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Submitted Electronically

Legislative and Regulatory Activities Division
Attention: Comments/Docket ID OCC-2011-0008
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson, Secretary
Attention: Comments/Docket No. R-1415
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments/RIN 3064-AE21
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Constitution Center (OGC Eighth Floor)
400 7th Street, SW
Washington, DC 20024

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

Christopher Kirkpatrick, Secretary
Attention: Comments/RIN 3038–AC97
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Margin and Capital Requirements for Covered Swap Entities, Docket ID OCC-2011-0008/RIN 1557-AD43, Docket No. R-1415/RIN 7100 AD74, RIN 3064-AE21, RIN 2590-AA45, RIN 3052-AC69;[1]

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN 3038-AC97.[2]

The Securities Industry and Financial Markets Association ("SIFMA")[3] welcomes this opportunity to comment on the captioned rule proposals by the Federal Reserve, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Farm Credit Administration, Office of the Comptroller of the Currency, and the Commodity Futures Trading Commission (together, "the Agencies") pursuant to their authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Proposed Rules would establish minimum initial and variation margin requirements applicable to (a) uncleared swaps and security-based swaps entered into by registered swap dealers, securities-based swaps dealers, major swap participants and major SBS participants for which there is a Prudential Regulator and (b) uncleared swaps entered into by swap dealers and major swap participants that do not have a Prudential Regulator.

1 79 Fed. Reg. 57348 (Sept. 24, 2014).
2 79 Fed. Reg. 59898 (Oct. 3, 2014).
3 SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

These comments solely address the impact of the proposed rules on securitization transactions; SIFMA will submit comments on other aspects of the rule proposal separately.

1. Summary of Comments

SIFMA members support regulatory requirements for mitigation of counterparty and systemic risk that may be created through derivatives trading, including through imposition of initial and variation margin requirements. We agree with the Agencies that uniform daily margin requirements should not be imposed across the board, as shown by the proposed rule's differentiation between financial and non-financial end users (among other aspects of the proposed rules). We believe further refinement to this framework is needed with respect to swaps entered in to by securitization vehicles, such that uncleared swaps with securitization SPV's would not be subject to daily margin posting requirements unless the credit analysis of the SPV's counterparty determined it to be necessary. If the rules are finalized without change, we expect securitization to become a less attractive and more expensive funding mechanism for issuers. This will increase the cost of credit to the retail, commercial, and corporate end users who depend on securitization, as well as diminish the attractiveness of securitization as an investment opportunity for institutional investors. Accordingly, we propose a framework whereby certain securitization transactions would be characterized as non-financial end users (or otherwise have their obligations to post margin amended in a similar way) in the final rules.

2. Securitizations Do Not Present the Same Risk as Corporate/Other Counterparties

Securitization is an important part of the modern US and global economies. Securitization provides an essential source of funding for lending and other business purposes in excess of that which is available directly from the balance sheets of banks and other mortgage lenders. For example, in the US, the majority of mortgage loans are funded through securitization. This funding technique attracts tremendous amounts of private investment capital from investors around the world to our local markets. Securitization also promotes efficiencies throughout the lending system by transforming illiquid loans or other assets into highly liquid securities. Securitization can increase the availability of credit because loans or other assets do not have to sit on balance sheets and tie up scarce capital until they are repaid -- that is, lending capital is recycled more quickly -- to the benefit of consumers and businesses through lower interest rates, broader availability of credit, or both.

The impact of these proposed rules on securitization is potentially very broad and severe. While the proposed initial margin requirements would apply to relatively few securitization transactions, the variation margin requirements may apply to the majority of securitizations that utilize derivatives.

Securitization transactions may generally be described as limited-purpose, bankruptcy-remote entities formed to provide funding and manage risk. They pool assets, such as loans, and fund them through the issuance of debt or other obligations. Traditional securitizations are not operating companies and act only within parameters outlined in their formative documents. Indeed, most securitizations are static entities. Decision-making regarding pool assets is very limited and is controlled by a manager, servicer or a trustee. At times, certain decisions may require the consent by note holders.

Importantly for the contemplation of margin requirements, securitizations are generally unable to raise capital post-issuance.

