DISCLOSURE - #5
(fax)

Ann M. Kappler

Senior Vice President and
General Counsel
Legal Department

3900 Wisconsin Avenue, NW
Washington, DC 20016-2892
202 752 4850
202 752 4439 (fax)
ann_kappler@fanniemae.com

March 24, 2003

BY ELECTRONIC MAIL AND COURIER

Alfred M. Pollard, Esq.
General Counsel
Office of Federal Housing Enterprise Oversight
1700 G Street, N.W.
Fourth Floor
Washington, D.C. 20552

Re: Comments on Proposed Regulations Regarding Public Disclosure of Financial and Other Information; RIN 2550-AA25

Dear Mr. Pollard:

We welcome this opportunity to provide our comments on the proposal of the Office of Federal Housing Enterprise Oversight ("OFHEO") to amend its rules to specify public disclosure requirements applicable to Fannie Mae and Freddie Mac ("the companies") with respect to financial and certain other information. *See* 68 Fed. Reg. 3194 (Jan. 23, 2003). OFHEO indicates that the proposal is in part designed to facilitate the process of voluntary registration by the two corporations under section 12(g) of the Securities Exchange Act of 1934 (" '34 Act") (15 U.S.C. 78l(g)), but also reflects the agency's view that it is independently empowered to require and enforce financial and securities disclosure now generally regulated by the Securities and Exchange Commission. ("SEC"). 68 Fed. Reg. 3194 *supra* at 3195.

The framework OFHEO proposes is straightforward. OFHEO first would stipulate in proposed new 12 CFR 1730.3(a) that each company must prepare public disclosures relating to its financial condition, results of operation, business developments, and management expectations that include supporting financial information and certifications. 68 Fed. Reg. 3194 *supra* at 3196. It then would specify in proposed new 12 CFR 1730.3(b)(1)-(3) that this requirement would be satisfied by (1) preparing, and making public, annual, quarterly and current reports in accordance with the rules and regulations applicable to section 12(g) registrants, including SEC/staff interpretations and the rules governing audited financial statements; (2) filing with the SEC the reports, statements and forms required pursuant to section 14(a),(c) of the '34 Act (15 U.S.C. 78n(a),(c)) and by the rules and regulations thereunder (as if the company were a section 12(g) equity registrant not having securities exempted from '34 Act registration); and (3) filing by the enterprise's officers and directors with the SEC of all reports and forms relating to the enterprise's common stock that are required under section 16 of the '34 Act (15 U.S.C. 78p) and the rules and regulations thereunder (as if the company were a section 12(g) equity registrant not having securities exempted from '34 Act registration). 68 Fed. Reg. 3194 *supra* at 3196.

We agree with OFHEO on the importance of strong disclosure practices to our company, our investors, and policymakers. We believe, however, that the approach OFHEO has chosen to implement these objectives is inconsistent with the policy announced by Treasury, the SEC, and OFHEO last summer, and are beyond OFHEO's regulatory authority.[1]

In July of 2002, Fannie Mae announced that it would voluntarily register its common stock with the SEC pursuant to section 12(g) of the '34 Act. We took this unprecedented action in order to reassure the investing public and policymakers that our corporate disclosures would consistently meet the same standards applied to all other U.S. corporations and remain best in class. As confirmed by the SEC in its no action letter, dated July 12, 2002, this registration, once effectuated, cannot be reversed by Fannie Mae; it is permanent. And, once effectuated, Fannie Mae will be treated as any other '34 Act registrant by the SEC: Fannie Mae will be bound by federal law to make regular filings of Form 10-K, Form 10-Q, Form 8-K, and all other reports required of registered public companies by the '34 Act and SEC rules thereunder (other than those addressed specifically by proposed new 12 CFR 1730.3(b)(2)-(3)); and Fannie Mae will be subject to Regulation FD. Fannie Mae will be fully subject to SEC review and enforcement authority for failure to comply with any of these requirements.

Because of the exempt nature of Fannie Mae's securities, including the common stock we will voluntarily register with the SEC, the beneficial ownership, reporting, and certain proxy-reporting provisions of the '34 Act (sections 16 and 14(a) and (c), respectively) will not technically apply to the company even after our registration. Fannie Mae has long maintained detailed insider trading policies and procedures that mirror section 16's requirements. And, beginning in April 2002, Fannie Mae began publicly reporting all insider trades on our website, making that information available more quickly than insider transaction disclosures required for other SEC-registered U.S. companies. Similarly, Fannie Mae has long modeled its proxy disclosures on those required by the SEC pursuant to section 14(c) of the '34 Act and the SEC's rules thereunder. Therefore, Fannie Mae readily agreed with the Treasury Department, OFHEO and the SEC, in July 2002, that it would become fully subject to the requirements of sections 14 and 16 of the '34 Act, and would file its beneficial ownership and trading reports and proxy reports with the SEC, pursuant to OFHEO regulation. Accordingly, we fully support proposed section 1730.3(b)(2) and (3) of OFHEO's proposed new regulation.

