

VIA ONLINE SUBMISSION <http://www.regulations.gov>

Christopher Kirkpatrick  
Secretary of the Commission  
Attn: Comments/RIN 3038-AC97  
Commodity Futures Trading  
Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581

»» **Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants**

Date: 18/12/2014

Ladies and Gentlemen:

We are submitting this letter as a supplemental comment in response to the October 3, 2014 Notice of Proposed Rulemaking on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (the "Proposed Rule") as promulgated by the Commodity Futures Trading Commission ("CFTC").<sup>1</sup> We appreciate the opportunity to submit a further comment on the Proposed Rule, issued pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

Jochen Leubner  
Our reference: Lbn  
Phone: +49 69 7431- 2569  
E-mail: [jochen.leubner@kfw.de](mailto:jochen.leubner@kfw.de)

This comment letter is submitted on behalf of KfW, and the views expressed herein are those of KfW only. KfW previously submitted a comment letter on the Proposed Rule, dated November 25, 2014 (the "Prior Letter"). In the Prior Letter, for the reasons described therein, KfW expressed the view that the use of swaps ("Swaps"), as defined under Dodd-Frank, by KfW do not pose the same types of systemic risk concerns which can be associated with uncleared Swaps transactions concluded by other market participants. As explained in the Prior Letter, KfW is a foreign government-linked entity owned by the Federal Republic of Germany (the "Federal Republic") and the German states and the obligations of KfW, including its obligations under Swaps it has entered into, are backed by the full faith and credit of the Federal Republic, due to a full, unconditional, explicit, statutory guarantee. Accordingly, we respectfully requested in the Prior Letter that the CFTC make clear in the final rule that KfW and entities like it, which are backed by the full faith and credit and the irrevocable guarantee of a sovereign government, are either (i) within the definition of a "sovereign entity" and therefore not subject to the margin rules otherwise applicable to Swaps not cleared by a registered derivatives clearing organization ("DCO"); or (ii) otherwise excluded from the definition of "financial end user" and not required to

<sup>1</sup> See 79 Fed. Reg. 59898 (October 3, 2014).



post or collect initial or variation margin under the margin rules.<sup>2</sup> We refer the CFTC to the Prior Letter for further background on KfW and its use of Swaps, and for additional detail on the recommendations made by KfW with respect to the Proposed Rule.

The purpose of this letter is to provide the CFTC with suggested language for inclusion in the Proposed Rule to address the issue raised above and in the Prior Letter regarding the status of entities such as KfW as "sovereign entities" under the Proposed Rule. The term "sovereign entity" is currently defined under the Proposed Rule to mean "a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government." KfW proposes to (1) amend this definition in the final rule by inserting the term "guaranteed public sector entity," immediately following the term "ministry;" and (2) adding a definition of "guaranteed public sector entity" as follows: "The term 'guaranteed public sector entity' means an entity owned by or established and sponsored by a central government, which is mandated to serve a public purpose specified by statute, and which is backed, with respect to its obligations in connection with any Swaps it has entered into, by an explicit, unconditional, full, statutory guarantee provided by the central government by which it is owned, established or sponsored."

For the reasons set forth in the Prior Letter, we believe that this clarification is needed in order to ensure that swap dealers are able to conclude that they are not required to collect margin from, and post margin to, entities such as KfW that satisfy the foregoing criteria. Without this clarification, we believe that the uncertainty regarding the scope of the exclusion for sovereign entities may cause certain dealers to apply the margin requirements to such entities. This result is unnecessary and unwarranted, is contrary to the intent of Congress and the CFTC and will result only in increased costs for KfW and the borrowers to which it is mandated by statute to provide lending and related services. We therefore respectfully request that our proposed amendment be included in the final rules on margin requirements.

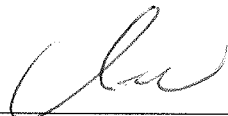
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Thank you for your consideration of our comments and please do not hesitate to contact David J. Gilberg of Sullivan & Cromwell LLP at 212-558-4680 or gilbergd@sullcrom.com if you have questions or would find further background helpful. We have sent a copy of this letter to the Federal Ministry of Finance of Germany in its capacity as KfW's owner and in its capacity as KfW's legal supervisory authority.

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<sup>2</sup> We note that the margin regulation proposals issued by the CFTC and the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (collectively, the "Prudential Regulators") are substantially the same in this respect. Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348 (September 24, 2014). As such, KfW will submit its comments in response to both proposals for consideration.

Sincerely,  
KfW



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Name: Andreas Müller  
Title: Senior Vice President



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Name: Dr. Frank Czichowski  
Title: Senior Vice President and  
Treasurer