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December 2, 2013

VIA ELECTRONIC SUBMISSION

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

**Re: Swap Execution Facility Filings to Implement Available-to-Trade
Determinations for Certain Interest Rate Swaps**

Dear Ms. Jurgens:

On behalf of the twelve Federal Home Loan Banks (the “FHLBanks”), we appreciate the opportunity to submit this letter in response to filings submitted to the Commodity Futures Trading Commission (“CFTC” or the “Commission”) by Javelin SEF, LLC (“Javelin”),¹ trueEX, LLC (“trueEX”), and TW SEF, LLC (“TW”) to implement available-to-trade determinations (“MAT determinations”) for certain interest rate swaps.

The FHLBanks support the concept of mandatory swap execution on a swap execution facility (“SEF”) as required pursuant to the Commodity Exchange Act (the “CEA”) and corresponding CFTC rulemakings (the “Mandatory SEF Execution Requirements”);² however, the FHLBanks

¹ References to the Javelin MAT determination refer to Javelin’s first amended MAT determination submitted to the CFTC on October 31, 2013 (the “First Amended Javelin MAT determination”). Javelin SEF, LLC, *Javelin MAT Determination Amended 10-31-13* (Oct. 31, 2013), available [here](#).

² See Section 2(h)(8) of the CEA; Final Rule, Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33,606 (June 4, 2013).

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have significant concerns with respect to the quick implementation of any MAT determination. Of primary concern is the impact that any MAT determination will have on compound transactions that are an integral component of the FHLBanks' hedging strategy. In addition, the FHLBanks have concerns with respect to the scope of initial MAT determinations and SEF operational, functionality and regulatory issues.

The FHLBanks believe that each of these concerns, which are addressed in greater detail below, has significant negative implications for the swaps market and demonstrates that SEFs, FCMs and DCOs do not presently have the necessary infrastructure to support implementation of mandatory SEF execution. Accordingly, the FHLBanks encourage the CFTC to take a thoughtful and measured implementation approach to mandatory SEF trading by phasing in compliance dates for mandatory SEF execution by interest rate swap product types. A phased-in approach will provide the market and market participants, such as the FHLBanks, that are subject to the Mandatory SEF Execution Requirements time to achieve the operational readiness required to implement mandatory SEF execution.

Further, the FHLBanks note that the Mandatory SEF Execution Requirements are intended to promote sound risk management practices by ensuring that market participants have access to publicly available prices discovered on competitive markets.³ However, the irony is that the very market participants that the Mandatory SEF Execution Requirements seek to protect may suffer the most adverse consequences as a result of the quick and unprepared implementation of mandatory SEF execution. In our view, this is not an intended outcome of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") or the Mandatory SEF Execution Requirements.

This comment letter is organized as follows: section I provides a brief overview of the FHLBanks and their use of interest rate swaps; section II addresses the FHLBanks' concern with respect to the impact that any MAT determination will have on compound transactions; section III proposes an approach for the treatment of FHLBank compound transactions; section IV proposes a phased-in implementation plan that the FHLBanks believe will help provide an opportunity for the CFTC, the market and market participants to identify, analyze and resolve the various issues surrounding SEFs; and section V provides an overview of the FHLBanks' other concerns with respect to the scope of initial MAT determinations, and SEF functionality, operational and regulatory issues.

I. The FHLBanks

The twelve 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

³ See 78 Fed. Reg. at 33,627 (June 4, 2013).

