



March 29, 2023

The Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

RE: Comprehensive Review of the Federal Home Loan Bank System

Dear Director Thompson:

SL Green Realty Corp. (“SL Green”) is a publicly held real estate investment trust (“REIT”), S&P 500 company, and New York City’s largest office landlord. As of June 2022, SL Green holds interests in buildings totaling 34.4 million square feet across New York City and the surrounding metropolitan area, including ownership interests in a significant number of residential units as well as several loans held on residential and/or multi-family projects in the debt and preferred equity platform.¹ As we noted in our initial comment letter submitted at the onset of the Federal Housing Finance Agency’s (“FHFA”) comprehensive review of the Federal Home Loan Bank (individually, “FHLB”, and collectively, “FHLBs”) system, we welcome the FHFA’s review thereof and appreciate the opportunity to participate in such process.

Our initial comment letter set forth several reasons why the FHFA, as part of its comprehensive review, should strongly consider exploring the responsible re-admission of captive insurer subsidiaries of mortgage REITs to the membership of the FHLB system, as set forth below:

- I. The FHFA’s 2016 final rule² excluding captive insurer subsidiaries of mortgage REITs defied congressional intent reflected in the plain language of the Federal Home Loan Bank Act of 1932 (the “FHLB Act”)³, which expressly noted that insurance companies shall be eligible for membership;
- II. The activities of captive insurance subsidiaries of mortgage REITs advance the statutory mission of the FHLB system; and
- III. The inclusion of captive insurance subsidiaries of mortgages REITs in the FHLB system does not negatively impact the system’s safety and soundness.

As the FHFA’s comprehensive review comes to its end this spring, we are concerned that certain participants in the FHFA’s listening sessions/roundtables or whom have submitted written comments as part of the agency’s public comment period have (1) mischaracterized the tangible benefits of granting FHLB membership to captive insurer subsidiaries of mortgage REITs (and/or mortgage REITs themselves) as well as broader housing ecosystem; and (2) grossly embellished any risks to the safety and soundness of the system in connection therewith. Further, as the FHFA addresses additional requirements or nuances related to current FHLB membership requirements and/or expanded membership (e.g., tiered membership and/or requiring a housing nexus for FHLB membership), we offer the following thoughts for the FHFA’s

¹ See *Corporate Profile*, available at <https://slgreen.gcs-web.com/> (October 2022).

² 12 CFR Part 1263 Members of the Federal Home Loan Banks; Final Rule.

³ 12 U.S.C. 1421, et seq.





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consideration as it begins the process of considering the impacts of such proposals on the broader housing industry as well as communities across the nation.

Accordingly, our comments herein will serve to (i) address additional nuances that the FHFA should take into account as it considers new or additional membership requirements, including a housing nexus requirement or tiered membership system; and (ii) emphasize our shared concern regarding the safety and soundness of the FHLB system and the means in which the inclusion of captive insurance subsidiaries of mortgage REITs in the FHLB System will not negatively impact the system's safety and soundness.

(I) Background:

As you know, in 2016, the FHFA promulgated a final rule that effectively banned captive insurance subsidiaries of mortgage REITs from FHLB membership despite (i) the FHLB Act, as the authorizing statute of the FHLB system, expressly stating that all insurance companies are eligible members thereof⁴, and (ii) the key importance of captive insurer subsidiaries of mortgage REITs and mortgage REITs themselves to the domestic housing finance industry. In February 2020, the FHFA issued a request for information to the general public with respect to a number of questions regarding membership eligibility of captive insurer subsidiaries of mortgage REITs, among other market participants.⁵ Despite receiving a number of comments from key stakeholders in the domestic housing finance industry advocating for the inclusion of captive insurer subsidiaries of mortgage REITs in the FHLB system, the FHFA did not announce new formal regulations updating membership requirements with respect to mortgage REITs and/or their captive insurer subsidiaries. However, in September 2021, the FHFA announced new guidance on the subject of eligibility of insurance companies in the FHLB system, which by and large continued to exclude captive insurer subsidiaries of mortgage REITs from the FHLB system.⁶

