

December 23, 2019

Via Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street NW
Washington, DC 20581

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AE89)

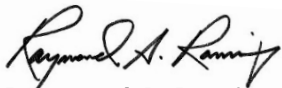
Dear Secretary Kirkpatrick:

On behalf of our clients, the eleven Federal Home Loan Banks (the "**FHLBanks**"), we appreciate the opportunity to respond to the above-referenced Commodity Futures Trading Commission proposed rulemaking (the "**CFTC Proposal**").

The FHLBanks previously submitted comments to the five federal banking regulators collectively referred to as the Prudential Regulators in the Commodity Exchange Act in response to a proposed rulemaking that would, among other things, extend the compliance deadline for initial margin requirements for certain market participants (the "**PR Proposal**"). Because the PR Proposal and CFTC Proposal are substantively the same in this regard, we respectfully submit the FHLBanks' comments in respect of the PR Proposal in response to the CFTC Proposal.

Please do not hesitate to contact us should you have any questions or require additional information.

Respectfully submitted,



Raymond A. Ramirez
Counsel
Eversheds Sutherland (US) LLP

Enclosure

cc: James M. Cain, Eversheds Sutherland (US) LLP
FHLBank Presidents
FHLBank General Counsels

December 9, 2019

VIA ELECTRONIC SUBMISSION

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Alfred M. Pollard, General Counsel
Attention: Comments/RIN2590-AB03
Federal Housing Finance Agency
Constitution Center (OGC Eighth Floor)
400 7th St. SW
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D 20429

Re: Response to Request for Comments – Margin and Capital Requirements for Covered Swap Entities

Ladies and Gentlemen:

On behalf of the eleven Federal Home Loan Banks (the "**FHLBanks**"), we appreciate the opportunity to respond to the above listed agencies' (collectively, the "**Prudential Regulators**") request for comments in respect of certain proposed amendments to the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (the "**Margin Rule**")¹ (such proposed amendments, the "**Proposed Rule**").² The FHLBanks support a balanced approach to regulation that provides the requisite amount of protection to the derivatives market while at the same time affording sufficient flexibility for participants therein to conduct their business. The FHLBanks support the amendments to the Margin Rule that would be made by the Proposed Rule, particularly the extension of the Margin Rule's final compliance date for initial margin requirements that would apply to those market participants (the vast majority of which are end-users) whose average aggregate notional amount ("**AANA**") of non-cleared derivatives (measured for the months of March, April and May 2020) is \$50 billion or below.

A. 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 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,

¹ Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840 (November 30, 2015).

² Margin and Capital Requirements for Covered Swap Entities, 84 FR 59970 (November 7, 2019) (the "**Adopting Release**").

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.”

As end-users, the FHLBanks 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, 2019, the aggregate notional amount of interest rate swaps held by the FHLBanks collectively was over \$590 billion.

B. FHLBank Comments

i. Extension of Compliance Date

The FHLBanks support the Proposed Rule’s amendments to the Margin Rule and commend the Prudential Regulators for taking steps to provide necessary guidance and relief in respect of the initial margin requirements.

In particular, the FHLBanks support the extension of the compliance deadline for initial margin, for those in-scope market participants whose AANA is \$50 billion or below, from September 1, 2020 to September 1, 2021.

As the Prudential Regulators recognized in the Adopting Release, ensuring compliance with the initial margin requirements of the Margin Rule imposes operational and other burdens on market participants.³ Among other things, compliance with the initial margin requirements necessitates the negotiation of, and entry into, documentation to exchange and segregate initial margin. Putting such documentation in place is time consuming and costly, particularly since such documentation will be required with multiple counterparties. In addition, ensuring the daily exchange of initial margin in a manner that complies with the Margin Rule requires the establishment of new systems, policies and procedures.