structured as cooperatives. Each FHLBank is independently chartered and managed, but the FHLBanks issue consolidated debt obligations for which each FHLBank is jointly and severally liable. The FHLBanks serve the general public interest by providing liquidity to approximately 7,000 member financial institutions, including banks, thrifts, credit unions, insurance companies and community development financial institutions. In doing so, the FHLBanks help increase 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 to safely and soundly provide liquidity to member financial institutions, and to manage and mitigate financial risk, primarily interest rate risk. Notably, due to their unique mission to provide liquidity to member financial institutions, the FHLBanks use highly customized off-the-run interest rate swaps to manage the risks associated with the advances they make to their membership. As of September 30, 2013, the aggregate notional amount of over-the-counter interest rate swaps held by the FHLBanks collectively was approximately \$568 billion. At present, the FHLBanks are clearing a significant and growing percentage of their interest rate swap transactions, but to date no FHLBank swap transactions have been executed and cleared on or through a SEF. While it is impossible to predict the percentage of the FHLBanks’ swaps that will ultimately be subject to mandatory clearing and the Mandatory SEF Execution Requirements under the Dodd-Frank Act, the FHLBanks expect that over time a majority of the swaps they enter into will be cleared and executed through a SEF.

Importantly, any increased costs and loss of liquidity for interest rate swaps that the FHLBanks incur as a result of the implementation of any MAT determination will directly impact the ability of their members (especially community banks and credit unions) to access credit from their respective FHLBanks and thus to provide funding to consumers, homeowners and businesses.

II. Compound Transactions

The FHLBanks have identified a host of issues concerning a hasty implementation of MAT determinations; however, the most pressing concern to the FHLBanks is with respect to compound transactions.

The FHLBanks Use of Compound Transactions

The FHLBanks have a unique and bona fide business purpose to execute compound transactions because such transactions allow the FHLBanks to provide advances to their member financial institutions at the lowest possible cost. “Compound transaction” refers to the “simultaneous and

contingent execution of two or more instruments.”⁴ For the FHLBanks, compound transactions are limited to the simultaneous and contingent execution of two components or legs: (1) the issuance of a debt security (for example, a bond), and (2) the execution of an interest rate swap on a LIBOR basis that is designed to hedge the interest rate risk associated with that debt security and convert the bond basis to the economic basis required by the FHLBank. The components or legs of the compound transaction are necessarily linked at execution to preserve the most value (or least cost) for the transaction as a whole. As noted above, any increase in costs for the FHLBanks as a result of the implementation of any MAT determination would increase the cost of the FHLBanks’ advances to members and thereby negatively impact members’ abilities to provide funding to consumers, homeowners and businesses. The following provides a comparison of the FHLBanks’ use of compound and non-compound transactions as part of their debt issuance strategies:

**Comparison of FHLBank Debt Issuance Strategies: Compound* versus Non-Compound Transactions
 January 1, 2008 through September 30, 2013**

Debt Issuance Type	Transaction Count		Total Principal of Debt/ Notional of Swaps (mil.)	
	Non-Compound	Compound *	Non-Compound	Compound *
Global Bullet Mandated	85	-	\$142,500	\$-
Global Bullet	15	595	\$3,667	\$238,083
Other Negotiated Bullet	395	1,921	\$23,588	\$450,927
Simple Floater	407	470	\$288,983	\$208,475
Tap	524	-	\$148,532	\$-
Auctioned Callable	3,517	-	\$207,894	\$-
Other	10	7,195	\$1,607	\$272,030
Swapped Callable	1	5,380	\$100	\$641,206
Unswapped Callable	670	-	\$68,482	\$-
Total	5,624	15,561	\$885,352	\$1,810,721
Percentage	27%	73%	33%	67%

* "Compound" is used to denote simultaneous and contingent bond issuance and swap execution.
 Data sourced from Office of Finance’s BASIS.

As illustrated above, over the last 5+ years, the FHLBanks used compound transactions, which represented 67% of the total principal amount of FHLBank System debt issuances, to take advantage of the tighter execution and reduced risk that such pairing affords. The simultaneous

⁴ See Managed Fund Association, *Comment Letter re: Industry Filings IF 13-004, 13-005, and 13-007* (Nov. 21, 2013), available [here](#) (providing a broad discussion of compound transactions) (the “MFA Comment Letter”).