Ultimately, prior to the FHFA's implementation of the 2016 final rule regarding membership eligibility, SL Green had a mutually beneficial and productive relationship with the FHLB system. For approximately a decade, SL Green maintained Belmont Insurance Company ("Belmont"), a wholly owned taxable subsidiary, as a captive insurer. In October 2015, Belmont became the first captive insurance company member of the FHLB of New York; however, its membership thereof terminated in accordance with the terms of the FHFA's 2016 final rule. Similarly, Belmont was in the process of applying for membership to the FHLB of Boston in July 2014 when a three-month moratorium on admission of captive insurers was instituted in connection with the then-proposed rule excluding FHLB membership of captive insurers. While some have argued that captive insurers existed only as conduits to access the FHLB system, the facts indicate that Belmont was created, and in fact, continued to operate, in accordance with the mission of the FHLB system by serving as a meaningful participant in the residential mortgage finance marketplace.

⁴ 12 CFR Part 1263 Members of the Federal Home Loan Banks; Final Rule.

⁵ See *Federal Home Loan Bank Membership Request For Input*, available at <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-on-FHLBank-Membership.pdf> (February 2020).

⁶ See *FHFA, Supervisory Letter on FHLBank Membership Issues*, available at <https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/Supervisory-Letter-on-FHLBank-Membership-Issues-September-2021.aspx>. (September 2021).



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(II) FHFA Should Take A Reasonable Approach With Respect To Membership Requirements:

From the listening sessions and roundtables that the FHFA has coordinated over the last year, it is clear that the FHFA is deliberating over how to address the issue of membership in the FHLB system in such a manner that would promote the mission of the system while also ensuring the system is inclusive enough to benefit all relevant stakeholders in the nation's housing ecosystem. In particular, during the roundtables and other events, there has been some discussion regarding whether FHFA should implement a housing nexus test for new or existing members, among other related requirements.

We respectfully take this opportunity to advise the FHFA to take a cautionary and reasonable approach with respect to the implementation of such additional requirements for new and/or existing members of the FHLB system. We recognize and appreciate FHFA's desire to ensure that membership of the system is consistent with the system's overall mission. In fact, as more fully described in this comment letter, SL Green and other similarly situated entities play an important role in the nation's housing ecosystem, including in the affordable housing space. The FHFA should be careful to ensure that any requirements related to increasing the housing nexus for new members are not so onerous that stakeholders like SL Green are unable to join the system, and therefore, unable to help advance the FHLB system nor address issues related to affordable housing, among other underlying issues, causing the housing crisis nationwide.

As we noted in our initial comment letter, we emphasize that FHFA should consider a regulatory framework in which captive insurer subsidiaries of mortgage REITs may be granted membership to the FHLB system so long as they (or their parent entity, as applicable) satisfy a reasonable set of conditions, such as additional reporting requirements or eligible collateral, designed to promote the FHLB system's mission and mitigate any perceived risks to the safety and soundness of the system. **That said, the FHFA must ensure that any proposed additional requirements be reasonable, and in no way, be so onerous that certain entities which are heavily involved in the housing finance ecosystem and have the potential to further improve their affordable housing and community development footprint following membership in the FHLB system be locked out of the system.** For example, a requirement that a mortgage REIT have a unreasonably high percentage of its assets or ownership interests thereof in residential buildings vs. commercial buildings would lock out SL Green and similarly situated entities who currently have a larger ownership interest in office buildings as opposed to residential buildings, but would be highly interested in investing more in residential buildings, particularly those buildings containing affordable housing units, in the event it (or its captive insurer subsidiary) is granted membership in the FHLB system.

SL Green has historically originated loans secured by residential properties, many of which contain a significant number of affordable housing units, in New York City totaling approximately \$2.9 billion. Specifically, during the time period in which Belmont was a member of the FHLB of New York, SL Green pledged six loans and borrowed approximately \$300 million in the aggregate. However, as of the date hereof, the aggregate loan balance remaining is \$228 million (vs. the historic sum of \$2.9 billion), of which the last residential loan origination occurred in early-2020. The remaining loan balance is relatively small in comparison to SL Green's historic lending amounts and reflects a shift in strategy away from investments in and lending for residential housing purposes, including affordable housing. This forced shift in strategy to scale back lending for residential housing purposes was, in part, due to the FHFA's decision to exclude captive insurers from membership in the FHLB system, which ultimately left SL Green and other similarly



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situated mortgage REITs as well as Belmont at a significant disadvantage when competing with local and community lenders.

