NYMT Insurance Holdings, LLC

Via e-mail: RegComments@fhfa.gov

January 6, 2015

Mr. Melvin Watt	Mr. Alfred Pollard
Director	General Counsel
Federal Housing Finance Authority	Federal Housing Finance Authority
400 Seventh Street S.W., Eighth Floor	400 Seventh Street S.W., Eighth Floor
Washington, D.C. 20024	Washington, D.C. 20024

Re: ***RIN 2590-AA39, Notice of Proposed Rulemaking and Request for Comments Involving Proposed Changes to the Regulations Concerning Federal Home Loan Bank Membership Criteria***

Dear Messrs. Watt and Pollard,

NYMT Insurance Holdings, LLC (the "Company") is a company in good standing, organized pursuant to the Michigan Limited Liability Company Act and licensed by the Michigan Department of Insurance and Financial Services as a pure captive insurance company pursuant to Chapter 46 of the Michigan Insurance Code of 1956, as amended. The Company is a wholly-owned subsidiary of New York Mortgage Trust, Inc. ("NYMT"), a publicly-traded real estate investment trust. In furtherance of the Company's support of the U.S. residential mortgage market, the Company's representatives have been engaged in membership discussions with the Federal Home Loan Bank of Indianapolis (the "FHLBI") since the first quarter of 2014. As a result of the 90-day moratorium imposed on June 12, 2014 by the Federal Home Loan Banks ("FHLBs") regarding the admission of new captive members, the review of the Company's application for membership with the FHLBI has been postponed.

The Company welcomes the opportunity to submit comments on Proposed Rule RIN 2590-AA39 (the "Proposed Rule") issued by the Federal Housing Finance Agency ("FHFA") on September 2, 2014. The Company offers the following considerations in support of the Company's objections to the Proposed Rule, which, among other things, seeks to prohibit insurance companies that provide coverage to affiliated entities from FHLB membership:

i. The FHFA's justification for requiring members of the FHLB that participate in the FHLB system on the basis of being insurance companies to provide coverage for third party risks is misplaced because it assumes that companies that insure nonaffiliated business are more likely to support the purposes of the Federal Home Loan Bank Act of 1932 (the "FHLB Act") than those insurance companies that insure the risks of affiliates;

ii. The Proposed Rule presumes that insurance companies whose primary business is insuring nonaffiliated persons or entities are more closely and effectively regulated than insurers that provide coverage to affiliated entities, which presumption is disputed by the transparent and detailed regulatory framework under which most captive insurers are regulated, and industry statistics which indicate that captive insurers are less likely to fail than their commercial insurer counterparts;[1]

iii. The FHFA's interest in preventing the circumvention of the requirements of FHLB membership is not served by disqualifying entities that are eligible for membership, other than for the fact that their owner(s) does not meet the eligibility requirements.

As will be discussed in further detail below, the stated reasons for the Proposed Rule not only are lacking justification based on the reality of the circumstances as they currently exist in the FHLB system, but fail to serve the purposes of the FHLB Act.

I. Supervisory Concerns – Furtherance of the FHLB Purpose

The Company acknowledges the interest of the FHFA and FHLBs in ensuring that members' activities are consistent with the purpose of the FHLB Act and the mission of the FHLBs. The Proposed Rule, however, does not invoke changes that would decrease the likelihood that members will be admitted who do not act in furtherance the FHLB Act purposes. Instead, the Proposed Rule recommends discriminatory treatment of a subset of those members (and potential members) that qualify as "insurance company" members under the FHLB Act.