Dividing the final compliance phase for initial margin into two groups will ensure that those market participants who engage in a relatively limited amount of non-cleared derivatives (i.e., those persons whose AANA is \$50 billion or below (but above \$8 billion)) will be afforded additional time to put the necessary documentation and systems in place. This will help alleviate the potential congestion and market disruption that would result from the large number of counterparties that would come into scope under the current compliance schedule for initial margin under the Margin Rule as well as the strain on the non-cleared swaps market resulting from the increased demand for limited resources and services to comply with the Margin Rule.

ii. AANA Calculation for the Compliance Deadline

The FHLBanks recognize that the extension of the compliance deadline for initial margin, for those in-scope market participants whose AANA is \$50 billion or below, from September 1, 2020 to September 1, 2021, is meant to be in line with a recommendation that was issued by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (the “**BCBS/IOSCO Recommendation**”) earlier this year.⁴ Several other major jurisdictions, including the European Union, have adopted the BCBS/IOSCO Recommendation as published.

Insofar as the September 1, 2020 compliance deadline is concerned, the Proposed Rule is consistent with the BCBS/IOSCO Recommendation in that it requires the calculation of AANA for the months of March, April and May 2020. However, the Proposed Rule does not track the

³ See page 59977 of the Adopting Release.

⁴ BCBS/IOSCO *Margin Requirements for Non-centrally Cleared Derivatives*, published on July 23, 2019.

BCBS/IOSCO Recommendation insofar as the September 1, 2021 compliance deadline is concerned. The BCBS/IOSCO Recommendation would require in-scope market participants to calculate their AANA for the months of March, April and May 2021 to determine whether they are in scope for initial margin on September 1, 2021. In contrast, the Proposed Rule does not specify a period for calculating AANA for purposes of the September 1, 2021 compliance deadline. Instead, it applies the September 1, 2021 deadline to covered swap entities with any other in scope party.

The practical effect of this distinction is that, in the United States, pursuant to the Proposed Rule, the September 1, 2021 compliance deadline would be based on whether a potentially in-scope market participant (i.e., a “financial end-user” under the Margin Rule) has “material swaps exposure.” The Margin Rule defines “material swaps exposure” as having AANA of \$8 billion or more, calculated in the months of June, July and August of the preceding year.⁵

Due to the global nature of the derivatives market, the FHLBanks believe it is important for the initial margin requirements to be as consistent as possible between jurisdictions, particularly where compliance deadlines are concerned. A lack of consistency in this regard can result in market fragmentation, which can cause the concentration of risk and serve to dis-incentivize hedging. Accordingly, the FHLBanks: (1) support the Proposed Rule’s use of March, April and May 2020 AANA for the proposed September 1, 2020 compliance deadline (which would apply to those in-scope persons whose March, April and May 2020 AANA exceeds \$50 billion); and (2) respectfully request that the September 1, 2021 compliance deadline be based on whether an in-scope market participant has an AANA of \$8 billion or more, as calculated for the months of March, April and May 2021.⁶

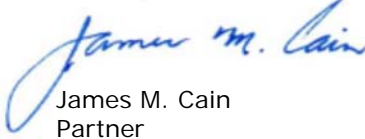
C. Conclusion

The FHLBanks appreciate the opportunity to comment on the Proposed Rule. Please contact Jamie Cain at (202) 383-0180 or james.cain@sutherland.com, or Ray Ramirez at (202) 383-0868 or ray.ramirez@sutherland.com, with any questions you may have.


⁵ So, for example, a financial end-user whose AANA exceeded \$ 8 billion in June, July and August of 2019 is deemed to have “material swaps exposure” in 2020 and, therefore, is in-scope for the initial margin requirements.

⁶ While the FHLBanks recognize that this is outside the scope of the Proposed Rule, the FHLBanks would support the adoption of the March, April and May timeframe for the material swaps exposure concept. Changing the timing for calculation of material swaps exposure from June, July and August of each year to March, April and May of each year would be consistent with the margin requirements of other jurisdictions, most notably the European Union.

Respectfully submitted,



James M. Cain
Partner



Raymond A. Ramirez
Counsel

cc: FHLBank Presidents
FHLBank General Counsels