



Timothy J. Mayopoulos

Executive Vice President,  
Chief Administrative Officer, General Counsel and  
Corporate Secretary

3900 Wisconsin Avenue, NW  
Washington, DC 20016-2892

202 752 7144  
202 752 6952 (fax)

timothy\_mayopoulos@fanniemae.com

August 24, 2011

Alfred M. Pollard  
General Counsel  
Attn: Comments/RIN 2590-AA13  
Federal Housing Finance Agency ("FHFA")  
1700 G Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20552

Dear Alfred:

Fannie Mae respectfully acknowledges the Company's conservatorship status and that the Conservator has succeeded to all rights, titles, powers and privileges of the Company and its stockholders, officers and directors. Fannie Mae further acknowledges the Conservator's authority to direct and to modify the functions and authorities of officers and directors, as well as the duties owed by officers and directors to the Conservator.

In light of the foregoing, the comments provided herein are for FHFA's consideration as the prudential regulator of the Company (as opposed to its role as Conservator), as you prepare to issue the final Prudential Management and Operations Standards implementing Section 1108 of the Housing and Economic Recovery Act of 2008.

As you know, in accord with Section 1710.10(b) of the FHFA regulation on corporate governance (12 CFR 1710.1 et seq.), the Company has elected to follow Delaware law for corporate governance to the extent not inconsistent with our Charter Act and other Federal laws. The guidelines appended to the proposed rule in several instances expand the role, responsibilities and duties of the Board of Directors beyond the standards established by Delaware law. Of particular relevance is the expansion of the duty of care. The duty of care requires that Directors "inform themselves, prior to making a business decision, of all material information reasonably available to them."<sup>1</sup> Directors also have a duty to exercise care in overseeing the conduct of corporate employees, and Delaware courts have found that liability can be imposed on Directors in circumstances where: "(a) the directors utterly failed to implement any reporting or information systems or controls; or (b) having implemented such a system or controls, consciously failed to monitor or oversee its

---

<sup>1</sup> Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985) (citing Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984)). See also, In re Caremark International Inc. Derivative Litigation, 698 A.2d 959, 971 (Del. Ch. 1996) (failure of Board oversight requires a "sustained or systemic failure of the board to exercise oversight -- such as an utter failure to assure a reasonable information and reporting system exists," also characterized as a "demanding test.")

operations thus disabling themselves from being informed of risks or problems requiring their attention.”<sup>2</sup>

In fulfilling his or her duties, a Director may rely in good faith on “the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation’s officers or employees”. (DCGL sec. 141(e)). The duty of care and the related oversight responsibility differs from managing the day-to-day operations of a company. Instead, the duty is to provide oversight regarding the establishment of systems and controls related to the day-to-day operations and to obtain ongoing information and reporting regarding the systems and controls. Similarly, while the duty of care requires that Directors obtain and inform themselves regarding available material information prior to making a decision, the duty of care does not require that Directors be day-to-day business and operational experts on each matter presented to the Board for consideration.

Fannie Mae recognizes that as a regulated entity, we are responsible for meeting the prudential standards promulgated in the final rule. We seek clarification that the standards are not intended to change the fundamental duties that Directors owe the Company under Delaware law. We seek clarification that the responsibility for day-to-day operations and management remains with the senior management team, while responsibility for oversight of management’s activities resides with the Board.

To provide clarification, we request that FHFA consider revisions to the standards as follows:

Consider Revising:

**Standard 3—Management of Market Risk Exposure**

Responsibilities of the Board of Directors

1. The board of directors has ultimate responsibility for understanding the nature and level of the regulated entity’s market risk exposures and should understand the possible short- and long-term effects of those exposures on the financial health of the regulated entity, including the possible short- and long-term consequences to earnings, liquidity, and economic value.

*Comment:*

This responsibility seems to require that the Board of Directors become expert on market risk exposures and all possible effects and consequences of market risk exposures. As previously discussed, the Board of Directors

---

<sup>2</sup> Stone v. Ritter, 911 A.2d, 362, 370 (Del. 2006).

has a duty of care to remain informed, which can be fulfilled in reasonable reliance on management's reports and records.