A. Congressional Intent

The purpose of the FHLB Act and the mission of the FHLBs, as stated by the FHFA, is to provide liquidity to the U.S. mortgage market by providing members with access to low cost borrowings on favorable terms. The membership requirement framework in the FHLB Act is structured to ensure that only participants that will participate in residential mortgage lending activities are eligible for membership. Still, this framework, which has been in place since the inception of the FHLB Act, is constructed broadly, and, up until the issuance of the Proposed Rule, has been construed the same way. The membership eligibility provisions indicate that"[a]ny . . . insurance company," as long as such company (i) is duly organized under the laws of any state, (ii) is subject to inspection and regulation, and (iii) makes long term home mortgage loans (which includes holding interests in assets securitized by such loans) are suitable for membership. Congress has the authority to define "insurance company" and other eligible entities under the FHLB Act. As the FHFA notes in its notice of proposed rulemaking, when the FHLB Act was passed and when insurance companies were originally included as eligible

[1] The terms "captive insurance company" and "commercial insurer" are used here for ease, and are intended to refer to the distinction made by the FHFA between insurers that provide coverage to affiliated entities (captive insurance companies) and insurers whose primary business is to provide coverage to nonaffiliated persons or entities (commercial insurers) although we note that many captive insurance companies insure the risks of nonaffiliated entities pursuant to the licenses granted to such companies under the applicable statutes of their state of domicile.

members, life insurers were the primary insurance companies engaged in the business of providing or investing in residential mortgage loans. Nevertheless, Congress elected not to specifically identify eligible members as life insurance companies, but chose to generally provide that "any insurance company" could be eligible for membership.

Contrary to the FHFA's contention that this term is ambiguous, and now requires further specification, is the factual reality that at the time the FHLB Act was enacted, life insurance companies were not the only type of insurer, and had Congress intended that membership only be available to certain types of insurers, could have made such a specification. The fact that Congress elected not to define the term "insurance company" or specifically limit eligibility to life insurance companies as eligible members, and instead included the term "any insurance company" as an eligible FHLB member unequivocally establishes Congress' intent for FHLB membership eligibility to be construed as broadly as possible to support to purpose of the FHLB Act and the mission of the FHLBs. Defining the term "insurance company" in the manner suggested in the Proposed Rule to exclude certain entities that are organized, licensed and regulated as insurance companies is not, as the Proposed Rule suggests, within the scope of the FHFA's rulemaking authority. Instead, it conflicts with the clear and unambiguous text of the FHLB Act, which can only be amended through congressional action.

If the FHFA legitimately believes that the phrase "any insurance company" in the FHLB Act is ambiguous and really means "certain insurance companies" that satisfy the FHFA's proposed definition, then the issue of amending the language should be raised for Congress to address. On multiple occasions, Congress has expanded the categories of eligible members and facilitated access to the important funding the FHLBs provide. Specifically, Congress expanded membership to commercial banks and credit unions in 1989 and, more recently, to CDFIs in 2008. It is illogical to think that Congress would suddenly reverse its approach to expanding access to the FHLBs by narrowly construing the term "any insurance company" to exclude certain types of insurance companies.

B. Regulation of Insurance Companies is left to the States

Underlying the delegation of insurance regulation to states in the McCarran–Ferguson Act is the emphasis on the need for there to be clear and consistent oversight of insurance by experienced regulators who understand the applicable laws of the states and the activities of the insurance companies. In the Proposed Rule, the FHFA states that the definition of an "insurance company" to mean "a company whose primary business is the underwriting of insurance for nonaffiliated persons" would have the "principal effect" of prohibiting captive insurers from becoming FHLB members. There are various types of captive insurance companies, but even the most straightforward type of captives, commonly known as "pure captive insurance companies", are permitted in most states to underwrite certain types of unaffiliated business. This underwriting of unaffiliated business easily could constitute a majority of a captive insurance company's business. A significant portion of captive insurance companies qualify as "insurance companies" for U.S. federal income tax purposes, which among other things, means they have sufficient distribution of risk. In that regard, the treatment of these captive insurance companies under the Internal Revenue Code (and by the IRS) is indistinguishable from the treatment of "traditional" insurance companies. Accordingly, contrary to the FHFA's assertions in the Proposed Rule, many captive insurance companies satisfy the "insurance company" definition

therein. Neither the FHFA nor the FHLBs are in a position or have the expertise to scrutinize the specific operations or activities of eligible FHLB members (insurance company or otherwise), and because no such scrutiny is required under the broad, all-inclusive language of the FHLB Act, the provisions in the Proposed Rule concerning the scope of coverage provided by insurance companies are unnecessary and raise significant concerns about potential unjust and arbitrary application of the membership standards and federal interference with state regulatory matters