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and contingent bond issuance and swap execution improves pricing and decreases transaction costs for the following reasons:

- *Tighter Bid/Ask Spread*: a compound transaction compared to standalone, or non-compound, transactions has a lower total bid/ask spread because (1) it has significantly lower market risk than each standalone component of the transaction; and (2) it is priced as a package instead of paying the bid/ask spread on each leg as though each leg is a separate transaction.
- *Lower Risk*: a compound transaction exposes the FHLBank and its dealers to lower market risk because (1) a counterparty exchanges the net risk of the compound transaction in a single simultaneous and contingent transaction, rather than the risk of each standalone component, thus resulting in more efficient risk transfer and hedging; and (2) there is no “legging risk,” that is the risk that the market moves between the time the first standalone transaction and the time any subsequent standalone transactions are executed.

The FHLBanks’ Concern Regarding Compound Transactions

The FHLBanks are concerned that if only one leg of FHLBank compound transactions (i.e., the interest rate swap component) has been designated as subject to a MAT determination (and is thus required to be executed on a SEF), then that standalone leg would be de-linked from, and ultimately impede execution of, the entire compound transaction, which is contingent on the simultaneous execution of the bond and swap legs. The separation of the debt issuance and swap execution will disrupt the pricing of, and increase the risk associated with, this type of compound transaction. As a best case scenario, this disruption will likely increase the FHLBanks’ debt issuance costs which will then be passed on to their member financial institutions. In a worst case scenario, the FHLBanks may be unable to issue certain debt structures at all because they may simply not be able to execute the necessary offsetting swap hedge, which could eliminate certain low cost funding alternatives and result in higher costs to their member financial institutions.

A broad MAT determination that covers off-the-run interest rate swaps (as proposed by the First Amended Javelin MAT determination) would likely have the greatest adverse impact on the FHLBanks’ compound transactions. This is due to the fact that the FHLBanks’ compound transactions almost always involve customized off-the-run interest rate swaps. The FHLBanks understand that such swaps cannot presently be executed on an order book. These transactions therefore must be executed through the request for quote (“RFQ”) execution process that may not presently exist in a number of SEFs. Further, such compound transactions require significant cooperation and interest from swap dealers and bond underwriters to initiate, negotiate and coordinate with the FHLBanks for execution. Thus, even if the RFQ execution process existed for off-the-run interest rate swaps, it may never be the most efficient or beneficial approach for executing compound transactions. Accordingly, the FHLBanks believe that

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mandatory SEF execution through the order book or RFQ process is not appropriate for such transactions.

The FHLBanks are deeply concerned that approval of any pending MAT determinations will preclude a full discussion and analysis of the problems that SEF execution poses for compound transactions and believe that, in many instances, the best approach to requiring SEF execution for certain types of compound transactions is to provide the market and the Commission additional time, as outlined in the suggested Phased-In MAT Implementation Plan, for discussion, analysis and resolution of this issue.

III. Proposed Treatment for FHLBank Compound Transactions

FHLBank compound transactions entail the simultaneous and contingent issuance of a debt security and the execution of a hedging swap transaction. As the data presented above illustrate, this debt issuance strategy represents the primary means by which the FHLBanks issue debt in the capital markets. The FHLBanks respectfully request that the Commission exclude swaps transacted as part of a simultaneous and contingent issuance of FHLBank debt from being designated as made available to trade (“MAT”) and from mandatory execution on SEFs. Since Commission rules already permit off-SEF execution of swaps designated MAT for block trades, the FHLBanks encourage the Commission to permit FHLBank compound transactions to be similarly privately negotiated, executed off-SEF, and subsequently processed for clearing and reporting through a SEF. The FHLBanks understand that a similar framework for futures transactions, called Exchange of Related Position (“EFRP”), permits private negotiation of futures transactions, in limited circumstances, and in accordance with the written rules of both the Commission and a futures contract market. An EFRP-like exception for FHLBank compound transactions would afford the FHLBanks the opportunity to evaluate the all-in cost of funding for debt issued as part of a compound transaction versus a non-compound transaction (i.e., swap execution not simultaneous or contingent) and select the lowest cost alternative.