We are troubled, however, by the fact that the proposal goes beyond filling in the regulatory "gaps" that the SEC would be unable to reach notwithstanding our voluntary registration. OFHEO's proposal asserts a parallel authority for OFHEO to act as a "back-up" regulator regarding the requirements with respect to which we now are under direct SEC jurisdiction by virtue of that registration. This assertion of overlapping authority is entirely unnecessary. The regulation and enforcement of disclosure under the securities laws is the fundamental, bedrock mission of the SEC. It has been doing this for roughly seventy years and has accumulated vast institutional expertise and

[1] When Congress has expressly intended to grant agencies other than the SEC authority to regulate financial institution disclosures, it has done so through statute. Section 12(i) of the '34 Act transfers the SEC's authority to the federal banking agencies. Despite numerous opportunities to extend the same or similar authority to OFHEO, Congress chose not to do so. And, even though the banking agencies have jurisdiction over bank securities disclosures, those agencies generally require that banks follow SEC rules.

an unmatched perspective. The OFHEO approach seems to contradict Director Falcon's July 12, 2002 statement in the question and answer session following the press conference on disclosure at the SEC. He said then that OFHEO's disclosure regulation would "involve just closing the gaps on a few technical issues related to the application of the '34 Act to Fannie and Freddie[,]" as well as his statement in his press release of that date that OFHEO "[would] promulgate a rule on disclosure that [would] facilitate the implementation of [Fannie Mae's and Freddie Mac's] voluntary action," and was "not pursuing a securities registration regime" for the companies. Congress has not charged OFHEO with the responsibility of investor protection. OFHEO's attempt to assume this role, in addition to or in place of the SEC, would not only be outside its statutory charge, but would also be a waste of OFHEO's resources and an unfortunate diversion of its institutional focus away from assuring the safe and sound operation of Fannie Mae and Freddie Mac.

The clear potential for regulatory conflict would exist in such a circumstance despite OFHEO's statement in the preamble to the proposal that it "anticipates no duplication of regulation." 68 Fed. Reg. 3194 *supra* at 3195. Charging an additional federal authority with enforcing securities laws, exclusively reserved to the SEC, would lead to a divergence in regulatory paths and inconsistencies in the securities laws which would confuse investors and create legal uncertainty.

Moreover, OFHEO's assertion of enforcement authority should OFHEO determine that Fannie Mae did not meet the SEC's requirements impinges directly upon the SEC's exclusive enforcement mission. There is no basis in statute or public policy for OFHEO to raise through this proposal the possibility that the agency might at some point seek to substitute its judgment for that of the SEC with respect to disclosure regulation and enforcement. We therefore strongly urge that the proposal be amended to delete proposed new 12 CFR 1730.3(b)(1), which would make failure to meet SEC requirements a violation of OFHEO's rules as well.

We urge OFHEO to restrict this proposal to the useful and appropriate exercise of filling in the "gaps" inaccessible to the SEC, and to make it clear that it will not seek to deviate from the disclosure standards established by that agency. It would be at best duplicative for OFHEO to establish a requirement that Fannie Mae must perform acts that we now are bound legally to perform pursuant to a statutory and regulatory framework administered and enforced by the SEC. Beyond that, it would be ill-advised for OFHEO to raise through this proposal the possibility that the agency might at some point seek to substitute its judgment for that of the SEC with respect to disclosure regulation and enforcement.

We have two comments of a technical nature. First, we wish to call your attention to an apparent drafting error, in that the proposal in proposed new 12 CFR 1730.3(b)(1) would require us to file reports and other materials required by staff interpretations of applicable law and regulation. What would constitute a staff interpretation is, of course, quite imprecise. More importantly, SEC staff interpretations, while important and informative, are not issued through rulemaking and do not establish legally binding and enforceable disclosure requirements for SEC registrants. We ask that OFHEO omit the reference to staff interpretations lest it seek to subject us to a unique, confusing, unpredictable and legally inappropriate regime in this area. We will treat SEC staff interpretations with the greatest seriousness, but they should not apply to us with any greater legal rigor than they would to any other registrant.

In addition, proposed new 12 CFR 1730.3(a) states that "[e]ach Enterprise shall prepare disclosures relating to its financial condition, results of operation, business developments, and management's expectations...." 68 Fed.Reg.3194 *supra* at 3196. We believe that the text should read "financial condition, results of operation and business" rather than as proposed, as the revision would track better the SEC's disclosure concepts. The SEC rules regarding business development and management expectations are more limited and will be adequately addressed through the periodic reports we will be required to file upon registration under the '34 Act.

* * * * * * * *

Thank you for this opportunity to express our views on this important proposal. Please contact me if you have questions or would like clarification of any of our comments

Sincerely,

Amkappler/pm

Ann M. Kappler