C. Affiliated v. Nonaffiliated Coverage

The negative positions that the FHFA has publicized in the Proposed Rule and the related communications regarding captive insurers signify the FHFA's lack of understanding regarding the captive insurance industry. The FHFA's commentary fails to recognize that the ownership and insurance program structure of many captives, and specifically the purpose of insuring the risks of their owner or group of owners, creates an inherent and significant incentive for effective self-regulation. Unlike the commercial insurance industry, in which the interest of the insurance company to generate profit conflicts with the insureds' interest in maximizing coverage and minimizing premium payments, the insureds' and insurer's interests generally are aligned in the captive context because of the relationship between insured and insurer. This has resulted in fewer insolvencies, claim-related disputes and other problems for captives in comparison with commercial insurers, which, in turn, has helped captives maintain a low profile and avoid significant regulatory scrutiny. The FHFA alleges that the lack of objective financial information regarding captive insurers is indicative of captives being unfitting members of the FHLB, when in fact, as participants in the captive insurance industry are aware, is a testament to their sound operation and financial viability, which in turn renders captives valuable assets to the FHLB system.

The FHFA notes that "there have been instances in which institutions having only minimum home mortgage loan assets and no plans to originate or purchase any significant amount of such assets have been permitted to become Bank members." This statement however, overlooks how the actual operation of the FHLBs furthers the FHLB Act in practice. The borrowings are provided on an over-collateralized basis and the type of collateral that may be pledge is restricted. Accordingly, within that framework and because borrowings are restricted to the amount of a member's eligible collateral available for pledge, it would seem that the most ideal FHLB member candidate (from a conceptual perspective) is the one with the highest concentration of eligible collateral available for pledge as this would allow the FHLBs to provide substantial liquidity to the U.S. mortgage market. However, rather than properly identifying the amount and concentration of eligible collateral as a significant opportunity for the FHLBs to advance their mission, as many FHLBs have done, the FHFA instead has cited it as a basis for the need to eliminate captive insurance companies as eligible members altogether.

II. Safety and Soundness Concerns – Underwriting affiliated v. nonaffiliated risks

Turning to the "safety and soundness" concerns, the FHFA argues that captive insurance company members present unique and material credit risks to the FHLBs. The FHFA does not provide any evidence to support its claim that captive insurance companies pose greater credit/default risk than other members, including traditional insurance companies. Industry data

demonstrates that captive insurance companies fail at a much lower rate, proportionally, than traditional insurers.[2] Not only do captive insurance companies generally have a lower default rate than traditional insurers, but also the default of single parent captive insurance companies is extraordinarily rare. Most FHLB captive insurance companies (including the Company) are formed as single parent, pure captives and, in most cases, the insurance risk is fully funded in capital, as required by state regulation. As a result, the likelihood that an FHLB captive insurance company member would experience a default in connection with its insurance program is highly unlikely. Therefore, unlike any other eligible FHLB member, the credit risk of captive insurance company members is almost exclusively tied to the underwriting of FHLB mission-specific investments.

A. Regulation of Captive Insurers

Further, captive insurance companies are subject to the same or similar regulatory framework as traditional insurance companies and,[3] as a general matter, are subject to far more oversight and regulation than CDFIs. As part of the regulatory framework, captive insurers (i) must submit financial information (including, in most jurisdictions, audited financial statements and certifications from an actuary regarding the sufficiency of funding) to the state regulator at least annually, (ii) must maintain minimum capital and surplus to satisfy state law (net of the actuarially determined loss reserves), (iii) are prohibited from distributing assets from the captive without regulatory approval, (iv) must submit a business plan to the regulator, conduct business solely in accordance with such plan, and submit any proposed changes to the regulator for approval, (v) must engage an independent auditor and independent insurance manager, and (vi) generally have at least one independent manager/director serving on the board. If the ongoing solvency of a captive becomes a concern, state regulators typically intervene to varying degrees depending on the level of concern. Such intervention can include actions such as requiring that the parent company contribute more capital, requiring the captive to charge higher premiums, requiring more frequent financial reports, or, in worst case scenarios suspending the captive's license. As a result of the foregoing, contrary to the FHFA's suggestion, it is very unlikely that the captive insurance company could ever operate against its own self-interest or that its financial condition could deteriorate rapidly without the regulator's and/or the FHLB's knowledge. Such rapid deterioration in the context of FHLB captive insurance company members would be almost exclusively limited to a significant and severe decrease in investment value. However, such investment risk is not unique to captive insurance companies and is shared by all FHLB members.