Currently, the FHLBanks voluntarily enter into compound transactions in order to (1) maximize the net economic value of the entire paired transaction, (2) lower execution and legging risk, and (3) achieve better net funding levels compared to non-compound style debt issuances. The negotiation of these transactions requires swap dealers and bond underwriters to collaborate in order to achieve the FHLBank targeted execution levels on the entire paired transaction and not on the value of an individual component. In FHLBank compound transactions, the objectives of the FHLBank, bond underwriter, and swap dealer are all currently aligned. Swap dealers actively compete with each other to provide a cost effective hedge linked to a proposed bond issuance that converts the bond basis to the economic basis required by the FHLBank. If the ability to structure these deals as a compound transaction is restricted by a MAT determination, then there will be less incentive for bond underwriters and swap dealers to collaborate to package a transaction and deliver the best economic value to the FHLBanks.

Private negotiation of certain exchange traded products is not a new regulatory concept and appears consistent with the regulatory framework created by the Commission's efforts to reduce risk and promote stability and transparency in the swaps market. An exemption extended to FHLBank compound transactions from mandatory execution on SEFs preserves a critical debt issuance strategy employed by the FHLBanks and has the additional public policy benefit of allowing the FHLBanks to fulfill their unique, statutorily mandated mission of providing liquidity to their member financial institutions in all market conditions.

IV. Proposed Phased-In MAT Implementation Plan

The FHLBanks believe that, whatever implementation timeline is ultimately chosen, it must be of sufficient length to allow the market to achieve certain pre-MAT determination implementation requirements, as outlined below (the "Pre-MAT Requirements"). The FHLBanks believe they can meet the proposed phased-in implementation schedule (excluding FHLBank compound transactions) set forth below, which follows a 270 day phase-in schedule (the "Phased-In MAT Implementation Schedule").⁵

Pre-MAT Requirements:

The FHLBanks believe that, whatever implementation timeline is ultimately chosen, the following Pre-MAT Requirements should be met prior to the CFTC's implementation of any MAT determination. Meeting the Pre-MAT Requirements will help ensure that market participants are afforded a choice between at least two (2) functioning SEFs (with adequate infrastructure, and dealer and FCM participation) that are capable of handling the initial influx of swaps products that would be subject to mandatory SEF execution as a result of the first MAT determinations approved by the CFTC.

- Require that multiple SEFs have registrations in place that are not temporary, and that the Commission has reviewed and determined to be compliant with applicable statutory and regulatory requirements ("Finalized SEF Registrations).
- Require that multiple SEFs have rulebooks in place that the Commission has reviewed and determined to be compliant with applicable regulations ("Finalized SEF Rulebooks").
- Require that at least two SEFs demonstrate the ability to effectively execute, terminate and compress the types of swaps products that would be governed by the applicable MAT determination. This means that a minimum of three (3) to four (4) first tier Wall Street swap dealers must have demonstrated their ability to (1) stream prices on a SEF order book (if appropriate) and (2) respond to RFQs in such a structure.

⁵ The MFA Comment Letter provides an alternative phased-in MAT implementation schedule.

- Require that FCMs and DCOs be able to evaluate a portfolio of MAT transactions on a portfolio basis to eliminate unnecessary credit limit breaches or trade failures.
- Require that non-swap dealer market participants have at least 30 days to trade proposed MAT swap product types as “Permitted Transactions” (transactions that are not subject to the Mandatory SEF Execution Requirements) on a SEF to ensure their ability to do so before a MAT determination becomes effective.
- Provide a 90 day period prior to the implementation of the first phase of MAT determinations to ensure that market participants have sufficient time to perform the due diligence necessary to comply with the Mandatory SEF Execution Requirements, including, among others, reviewing Finalized SEF Rulebooks, executing agreements required to onboard with the respective SEFs, and developing the systems and infrastructure required to execute on SEFs.

