

March 20, 2017

**VIA ELECTRONIC SUBMISSION**

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Comments in Response to Proposed Amendments to Rule 1.31**

Secretary Kirkpatrick:

On behalf of the eleven Federal Home Loan Banks (the “**FHLBanks**”), we appreciate the opportunity to comment on the Commodity Futures Trading Commission’s (the “**Commission**” or “**CFTC**”) proposed amendments to CFTC regulation 1.31 (the “**Proposed Amendments**”).<sup>1</sup> CFTC regulation 1.31 (“**Rule 1.31**”) imposes requirements with respect to, among other things, the form and manner in which market participants, who are required to maintain records pursuant to the Commodity Exchange Act (“**CEA**”) and CFTC regulations promulgated thereunder, must keep such records. The FHLBanks are participants in the derivatives market and, as a result, are subject to Rule 1.31’s requirements.

**I. The FHLBanks**

The FHLBanks are government-sponsored enterprises (“**GSEs**”) of the United States, organized under the authority of the Federal Home Loan Bank Act of 1932, as amended, and 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, all of the FHLBanks provide readily available, low-cost sources of funds to their member financial institutions through loans referred to as “advances.”

The FHLBanks, as end-users, enter into swap transactions with swap dealers to facilitate their business objective of safely and soundly providing liquidity to their member financial institutions and to manage and mitigate financial risk, primarily interest rate risk. As of September 30, 2016, the aggregate notional amount of interest rate swaps held by the FHLBanks collectively was over \$500 billion. At present, the FHLBanks are clearing a significant and growing percentage of their interest rate swap transactions. However, a percentage of FHLBank swaps are not currently eligible for clearing and it is anticipated that, even as the types of swaps that can be cleared expands, the FHLBanks will, for the foreseeable future, depend on the over-the-counter swaps market to meet their hedging needs.

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<sup>1</sup> Recordkeeping, 82 Fed. Reg. 6,356 (Jan. 19, 2017) (to be codified at 17 C.F.R. pt. 1 and 23) (the “**Proposing Release**”).

## II. FHLBank Comments

The FHLBanks commend the CFTC for its efforts to solicit input from market participants with respect to the application of Rule 1.31. The FHLBanks believe that the Proposed Amendments to Rule 1.31 strike an appropriate balance between (1) the Commission's need to ensure that it has access to, and the reliability and authenticity of, records that are required to be maintained under the CEA and CFTC regulations with (2) market participants' need for an updated recordkeeping standard that affords sufficient flexibility for the adoption of recordkeeping policies and procedures that make sense from a technological and business perspective. For this reason, the FHLBanks support the Proposed Amendments. In particular, the FHLBanks support the Proposed Amendments' removal of the Rule 1.31 requirements to:

- retain electronic records in their native file format;
- enter into an arrangement with a third-party technical consultant if electronic records are retained; and
- solely maintain CFTC records on the electronic storage medium employed for electronic records.

These requirements were unduly burdensome and impractical in light of the technological advances since Rule 1.31 was first adopted.

In addition, the FHLBanks offer the following comments:

- A. The Commission's requirements for the retention of electronic records should ensure maximum flexibility to market participants, particularly those that are already subject to requirements imposed by other regulators.

The FHLBanks recognize that the Commission wishes to ensure that it has access to market participants' electronic records and that such records are authentic and reliable. To this end, the Proposed Amendments impose (i) a general standard that applies to all records, *i.e.*, that records be in a form and manner that ensure their authenticity and reliability, and (ii) a standard that applies to electronic records, *i.e.*, the establishment of systems and controls to ensure the authenticity and reliability of electronic records.

The FHLBanks believe that imposing two recordkeeping standards is redundant. Accordingly, the FHLBanks suggest that the Commission remove proposed section 1.31(d)(2) from the Proposed Amendments and instead adopt the standard in proposed section 1.31(d)(1) for all records, irrespective of whether they are electronic. This would be consistent with the Commission's goal of ensuring maximum flexibility for market participants to avail themselves of technological advancements and is particularly important for market participants that are already subject to records retention requirements imposed by other regulators.

As an example, the FHLBanks are subject to robust record retention requirements imposed by the Federal Housing Finance Agency ("**FHFA**"), one of the five "Prudential Regulators" identified in Section 1a(39) of the CEA. If the Commission adopts two standards for the retention of records, including the detailed standard for electronic records set forth in proposed section 1.31(d)(2), the FHLBanks will be required to reconcile the Commission's requirements with that of the FHFA. However, doing so is burdensome and unnecessary because the FHFA's requirements are designed to ensure that the FHLBanks' records are authentic, reliable, and available for inspection. Accordingly, the Commission should adopt a general standard of authenticity and reliability for the retention of records and allow market participants to develop

systems that satisfy the Commission's interests as well as their business and other (e.g., regulatory) needs.

- B. In line with Acting Chairman Christopher Giancarlo's new agenda for the Commission, "Project KISS," the Commission should review all of its recordkeeping requirements to ensure consistency.

The FHLBanks recognize that it is necessary to have distinct standards for different entity types. In particular, the FHLBanks are of the view that registered intermediaries, namely swap dealers, futures commission merchants, introducing brokers, commodity pool operators, and commodity trading advisors, should be subject to requirements that are distinct from those to which non-registrants, *i.e.*, end-users, should be subject. However, even with respect to end-users, the Commission's regulations impose distinct, and in some cases, redundant, recordkeeping standards. The FHLBanks believe that having distinct recordkeeping requirements for end-users is complex, burdensome, and unnecessary. As an example, the FHLBanks are subject to recordkeeping requirements under, among others, Rule 1.31, Rule 1.35 and Part 45 of the Commission's regulations. Accordingly, the FHLBanks believe that the Commission should undertake to review, revise, and streamline all of its regulations that impose recordkeeping requirements on market participants that are end-users, including Rule 1.31. This would be in line with Acting Chairman Christopher Giancarlo's recently announced "Project KISS," which the FHLBanks understand is intended to make the Commission's regulations simpler, less burdensome, and less costly.<sup>2</sup>

- C. The Proposed Amendments, if adopted, should be phased-in over a period of six months.

The FHLBanks support the Commission's Proposed Amendments. However, developing and/or revising recordkeeping systems and controls can be time consuming and costly. Accordingly, the FHLBanks respectfully request that the Commission afford market participants ample time to come into compliance with the amended Rule 1.31, if and when the Proposed Amendments are adopted. At a minimum, the Commission should afford market participants six months after the effective date of the Proposed Amendments to come into compliance with the updated Rule 1.31.

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<sup>2</sup> See Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, "CFTC: A New Direction Forward," <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>.

We appreciate the opportunity to comment. Please contact Jamie Cain at (202) 383-0133 or [james.cain@sutherland.com](mailto:james.cain@sutherland.com), or Ray Ramirez at (202) 383-0868 or [ray.ramirez@sutherland.com](mailto:ray.ramirez@sutherland.com), with any questions you may have.

Respectfully submitted,

A handwritten signature in blue ink that reads "James M. Cain". The signature is written in a cursive, flowing style with a large initial 'J'.

James M. Cain  
Partner

cc: FHLBank Presidents  
FHLBank General Counsels