Furthermore, because the captive regulators regularly monitor the financial performance of captive insurance companies and because captives are prohibited from transferring assets without the permission of the regulator, it is not possible for the captive insurance company to serve as a "conduit" to merely pass through FHLB borrowings. Because such borrowings, either through a direct or affiliate pledge model, must be advanced to the FHLB member, they

[2] See A.M. Best, Special Report on U.S. Captive Insurance (August 2014) (comparing various financial and solvency ratios of captive insurance companies with traditional insurers and finding that captives "substantially outperformed" their traditional insurer counterparts).

[3] *See e.g.*, Comments of the Delaware Department of Insurance, MN 2590-AA39 3-4 (Apr. 1, 2011); Comments of the Vermont Department of Banking, Insurance, Securities' and Health Care Administration, RIN 2590-AA39 2 (Feb. 23, 2011); Comments of the Captive Insurance Company Association, RIN 2590-AA39, 1-2 (Mar. 27, 2011); *see also* NAIC, Captive Insurance Companies (Aug. 5, 2014), http://www.naic.orgicipr_topics/topic_captives.htm ("Once established the captive operates like any commercial insurance company and are subject to state regulatory requirements including reporting, capital and reserve requirements.")

generally must be reflected on the company's balance sheet. Furthermore, because the FHLB advance constitutes a liability of the captive insurance company, the state regulators will not allow the captive insurance company to transfer the funds if doing so would result in an adverse financial position. Therefore, the Company expects that its balance sheet presentation, and the precise transparency regarding the use and nature of the FHLB advanced funds to facilitate liquidity and mission-specific investments, is consistent with many other FHLB members. As a result, the "conduit" characterization, and its use as a negative connotation for captive insurance company operations is improper and unsupported by any factual evidence in the Proposed Rule.

B. The FHFA Mis-characterizes Mission-Specific Financings as Problematic "Conduits"

One of the concerns raised by the FHFA most frequently in the Proposed Rule pertains to their characterization of captive insurance companies are as "conduits" for financing activities of non-eligible entities, like real estate investment trusts, such as NYMT. With respect to this "concern," it is important to note that (i) the conduit characterization is irrelevant under the FHLB Act, which instead describes broad categories of eligible FHLB members and focuses on the facilitation of U.S. mortgage origination and investment activities that are consistent with the mission of the FHLBs, and (ii) because money is fungible, it is impossible to track the use of specific FHLB borrowings by any type of FHLB member, captive insurance company or otherwise. This is especially true because many of the same FHLB borrowing structures (*e.g.*, direct or affiliate pledge), inter-company transfer and external transactions (e.g., loans, sales, etc.) are available to and used by other types of FHLB members. For example, if a life insurance company uses FHLB advances to buy mortgages from an originator, then it would seem that the same "conduit"-type logic would apply because the originator (an ineligible entity) is gaining access to FHLB advance funds through the eligible entity's purchase of assets or loan of funds as an investment strategy, the same type of transaction that exists in many of the FHLB captive insurance company structures.[4]

It is possible that the FHFA would point to the volume and concentration of the captive insurance companies' activities in this regard as being the distinction between the life insurer example. However, it should be noted that (i) some captive insurance companies (and many others are capable of doing so) do not necessarily transfer (through eligible asset purchases or loans) the FHLB advanced funds and instead use such funds for their own operational and investment activities, and (ii) regardless of the manner in which it is accomplished, a high volume and concentration of assets on the captive insurance company's balance sheet that are eligible for pledge to the FHLBs should not cause any conceptual concern to the FHFA insofar as such volume and concentration pertains almost exclusively to the support of the FHLBs' mission.