Many securitization transactions employ swaps to match or hedge the cash flows that arise from the assets that collateralize the transaction to those which are required to be paid to investors in the liabilities issued by the transaction. These swaps are different from typical flow-traded swaps in that securitization swaps generally benefit from structural features designed to mitigate counterparty risk. As discussed above, securitizations are single purpose entities whose activities are highly restricted. They pose less

operational risk than corporate entities of a similar credit standing who are counterparties to a derivative. Because of this, securitizations do not create the same need for margin posting to protect transaction counterparties.

Some of these common structural features include:

- Securitization transactions are structured so as to provide collateral to support debt and other obligations of the trust, including any derivatives. In contrast, other swaps solely rely on the counterparty for repayment and may not be collateralized, hence the desire for appropriate margining arrangements to reduce counterparty risk exposures.

- The amount of collateral involved in a transaction should equal or exceed the swap counterparty's exposure to the securitization, providing additional protection.

- In other cases, individual credit derivatives are "defeased" by dedicated assets in a separate securities account in which the derivatives counterparty has a first priority security interest and its recourse typically is limited to those assets.

- Derivatives counterparties to a securitization have rights as a secured creditor, and securitization transactions typically place derivatives at or near the top of the priority of payments waterfall at least pari passu with or senior to note holders and other obligations of the transaction.

- Corporate securitizations such as whole-business securitizations[4] employ operational and financial controls in the form of a restrictive covenant package – including limits on disposals, mergers and acquisitions; the inclusion of a negative pledge; limits on ability to change the overall business make-up; restrictions on distributions leaving the group in certain circumstances, limits on making loans, incurring indebtedness and making guarantees. In some jurisdictions such as the UK, the availability of administrative receivership in an insolvency means that secured creditors (including swap providers) can continue to run the business or elect to sell the business or any part thereof without the interference of other creditors in the event of a distressed scenario.

It is possible that a swap counterparty could be placed in a position subordinate to note holders in the event of a default or other credit event of the counterparty (i.e., a flip clause). However, risk presented to the counterparty in these situations is limited. If the swap counterparty is "out of the money", it would not have credit exposure to the SPV. Even if the swap counterparty were "in the money", the benefits to the securitization transaction of terminating the swap are limited, given that termination would cause transaction cash flows to become unhedged. It is not in the securitization investors' interest for these cash flows to become unhedged. For this reason, many transactions require that a replacement counterparty be identified before swaps can be terminated. The premium paid by the replacement counterparty would be used to compensate the original counterparty for the value of the swap. Accordingly, the flip clause that subordinates the counterparty should not often be triggered.

[4] Whole business securitizations ("WBS") are structured and operate differently from other forms of securitisation described in this letter. Rather than securitizing a particular class of self-liquidating assets, a WBS structure is a form of financing whereby an SPV is established to issue notes that are secured on the cash-flows and cash-generating assets of a whole business. A number of these deals have been executed in the UK (as well as the US and Japan) and these structures have been utilized by airports, water companies, and ports, amongst others. There is no physical transfer of assets: instead a secured loan structure is used whereby the proceeds of the notes are on-lent to a borrower entity and ultimately to the operating company and the cash-flows from the business are used to pay off the loan and Notes over time. The security provided consists of fixed and floating charges granted over the loan receivables and assets of the company and is granted in favor of a security trustee who holds such security on behalf of the secured creditors, including the swap counterparty. Any swap counterparty typically ranks at least pari passu with the most senior class of debt in the priority of payments.

3. Impact of the Proposed Rules on Securitization Transactions

The impact of requiring securitization vehicles to post variation margin would be significantly negative and would likely constrain the ability of securitization to fund credit creation. For example:

- Securitizations cannot post margin without significant changes to the way in which the vehicles are structured, and these changes would be likely to render many transactions uneconomical. Securitizations are structured as they are in order to ensure the robustness of the securitization as counterparty to a swap provider, in order to meet rating agency requirements, and most importantly, to provide investors with exposures to cash flows in a form they desire.

- A securitization is generally only capitalized to the extent of its obligations, and traditional securitizations do not have an operating business to generate free cash flow, nor the ability to raise additional capital to fund margin requirements. Accordingly, they are not able to post variation margin, much less initial margin, to their derivatives counterparties.

- If not revised, the proposed rules would force securitization issuers into one of two bad options: issuing a transaction that complies with the rules, which may not be economically feasible, or issuing transactions that do not include derivatives. In either case, we believe that financing costs to retail, commercial, and corporate borrowers would increase without a material reduction in overall risk in the system.

