

**BY ELECTRONIC DELIVERY at <http://comments.cftc.gov>**

November 23, 2015

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

Re: Proposal to Amend the Definition of “Material Terms” for Purposes of Swap Portfolio Reconciliation; RIN 3038-AE17

Dear Mr. Kirkpatrick:

Freddie Mac is pleased to submit these comments in response to the notice of proposed rulemaking by the Commodity Futures Trading Commission (the “Commission” or “CFTC”) regarding the amendment of the definition of “material terms” for purposes of swap portfolio reconciliation (the “Proposal”).<sup>1</sup> The Proposal would amend final rules (the “Portfolio Reconciliation Rules”) adopted by the Commission in 2012<sup>2</sup> under Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which directed the CFTC to prescribe regulations for the timely and accurate confirmation, processing, netting, documentation and valuation of all swaps entered into by swap dealers (“SDs”) and major swap participants (“MSPs”).<sup>3</sup>

Freddie Mac was chartered by Congress in 1970 with a public mission to stabilize the nation’s residential mortgage markets and expand opportunities for affordable homeownership and rental housing. Our statutory mission is to provide liquidity, stability and affordability to the U.S. housing market. Freddie Mac uses swaps to hedge large-scale commercial risks on an ongoing basis. Freddie Mac currently operates under the direction of the Federal Housing Finance Agency as our Conservator.

**Summary**

Freddie Mac strongly supports the efforts of the CFTC to implement the Dodd-Frank Act and its objective of enhancing stability and transparency in the swaps markets. We recognize that the Dodd-Frank Act requires the CFTC to establish appropriate requirements for swap portfolio

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<sup>1</sup> 80 FR 57129 (Sept. 22, 2015).

<sup>2</sup> 17 CFR §§23.500-505; Confirmation, Portfolio Reconciliation, Portfolio Compression and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012).

<sup>3</sup> See 7 USC §§6s(h)(1)(D); 6s(h)(3)(D) and 6s(i).

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reconciliation. However, for the reasons described more fully below, Freddie Mac believes that the Commission should continue to exclude the execution timestamp and swap data repository (“SDR”) submission timestamp data fields with respect to non-cleared swap transactions from the definition of “material terms” under §23.500(g) for purposes of compliance with the portfolio reconciliation requirements of §23.502.

### Discussion

In CFTC Staff Letter 13-31 (June 23, 2013), the Commission’s Division of Swap Dealer and Intermediary Oversight stated that it would not recommend enforcement action against SDs and MSPs that omit certain enumerated data fields (“no-action excluded data fields”), including the trade execution time (“execution timestamp”) and the submission time to the SDR (“SDR submission timestamp”), from the portfolio reconciliation process required under §23.502.

The Proposal would codify the staff position that SDs and MSPs need not reconcile certain of these data fields by adopting a regulation which excludes from the definition of “material terms” under §23.500(g) most of the no-action excluded data fields. However, unlike the staff position, under the Proposal the exclusion of the execution timestamp and SDR submission timestamp data fields is limited to cleared swaps, and SDs and MSPs and their counterparties would be required to reconcile these data fields for non-cleared trades for the first time. Failure to reconcile these data fields would result in a trade discrepancy, requiring resolution, escalation measures, error reporting and possible sanctions for non-compliance or other regulatory or business consequences.

While Freddie Mac respects the Commission’s view that “[t]he time of execution of an uncleared swap and the time of submission to an SDR is of regulatory value to the Commission for purposes of determining compliance of SDs and MSPs with the Commission’s regulations,”<sup>4</sup> Freddie Mac submits that the CFTC can meet this objective through inspection of the registered SDs/MSPs and SDR records. The alternative of imposing this portfolio reconciliation requirement on non-registered counterparties would create an undue operational burden and expense – requiring Freddie Mac to develop a new system, exclusively for this regulatory purpose, in order to capture and maintain the time of execution and the time of submission to an SDR and to administer resolution of data discrepancies.

With respect to SDR submission timestamps, Freddie Mac faces SDs in all of its non-cleared swaps transactions and is not an SDR reporting party. As a result, Freddie Mac is neither in control of, nor in a position to verify, the time of SDR reporting by its counterparty in the course of portfolio reconciliation or otherwise.

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<sup>4</sup> See 80 FR 57131, n. 28 and related text.

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In the case of execution timestamps, we believe a requirement to reconcile this field could lead to multiple unnecessary trade reconciliation failures. For trades transacted verbally or otherwise through non-automated means, each party may record a somewhat different time of execution, depending upon its individual trade capture system.

Even trades transacted through an automated "straight-through processing" (STP) system could be problematic since time of execution may involve a process that initiates with the SD "alleging" a trade, continues with the counterparty "affirming" the trade, and culminates with the STP system "recording" the trade. Trade formation technically occurs, in Freddie Mac's view, at the point of affirmation. Currently, Freddie Mac would not be concerned if the time of execution recorded by the STP system was somewhat different than the precise moment of affirmation. However, under the Proposal, Freddie Mac would be very concerned if the two times were different enough to cause a discrepancy at portfolio reconciliation and require additional and otherwise unnecessary time, effort and expense to resolve such discrepancy.

### **Conclusion**

For the foregoing reasons, Freddie Mac urges the Commission to continue to exclude from the portfolio reconciliation requirement of §23.502 the execution timestamp and SDR submission timestamp data fields with respect to non-cleared swaps.

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Freddie Mac appreciates the opportunity to provide its comments in response to the Proposal. Please contact me if you have any questions or would like further information.

Sincerely,



Wendell J. Chambliss  
Vice President and Deputy General Counsel  
Mission, Legislative and Regulatory Affairs Department  
Legal Division