In short, the purpose of the FHLB Act and the mission of the FHLBs is to provide liquidity to the U.S. mortgage market by providing members with access to low cost borrowings

[4] While the FHFA does not provide any information in the Proposed Rule, it would be interesting to know to what extent the FHFA is aware of, or investigated as part of the necessary due diligence in connection with the Proposed Rule, the extent to which other types of eligible FHLB entities transfer FHLB advanced funds to ineligible entities within the same corporate system. Because there is no restriction in the FHLB Act on such transfers, it is unlikely that the FHFA has ever had any cause to look into this issue. However, because it is being highlighted as a problematic aspect of captive insurance arrangements, one would assume that the perceived problems, if legitimate, would have caused the FHFA to evaluate the prevalence of the practice rather than merely isolating a particular class/category of FHLB members.

on favorable terms. The borrowings are provided on an over-collateralized basis and the type of collateral that may be pledge is restricted. Accordingly, within that framework and because borrowings are restricted to the amount of a member's eligible collateral available for pledge, it would seem that the most ideal FHLB member candidate (from a conceptual perspective) is the one with the highest concentration of eligible collateral available for pledge as this would allow the FHLBs to provide substantial liquidity to the U.S. mortgage market. However, rather than properly identifying the amount and concentration of eligible collateral as a significant opportunity for the FHLBs to advance their mission, as many FHLBs have done, the FHFA instead has cited it as a basis for the need to eliminate captive insurance companies as eligible members altogether.

C. The FHLBs Have Processes and Procedures in Place to Mitigate Credit Risk

In over 80 years of existence, the FHLBs have never sustained a loss on its advances to members. This experience evinces that the FHLBs have established safe and sound processes, procedures and controls to protect against the credit risk of member borrowing, regardless as to whether the member is an insurance company, bank, credit union, or otherwise. On this point, it is the Company's understanding that although there generally are three categories related to the method of pledging collateral to the FHLBs (i.e., blanket lien status, listing status, and delivery status), the delivery status method is most commonly utilized or required for collateral pledged by insurance companies. This method, which specifically gives the FHLB physical possession of the pledged assets, provides the FHLBs with significant protection against credit risk.

Captive insurance companies are generally pledging the exact same types of assets and collateral as the other FHLB members. Furthermore, like all other members, captive insurance companies are required to purchase (i) membership stock based on the applicable asset test of the FHLB, and (ii) activity stock based on the amount of active borrowings. Therefore, if FHLB advances are provided on an over-collateralized basis and the FHLB credit/collateral policies and procedures and stock purchase requirements are consistently applied, then it is unclear how or why captive insurance company members would present any greater or lesser credit risk to the FHLBs than any other member. Interestingly, CDFI members lack a federal or state-sponsored backstop or insurance fund (*e.g.*, the FDIC, NCUA, etc.) in the event of insolvency, which theoretically may be viewed as an enhanced credit risk as compared to other FHLB members, and yet CDFIs were explicitly approved by Congress as eligible FHLB members in 2008, and their continuing membership/unique credit risk is not being questioned in the Proposed Rule.

III. The Proposed Rule does not serve the stated purposes of the FHFA, and is Harmful to the FHLBs and the U.S. Mortgage Market

A. The Proposed Rule will cause Damage on the basis of Theoretical Problems

The proper way to evaluate the need for regulatory action is to first identify a problem intended to be addressed by the action; next, to evaluate the likelihood that the action will correct the problem; and lastly, to determine whether the benefits outweigh costs or collateral damage associated with the action. The Proposed Rule does not address any specific, tangible problem, raises theoretical and conceptual issues, and would actually serve to harm the FHLBs and the U.S. residential finance market. The issues noted by the FHFA do not serve as a basis for

justifying the validity of the Proposed Rule. Further, the Proposed Rule is devoid of any information and analysis concerning the impact the rule would have on the FHLBs (both from a financial and membership status perspective), the U.S. mortgage market or the affordable housing programs ("AHPs"). This is of particular concern because this information and analysis is of paramount significance to facilitating the type of robust and informed discussion that is the fundamental principle of notice-and-comment rulemaking. Accordingly, the Proposed Rule fails the criteria of sound regulation.