New York City, among other, urban areas across the country, has a strong need for additional residential housing opportunities, particularly affordable housing. For example, the 421(a) and Affordable New York programs have been phased out without sufficient replacements to address the affordable housing crisis, especially during the current economic climate. **It would be deeply misguided to enact unreasonable standards for membership in the FHLB system such that entities like SL Green (and/or the captive insurer subsidiaries thereof) could not partake in the benefits of the FHLB system, and in doing so, help advance the FHLB system's mission and goals.** The responsible expansion of membership to captive insurer subsidiaries of mortgage REITs would allow more entities such as SL Green, Belmont, and other similarly situated entities to take advantage of such programs while simultaneously furthering the FHLB system's statutory mission.

(III) Impacts of Expanded FHLB Membership On Safety and Soundness of the FHLB System:

During the listening sessions and roundtables, we were concerned to see that certain stakeholders repeated misleading assertions that the expansion of FHLB membership to include mortgage REITs and/or the captive insurance subsidiaries thereof would introduce an unreasonable amount of risk to the safety and soundness of the overall FHLB system. We re-emphasize that these assertions are misleading and ignore the history of the FHLB system prior to enactment of the 2016 rule during which time captive insurers were permitted to join the system, and there was no substantive evidence of additional risk to the overall system.

The facts demonstrate that in the almost-100 years that the FHLB system has existed, it has never experienced any credit losses on advances⁷. For the vast majority of such time period, captive insurers were included in the membership of various FHLBs. In fact, prior to the effective date of the FHFA's 2016 final rule regarding membership eligibility, all 11 FHLBs had policies in place with respect to eligible collateral and other safeguards related to non-depositories such as insurance companies.⁸

In addition, the notion that captive insurers are not subject to appropriate levels of regulation and oversight is also deeply misleading. As we noted in our initial comment letter, a captive insurance company (like all insurance companies) is regulated by the State insurance department of the applicable State in which such captive insurance company is domiciled. Accordingly, each captive insurance company must comply with the rules and regulations promulgated by its State's insurance department, including being subject to routine examinations by the applicable State insurance department. In fact, during the time period in which Belmont was a member of the FHLB of New York, it was subject to regulation and frequent inspections and examinations by the New York State Department of Financial Services.

Further, many captive insurers are the subsidiaries of publicly traded REITs. These parent entities are subject to stringent federal and state securities-related regulations and rules. For example, publicly traded mortgage REITs file a number of periodic public reports, including 10-Ks, 10-Qs and 8-Ks with the US

⁷ See, *Capital Markets Bureau Primer*, National Association of Insurance Commissioners, available at <https://content.naic.org/sites/default/files/capital-markets-primer-federal-home-loan-banks.pdf> (June 2020).

⁸ See, *Federal Home Loan Bank System Lending and Collateral Q&A*, FHLB Office of Finance, available at https://www.fhlb-of.com/ofweb_userWeb/resources/lendingqanda.pdf (March 2022).



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Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, as well as financial statements and accounting-related reporting deliverables under the Sarbanes Oxley Act. In addition, mortgage REITs are subject to several tax-related requirements, including, but not limited to, REIT income tests and asset tests, in order to maintain REIT status under the Internal Revenue Code.

(IV) Conclusion:

On behalf of SL Green, I thank you for the opportunity to comment on the FHFA's ongoing comprehensive review. The FHFA's on-going comprehensive review has been an important means of showcasing both the FHLB system's successes and failures over the years. As we have noted herein, one failure has been the FHFA's decision to lock out important stakeholders, like SL Green and others (and/or their captive insurer subsidiaries, as applicable), from partaking in the FHLB system, and in doing so, helping further the system's mission and goals. For the reasons described in this comment letter, we respectfully urge the FHFA to (i) revisit its 2016 final rule excluding captive insurance subsidiaries of mortgage REITs from membership in the FHLB system, and (ii) determine reasonable ways in which the responsible admission of such entities to the FHLB system would benefit all stakeholders in our nation's housing ecosystem.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Levine', is written over a circular stamp or watermark.

Andrew Levine
Chief Legal Officer – General Counsel
Executive Vice President
SL Green Realty Corp.