Phased-In MAT Implementation Schedule:

Once it is determined that the Pre-MAT Requirements have been satisfied, the FHLBanks propose that the Commission, then and only then, take a cautious and gradual approach to the initial launch of MAT determinations and mandatory SEF trading, as outlined below. Under this Phased-In MAT Implementation Schedule, the Commission would approve initial MAT determinations for only the most standardized and liquid swaps products on a standalone basis first, and then cautiously expand to other interest rate swaps products only as there is a demonstrated liquidity within the market and operational readiness for mandatory SEF execution of such additional interest rate swaps.

Phase	Products	Phase Start
1	<p>On-the-Run Interest Rate Swaps: the most standardized interest rate swaps with the most frequently and recently traded tenors that are based on maturities that correspond to Treasury benchmarks.</p> <p>Example:⁶ Benchmark tenor swaps indexed to 3-month LIBOR (T+2 settle) (2yr, 3yr, 5yr, 7yr, 10yr, 15yr, 20yr, 30yr) + Standard Coupon Standard Maturity (“SCSM”) Swaps (or MAC style swaps) (T+2 settle)</p>	Day 1
2	Other full integer year tenor swaps (T+2 settle).	Day 90

⁶ For additional examples of on-the-run interest rate swaps, see trueEX’s MAT determination. See trueEX, *trueEX MAT Determination Filing* (Oct. 21, 2013), available [here](#); see also trueEX, *Contract Specs-- trueEX Interest Rate Swap* (last visited Nov. 17, 2013), available [here](#).

3	Off-the-Run Interest Rate Swaps: less liquid customized interest rate swaps that have any start and end date, which includes same day, next day, or forward settling swaps and swaps with customized payment terms.	Day 180
4	Compound Transactions and Terminations (excluding FHLBank swap/bond compound transactions).	90 days after implementation of the applicable Phase 1, 2 or 3 MAT determination ⁷

V. Other Issues Regarding MAT Determinations and SEFs

(1) The Scope of Initial MAT Determination

The FHLBanks believe that the proposed Phased-In MAT Implementation Schedule is a prudent approach to certifying MAT determinations and do not support the quick implementation of MAT determinations for off-the-run illiquid interest rate swaps, such as those that would be required under the First Amended Javelin MAT determination.⁸ Under the proposed Phased-In Implementation Schedule, any initial MAT determination is limited to the most liquid and standard on-the-run interest rate swaps for which the market has demonstrated that there is operational readiness among swap dealers, FCMs, DCOs and end-users. Although the FHLBanks are not currently executing trades on SEFs, they understand that such interest rate swaps are currently being successfully executed voluntarily by certain other market participants on SEFs.⁹

If market participants, including the FHLBanks, are required to quickly move a high volume of off-the-run interest rate swaps to SEF execution without having any indication of successful execution of such trades or without resolving key SEF operational and regulatory issues, then the FHLBanks and other market participants risk exposure to failed trades, a lack of liquidity, and ultimately an inability to maintain hedging strategies necessary to support the public mission of the Federal Home Loan Bank system and the hedging needs of their member institutions.

⁷ For example, an interest rate swap that is part of a compound transaction and made available to trade under a Phase 1 MAT determination would be subject to the Mandatory SEF Execution Requirements 90 days after implementation of the Phase 1 MAT determination.

⁸ The FHLBanks note that the First Amended Javelin MAT determination, which amends a prior Javelin MAT determination submitted to the CFTC on October 18, 2013 (the “Initial Javelin MAT determination”), purports to be narrower than its original proposal. However, the FHLBanks view the First Amended Javelin MAT determination as broader with a potentially greater impact than the Initial Javelin MAT determination because it includes same-day settlement swaps, the vast majority of which are off-the-run, and which are used to hedge the FHLBanks’ advances to member financial institutions.

⁹ We note that the CFTC has stated that it has the authority to approve or deem only part or some of the swaps within a MAT determination group, category, type or class as available to trade, based on its review of any MAT determination. See 78 Fed. Reg. at 33,611 (June 4, 2013).