There are 20 current captive insurance company members of the FHLB. Even though the number is limited, captive insurance companies represent a significant portion of the active borrowings of the FHLBs, with figures indicating that there are approximately $10 billion in FHLB advances outstanding to captive insurance company members. In the FHLB of Indianapolis alone, the advances to captive insurance companies constitute approximately 10%-20% of the total outstanding advances. If the membership of the current captive insurance company members of the FHLB is terminated, then it will have a significant and immediate corresponding effect on (i) the liquidity available in the U.S. mortgage market, (ii) the financial performance of the FHLBs, and (iii) the amount of funding available for the continued advancement of affordable housing. In some cases, the financial impact could be so severe that it could jeopardize the independent status of one or more of the FHLBs and could force consolidation. When the impact is expanded from the current membership to the prospective opportunities that would be eliminated by precluding new captive insurance companies from becoming members of the FHLBs, the adverse consequences would be compounded annually.

Perhaps a more troubling consequence of the Proposed Rule is the effect it will have on the funds available to support AHPs. FHLBs do not pay federal income tax and, instead, are obligated to contribute 10% of their annual income to AHPs through various grant programs. The termination of current captive insurance company members and the prohibition of future captive insurance company members will significantly reduce the amount of total outstanding actual advances and eliminate future advance opportunities, which in turn will reduce the annual income of the FHLBs. If the FHLBs' annual income is reduced by the Proposed Rule, then the funds available for AHP grants will, likewise, be reduced. This result is a significant adverse consequence of implementing the Proposed Rule in its current form. However, because it is not highlighted or discussed in the Proposed Rule, people and organizations that benefit from or depend on AHP grants may be completely unaware of the impact the Proposed Rule will have on them. The FHFA must be more transparent in stating the consequences of the Proposed Rule and defending the validity of the Proposed Rule in light of those consequences.

The FHFA's Proposed Rule to eliminate FHLB membership for captive insurance companies operated by responsible mortgage market participants limits the ability of these firms to support affordable credit for prospective homeowners. Although FHLB funding to mortgage real estate investment trust ("MREIT") captive insurance companies is not presently a significant component of consolidated MREIT financing, it is an avenue for growth of stable funding at reasonable terms. If the FHFA enacts the Proposed Rule, there will be reduced availability of stable financing for investments for current members of the FHLB system as well as those seeking admission, which may further limit the number of firms dedicated to supporting the market for residential mortgages. A relative tightening of credit for homebuyers would also

adversely impact new home construction, which otherwise has the potential to be a major contributor to economic growth and employment gains given depressed levels of construction activity since the crisis. In short, the withdrawal of liquidity threatened by the Proposed Rule would hinder the housing recovery.

We believe the ongoing membership tests proposed by the FHFA will have a similar stifling effect. These proposed membership tests (requiring all FHLB members to maintain 1% to 5% of assets in home mortgage loans and require non-CFI depository institutions to maintain 10% of assets in home mortgage loans) are arbitrary and without basis in the FHLB Act. Although we do not expect the proposed ongoing eligibility requirements would affect the manner in which the Company conducts its business or its membership eligibility, we are concerned with this aspect of the Proposed Rule as an FHLB member and significant mortgage market participant.

These membership requirements could hinder sound balance sheet management (particularly in times of financial stress with mortgage valuation instability) and disadvantage seasonal community lenders and mortgage banks that sell mortgage production. Further, these proposed requirements fail to recognize that members, including captive insurance companies, may from time to time sell their mortgage holdings into the secondary market. In addition, the proposed ongoing eligibility tests are unnecessary as the existing FHLB collateral policies (discussed below) ensure support of the FHLB system mission and that members are participating in the mortgage market at significant levels. Whenever any member seeks an advance from an FHLB, it must provide "eligible collateral," which is determined by statute, representing a mechanism put in place by Congress to ensure that advances were appropriate for the FHLB system's goals. The FHFA proposes to inject arbitrary limitations and disincentives to FHLB membership and uncertainty into the system even though, as it notes, "FHFA has found no evidence that this problem [of institutions having only minimal home mortgage loan assets and no plans to originate or purchase any significant amounts of such assets] is widespread."

