity risk, there can be no assurance such a settlement will be reached on mutually acceptable terms. MBIA further announced that as a result of the risk that MBIA may not reach such a settlement within a reasonable period of time, management has concluded that there is a significant risk that the New York Department of Financial Services ("NYDFS") will

[2] In accordance with Paragraph 1.3(jjj)(3)(ii)(A)(1) of CFTC regulations, the potential outward exposure for CDS that are not subject to daily margining and are not cleared is determined by multiplying the total notional principal amounts of those positions by 0.10.

[3] A "substantial position" in CDS is defined as swap positions exceeding either $1 billion in daily average aggregate uncollateralized outward exposure, or $2 billion in daily average aggregate uncollateralized outward exposure plus daily average aggregate potential outward exposure.

[4] Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. at 27827.

place MBIA into a rehabilitation or liquidation proceeding that raises substantial doubt about MBIA Corp.'s ability to continue as a going concern. Given existing market conditions and MBIA's financial circumstances, MBIA has no expectation of having access to the additional capital in the near term that would be needed to comply with the CFTC's proposed requirements should they be enacted as proposed.

Like all insurance companies, MBIA is regulated and managed on a statutory accounting basis. Statutory accounting has long been the required measure of capital adequacy and solvency. The primary difference with GAAP in this regard is that statutory accounting is focused on solvency and liquidity driven by expected insurance losses, and thus requires reserves related to CDS exposures that reflect management's best estimate of such losses. GAAP, in contrast, calls for CDS to be recorded on the balance sheet at fair value. Fair value of derivative instruments is defined as the price that would be received to sell a derivative asset or paid to transfer a derivative liability (an exit price) in an orderly transaction between market participants at the measurement date. MBIA's non-performance risk is taken into account in the measurement of fair value, which does not reflect expected ultimate losses. The continued oversight of MBIA on a statutory accounting basis, which does reflect expected insurance losses, should address any concerns over MBIA's failure to meet the GAAP-based capital requirements under the proposed rules.

Over the past several years, MBIA has worked extensively with the NYDFS on management and oversight of MBIA's CDS exposures, including work relating to capital adequacy. In particular, MBIA has been working diligently with the NYDFS to manage its legacy swap portfolio, including remediating the portfolio to reduce risk exposure. Because all such work to date has been conducted on a statutory accounting basis, the imposition of GAAP analysis onto MBIA's accounting would introduce conflicting standards in an arduous process that is well underway.

The concern for MSP systemic risk is particularly attenuated with respect to MBIA, because in early 2008 MBIA announced that it would permanently cease executing new credit derivative transactions, except in transactions related to the reduction of existing exposures. Moreover, we believe that our few remaining CDS counterparties are marking their MBIA insured exposures at a small fraction of their notional amount. We believe certain of these counterparties have also been in contact with the NYDFS, and understand MBIA's financial position. Accordingly, we believe that MBIA presents no past, current or ongoing systemic risk to global financial markets given that during the distress experienced by the bond insurance industry and MBIA over the last five years, it received no government assistance or intervention; banks and financial institutions now carry minimal exposure to MBIA, and MBIA has discontinued insuring CDS, which is the principal MBIA-insured instrument held by banks and financial institutions.

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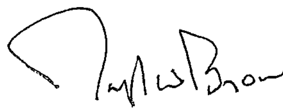
For the foregoing reasons, MBIA respectfully recommends that the capital rules, when finalized, exempt entities with legacy portfolios that are already subject to capital regulation as Congress has exempted banks, which are already subject to separate prudential regulation, from the CFTC's (and the SEC's) capital and margin requirements.

Margin

While the CFTC's proposed margin requirements for MSPs have not been finalized, we support the current proposal. As proposed, the margin requirements "cover only swaps executed after the effective date of the regulation."[5] As a result, margin requirements will not be applicable to our legacy swap business. Additionally, we would like to bring to your attention that under NYDFS Circular Letter No. 19, dated September 22, 2008, the Superintendent of Insurance has restricted financial guarantee insurers from issuing financial guarantees on credit default swaps under which the insurer is required to post collateral.[6] Given that MBIA is in the process of seeking to terminate its existing CDS exposure, in some cases by amending existing policies or writing new policies offsetting existing policies, we request that any final regulations also exempt from the margin requirements new transactions entered into as part of a bona fide risk reduction strategy.

We thank you for your consideration of these matters and welcome an opportunity to discuss our comments. Please do not hesitate to contact me at Jay.Brown@mbia.com or (914) 765-3330.

Sincerely yours,



Joseph W. Brown
Chairman
MBIA Insurance Corporation

cc: Mr. Thomas Smith, Deputy, Division of Swap Dealers
and Intermediaries Oversight, CFTC

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[5] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. at 23734.

[6] State of New York Insurance Department, "Best practices" for financial guaranty insurers (2008), *available at* http://www.dfs.ny.gov/insurance/circltr/2008/cl08_19.htm.