Therefore, initial MAT determinations should not include non-benchmark, off-the-run interest rate swaps due to the specialized nature of these instruments and corresponding lack of liquidity. Given the current lack of SEF experience with, and functionality for, such trades, SEF execution for these swaps is inappropriate at this time. The FHLBanks believe that a prudent phased-in approach, as described above, will permit the market to effectively analyze mandatory SEF trading in light of the novel and complex issues related to SEF execution before SEF execution of such trades is mandated. Mandatory SEF execution should not be required before such trades have been “test driven” in the market.

Finally, the FHLBanks note that the proposed Phased-In MAT Implementation Plan is akin to the CFTC’s mandatory clearing implementation framework.¹⁰ Just as implementation of the clearing mandate started with a narrow group of dealers with demonstrated clearing experience, the Phased-In MAT Implementation Plan starts with a narrow set of interest rate swaps and initially certifies only highly liquid benchmark transactions. The Phased-In MAT Implementation Plan then cautiously expands MAT determinations only as there is a demonstrated liquidity within the market and operational readiness for mandatory execution of new interest rate swap trades.

(2) SEF Regulatory, Functionality, and Operational Issues

The current state of play of SEFs is ambiguous at best. Premature approval of any MAT determination could pose a threat to market safety because it would subject a high volume of interest rate swaps to mandatory execution on SEFs, many or all of which have not yet resolved various regulatory, functionality and operational issues that are described below. This approach seems inconsistent with that of other regulatory regimes. For example, the Federal Aviation Administration would never permit passengers to fly or travel on a newly designed aircraft that has not been registered and certified as “airworthy,” and local housing authorities would not allow tenants to occupy a new building that did not have a certificate of occupancy that would only be issued upon inspection and confirmation that the building meets all code and safety requirements. For this reason, the FHLBanks support the use of the Phased-In MAT Implementation Schedule (following satisfaction of the Pre-MAT Requirements) that would afford market participants, including SEFs, FCMs, and customers sufficient time to address the various regulatory, functionality and operational issues that exist, some of which are listed below, prior to the effectiveness of any MAT determination.

¹⁰ We note that the CFTC implemented the mandatory clearing requirement on a phased-in basis only after a significant amount of pre-mandate, voluntary swap clearing had occurred, thus demonstrating both the existence and efficiency of the required clearing infrastructure prior to implementing a mandatory clearing process. The FHLBanks understand that there is no pre-mandated trading for certain proposed MAT structures to ensure and lead market participants to believe that the market is prepared for mandatory SEF Execution.

- *SEF Registrations and Rulebooks.*

Market participants, such as the FHLBanks, that seek to become members or participants of a SEF (or SEFs) to comply with the Mandatory SEF Execution Requirements must comply with various SEF onboarding requirements, including execution of a user contract that binds the SEF participant to that SEF's rulebook and jurisdiction. Notably, most, if not all, of the temporarily registered SEFs have rulebooks that have changed materially and frequently in recent weeks due to CFTC guidance, no-action relief or for other reasons.¹¹ The FHLBanks understand that the CFTC has not yet completed its review of any SEF's rulebook to determine whether it is in compliance with CFTC rules and regulations. In addition, the CFTC has yet to finalize registrations for any of the SEFs that are temporarily registered as of this date. The FHLBanks see a dynamic and developing regulatory regime for SEFs that is filled with uncertainty and significant market risk to market participants. Market participants need to engage with stable SEF platforms that satisfy regulatory requirements and also need sufficient time to adequately prepare internal systems to comply with and navigate the requirements of SEFs. The fact that such SEFs also do not have final registrations and approved rulebooks would also expose the FHLBanks to regulatory and legal uncertainty.

- *Lack of Trade Functionality for Off-the-Run Interest Rate Swaps.*

Certain SEFs have advised the FHLBanks that they have not yet developed or tested the technology required to offer RFQ trading functionality for any-date to any-date swaps, and thus they do not offer RFQ trading functionality for certain off-the-run interest rate swaps. Such SEFs have indicated to the FHLBanks that they do not expect to have the necessary systems in place for executing off-the-run interest rate swaps through the RFQ execution process until an unspecified time in 2014.