- If a securitization were to be capitalized in such a way as to be able to comply with potentially unknowable margin posting requirements, the transaction would likely become less, or not, economical to its issuer. Securitizations would require potentially large cash reserves to be incorporated into the deal structure, and we believe this would cause issuers to look elsewhere for their funding needs. These cash-reserve alternatives will likely be more expensive than current securitization execution. Issuing corporate debt or raising equity, while more expensive than current securitization execution, may become preferable to the detriment of the ultimate beneficiaries of the capital raise (e.g., consumers, business customers, etc).

- Our members have also considered mechanisms whereby a third party would provide committed funding to the transaction for the purposes of meeting margin obligations. We believe this approach raises similar concerns as the approach above in terms of transaction economics and complexity, and is likely not workable for a significant portion of the market. As well as being potentially costly and somewhat theoretical, we also observe that these mechanisms simply transform a derivative exposure into a loan exposure. They do not reduce the amount of risk in the system - they just change its form.

- Finally, transactions could be issued without the use of derivatives. In some cases, such as repackaging transactions where the exposure purchased by the investor is transferred to the issuer via a derivative, it will not be practical to issue transactions without derivatives since the derivatives in those transactions are key to the nature of the transaction (e.g., they transform a fixed rate corporate bond into a floating rate bond). In other cases, if transactions were issued without derivatives, securitization would be a less flexible financing mechanism, reduce investor choice, and expose investors and issuers to increased risk.

    - Mortgage securitization provides an example. Investors may not want to buy fixed-rate bonds collateralized by 30-year fixed-rate mortgage loans (especially in a rising rate environment), but issuers would not be able to easily provide them with a floating rate option. Therefore, non-agency mortgage securitization of fixed-rate mortgages (which represent the vast majority of mortgage origination today) would become less attractive to investors, more costly for issuers, and less able to fund mortgage origination. The

opposite situation – issuance of fixed-rate note collateralized by floating rate collateral would be similarly constrained.

4. Proposal for Treatment of Certain Securitizations In a Manner Similar to Non-Financial End Users

We believe the regime set forth in the proposed rules for non-financial end users provides an appropriate analog by which margin requirements could be implemented for securitization transactions that contain appropriate internal structural risk mitigants.

According to the proposed rules, for trades with a non-financial end user, a swap entity that is a bank would only collect variation margin as it determines appropriate for credit risk management purposes. We believe this framework, which involves reasonable and documented judgment and credit analysis, is appropriate for swaps with securitization vehicles, given the built-in structural protections afforded their counterparties discussed earlier in this letter.

The use of this framework would be conditioned upon a transaction meeting the following criteria as of the swap execution date:

1. The derivative counterparty is a secured creditor of the SPV;
2. The derivative counterparty has implemented polices and procedures governing the review of material provisions of documentation for the securitization transaction related to the swap exposure;
3. The notional size of derivative does not, and cannot, exceed amount of collateral (including any guarantees) supporting transaction;
4. Any collateral posted to the SPV by a derivative counterparty is not commingled with the general funds or assets of the SPV through segregation, contractual provisions, or other mechanisms that protect and isolate the posted collateral.
5. The derivative counterparty is most senior or at least pari-passu with senior noteholders absent an event of default;
6. The SPV makes good faith efforts[5] to locate a replacement counterparty before swaps may be terminated, and the premium payment of a replacement provider for an in-the-money swap is passed on to the original swap provider.

We believe this approach would balance the need for risk mitigation with the need for securitization to continue as an effective and efficient means to fund lending and credit creation.

To the extent that the CFTC and prudential regulators are not comfortable with such a change to the proposed rules, they should provide no-action or other similar relief to allow securitization vehicles to be treated in a similar manner as non-financial end users.

[5] To the extent that the transaction is not unwound at this point.

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We appreciate this opportunity to provide comments on this important rule proposal. As discussed above, we believe this proposal has the potential to cause serious harm to the efficacy of securitization as a funding mechanism for consumer, business, and corporate borrowers and believe our proposed approach balances the need for prudential protections with the need for a vibrant securitization market to fund credit creation and economic activity. We would be pleased to discuss these comments further.

Should you have any questions or requests for clarification, please contact me at 212-313-1126 or ckillian@sifma.org.

Sincerely

Chris Killian
Managing Director
Head of Securitization