*Proposed revision:*

Delete the language above. Standard 3, paragraph 7 already addresses the Board oversight and duty of care responsibilities appropriately by requiring that "the board or a committee thereof should review the regulated entity's risk exposures on a periodic basis. The board of directors should ensure that management takes appropriate corrective measures when market risk limit violations or breaches occur." Similarly, Standard 8, paragraph 6 on overall risk management processes, also appropriately addresses the responsibility in Standard 3, paragraph 1, by requiring that "the board of directors and senior management should be provided with accurate, timely, and informative risk reports on a regular basis that provide an overview of the regulated entity's overall risk profile, including its exposures to market, credit, liquidity, and operational risks and any concentration of risk."

*Consider Revising:*

**Standard 6—Management of Asset and Investment Portfolio Growth**

Responsibilities of the Board of Directors and Senior Management

1. The board of directors is ultimately responsible for ensuring that each regulated entity manages its asset growth and investment portfolio growth in a prudent manner, and ensuring that senior management includes persons who are appropriately trained and competent to oversee the management of the regulated entity's growth in those areas.

*Comment:*

This responsibility seems to require that the Board of Directors become the Company's risk manager of asset and investment portfolio growth. As previously discussed, the Board of Directors has a duty of care to remain informed and to provide oversight, which can be fulfilled in reasonable reliance on management's reports.

*Proposed revision:*

1. A regulated entity should manage its asset growth and investment portfolio growth in a prudent manner, and the board of directors is responsible for ensuring that senior management includes persons who are appropriately trained and competent to oversee the management of the regulated entity's growth in those areas.

Consider Revising:

**Standard 7—Investments and Acquisitions of Assets**

Responsibilities of the Board of Directors and Senior Management

1. The board of directors is ultimately responsible for ensuring that the regulated entity manages its investments and acquisitions in a prudent manner, and for ensuring that senior management includes persons who are appropriately trained and competent to oversee the regulated entity's investments and acquisitions.

*Comment:*

This responsibility seems to require that the Board of Directors become the Company's manager of investments and acquisitions. As previously discussed, the Board of Directors has a duty of care to remain informed, and to provide oversight, which can be fulfilled in reasonable reliance on management's reports.

*Proposed revision:*

1. A regulated entity should manage its investments and acquisitions in a prudent manner, and the board of directors is responsible for ensuring that senior management includes persons who are appropriately trained and competent to oversee the management of the regulated entity's investments and acquisitions.

Consider Revising:

**Standard 8—Overall Risk Management Processes**

Responsibilities of the Board of Directors

1. The board of directors is ultimately responsible for the regulated entity's risk management processes, and for ensuring that senior management includes persons who are appropriately trained and competent to oversee the regulated entity's risk management process.

*Comment:*

This responsibility seems to indicate that the Board of Directors becomes the day-to-day risk manager for the Company, while senior management is responsible for oversight of the risk management process. The Board

should be responsible for oversight, while senior management is responsible for designing, developing and implementing the entity's risk management process. As previously discussed, the Board of Directors has a duty to provide oversight but not to perform day-to-day operational functions.

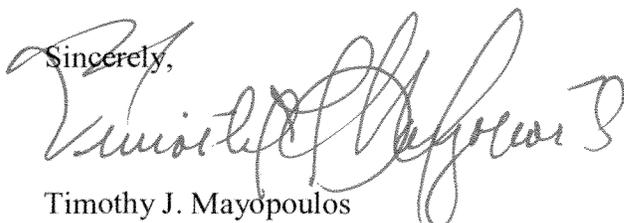
*Proposed revision:*

1. The board of directors shall require that the regulated entity has established and maintains risk management processes and that senior management includes persons who are appropriately trained and competent to oversee the management of these processes.

Fannie Mae brings these particular standards to your attention as an expansion of the duties of the Board may impact the Company's ability to recruit and retain qualified Board members. Eligible individuals might be concerned about the consequences of an administrative enforcement action should they fail to meet the proposed level of expertise required in the standards cited. Eligible individuals also might be concerned about of Second and Third Tier penalties for breaches of fiduciary duties, as it is unclear if these new standards would create expanded fiduciary duties.<sup>3</sup>

Should any additional information be required as you consider the final rule, please do not hesitate to contact me or Judith Dunn at 202-752-1648.

Sincerely,



Timothy J. Mayopoulos  
Executive Vice President, Chief Administrative Officer, General Counsel  
and Corporate Secretary

---

<sup>3</sup> See The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, §1376, 12 U.S.C. §4636 (2008).