- *Lack of Trade Termination and Compression Functionality.*

The FHLBanks understand that certain SEFs, through which the FHLBanks and other market participants plan to execute trades, currently are only capable of executing plain vanilla interest rate swaps and do *not* have systems in place to perform functions that are integral to the FHLBanks, including termination or compression of plain vanilla interest rate swaps or other interest rate swaps, due to a lack of developed trade platform functionality.

¹¹ We note, for example, that the Bloomberg SEF Rulebook has been amended seven times in the past two months (since September 2013).

- *Lack of Trade Preparedness for FCMs.*

The FHLBanks, like most cleared swaps customers, will clear trades through certain FCMs with which the FHLBanks have spent a significant amount of time, effort and costs negotiating cleared swaps documentation. However, certain of the FHLBanks' key FCMs have announced that they are capable of acting as FCMs for interest rate swaps traded *only* on certain SEFs, and currently it is not clear whether those SEFs support execution of a broad range of off-the-run interest rate swaps. As previously noted, these transactions are integral to certain of the FHLBanks' hedging strategies.

As a result, if the CFTC approves a broad MAT determination, such as the First Amended Javelin MAT determination, and certain FCMs that are clearing for the FHLBanks are not prepared to execute with all SEFs, the FHLBanks' abilities to engage in certain off-the-run interest rate swaps to hedge against market risk may be obstructed due to a lack of access to SEFs that support such trades. Alternatively, the FHLBanks and other market participants may be required to expend additional time, effort and costs to establish clearing relationships with other FCMs that have broader capabilities with other SEFs, assuming that such FCMs exist and can accommodate the needs of the FHLBanks.

- *Lack of Electronic Trading Preparedness.*

Traditionally, the FHLBanks, like many other market participants, have executed swaps trades by voice with their swap counterparties, and do not yet have the required systems in place to execute a broad range of swaps electronically through one or more SEFs. The process for onboarding with a SEF is laden with uncertainty. The FHLBanks are concerned that approval of any MAT determination may require them to hastily onboard to SEF systems. This would, at a minimum, result in considerable operational risk and uncertainty.

- *Conflicting SEF and FHFA Regulations.*

As noted above, market participants that become members of a SEF are subject to a contractual obligation to comply with that SEF's rulebook. However, certain SEF rulebook provisions may run afoul of certain Federal Housing Finance Agency ("FHFA") regulations to which the FHLBanks are subject. Specifically, an FHFA regulation contains a provision regarding the availability of unpublished information, which requires, in the broadest sense, that each FHLBank maintain confidentiality with respect to "unpublished information."¹² However, certain SEF rulebooks would subject the FHLBanks to a contractual obligation that may violate

¹² See 12 C.F.R. § 911.3 (2013) (prohibition on unauthorized use and disclosure of unpublished information); see also 12 C.F.R. § 911.1 (2013) (defining "unpublished information"), available [here](#).

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this FHFA regulation by requiring participants to turn over to the SEF confidential information in connection with SEF market surveillance and regulatory activities.¹³ Market participants, and particularly entities that are subject to multiple regulatory regimes, such as the FHLBanks, require sufficient time to review and vet SEF rulebook provisions to ensure compliance with their respective regulations, and, where necessary, time to address potentially conflicting rulebook provisions with SEFs. The FHLBanks respectfully request that any Commission action with respect to MAT determinations afford them the time necessary to address and resolve such regulatory concerns.

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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,

A handwritten signature in black ink, appearing to read "Warren Davis". The signature is fluid and cursive, with the first name "Warren" and last name "Davis" clearly distinguishable.

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP

cc: FHLBank Presidents
FHLBank General Counsel

¹³ See Bloomberg Rule 409.A, which subjects a participant's books and records to review by Bloomberg, and Bloomberg's confidentiality provisions in Rule 805, which permits disclosure of confidential information under certain circumstances. See BLOOMBERG, BLOOMBERG SEF LLC RULEBOOK (Nov. 26, 2013).