Restricting FHLB membership through the FHFA's newly-proposed eligibility requirements, including the elimination of a class of members permitted by the FHLB Act, inhibits the ability of the FHLB system to profit from its relationships with insurance companies and other eligible members, ultimately limiting the ability of FHLBs to support affordable housing through that portion of the FHLBs' earnings. Monitoring ongoing eligibility requirements would require FHLB member banks to move from a lending role to that of a regulator, imposing additional operational costs on the FHLB system. Breadth of membership and participation are key components of the FHLB system that allow it to provide products and services to advance the FHLB goals of market liquidity and affordable housing. Adoption of the Proposed Rule requirements would fundamentally and negatively alter the relationship the FHLB system has with its members, may deter desired FHLB membership and ultimately reduce FHLB's earnings that could otherwise be used to support affordable housing. As such, adoption of the Proposed Rule would adversely affect the ability of the FHLB to meet its mission to support the housing market.

B. Contrary to the FHFA's Contention, Captive Insurance Company FHLB Members Lower Mortgage Market Risk and Volatility

Interest rate risk is one of the most critical and potentially harmful risks related to the reemergence, continuation and/or worsening of the U.S. mortgage market crisis. Most borrowers generally have been limited to utilizing rehypothecation arrangements as their primary means for facilitating investments in U.S. mortgage market assets or otherwise supporting the U.S. mortgage industry. In most instances, the rehypothocation arrangements are short term in nature (overnight to 30 days) even though the underlying rehypothecated asset may be for a much longer duration. This mismatch in the term of a financing and the term of the asset creates potential risk associated with the volatility of interest rates, which impacts the profitability of the underlying asset. Furthermore, in the event of a market crisis, short term funding can be difficult to obtain or entirely nonexistent. This unavailability of funding, in turn, can lead to an exacerbation of the crisis as borrowers are forced to immediately sell off assets in order to generate sufficient liquidity to support ongoing operations (*i.e.*, survive).

The FHLBs provide a source of stable and long term funding. This enables members to better manage their interest rate risk by matching the term of funding with the term of the underlying asset. The reduction in risk associated with interest rate volatility facilitates more investment in mortgage market assets, thereby mitigating the likelihood of a crisis. Likewise, in the event a U.S. mortgage crisis does arise, the long term funding and stability/reliability of FHLB funding serve as valuable mechanisms for both (i) assisting members in navigating and surviving the crisis, and (ii) limiting the duration of the crisis.

As noted above, the current captive insurance company members of the FHLBs represent a notable portion of the outstanding advances and the advances could easily grow to $100 billion or more over the next several years as additional members (captive insurance companies and otherwise) join and borrow. The combination of the substantial level of U.S. mortgage assets held by captive insurance companies with the benefits associated with the long term and reliable nature of FHLB funding materially reduces the overall risk of a mortgage market crisis emerging or continuing. Accordingly, contrary to the FHFA's suggestion, precluding captive insurance companies from FHLB membership increases the overall risk in the U.S. mortgage market because it limits the number of eligible entities with access the tools available through FHLB funding that are critical in preventing and combating the causes of mortgage market crises.

IV. Conclusion

For the reasons stated herein and in other comments submitted, the Company respectfully requests that the FHFA refrain from implementing the provisions of the Proposed Rule concerning captive insurance company membership and eligibility, and withdraw the Proposed Rule. Captive insurance companies have been stable members in good standing of the FHLB system for over 20 years and through multiple credit cycles, and have historically played a significant role in supporting the mission of the FHLBs and can continue to play and expand that role in a safe and sound manner on an ongoing basis. In the alternative, the Company urges the FHFA to conduct a thorough financial impact analysis on the Proposed Rule and share the results with the general public. While doing so, the FHFA should suspend further rulemaking on this

proposal until such time that the FHFA can adequately identify and substantiate the problems that the Proposed Rule is intended to address.

Sincerely,

NYMT Insurance Holdings, LLC