3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

VIA ONLINE SUBMISSION PROCESS

July 8, 2011

The Parties Listed on Schedule A Hereto

Re: Comments of Federal National Mortgage Association ("Fannie Mae") to the proposed rulemaking on Margin and Capital Requirements for Covered Swap Entities

Ladies and Gentlemen:

Fannie Mae appreciates the opportunity to comment on the proposed rulemaking regarding Margin and Capital Requirements for Covered Swap Entities issued by the Department of the Treasury, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Farm Credit Administration ("FCA") and the Federal Housing Finance Agency ("FHFA" and, collectively with the OCC, the Board, the FDIC and the FCA, the "Agencies") in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA"). We commend the Agencies for their thoughtful leadership on this important topic.

Fannie Mae is a government-sponsored enterprise that was chartered by Congress in 1938 to support liquidity, stability and affordability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold. As part of our strategy for managing the duration and prepayment risk of our mortgage portfolio, Fannie Mae supplements our issuance of debt by entering into interest-rate related derivative transactions.

Background and Summary of Comments

Sections 731 and 764 of the DFA created Section 4s of the Commodity Exchange Act ("CEA"), and authorized the Agencies to adopt jointly, for swap entities under their respective jurisdictions, rules imposing (i) capital requirements and (ii) initial margin ("IM") and variation margin ("VM") requirements on all non-cleared swaps and non-cleared security-based swaps (collectively referred to herein as "non-cleared swaps"). Consistent with the CEA, the margin rules should be adopted by the Agencies in a manner that (i) helps ensure the safety and soundness of each regulated entity and (ii) is appropriate for the risk associated with the related non-cleared swaps held by such entity.[1] The Agencies, the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC") have been charged with, to the maximum extent practicable, establishing and maintaining comparable

---

1 See Commodity Exchange Act § 4s(e)(III)(A).

minimum capital requirements and minimum IM and VM requirements, including the use of non-cash collateral, for swap dealers and major swap participants.[2]

We offer the following comments, which will be developed in greater detail below:

- Segregating VM will increase costs and decrease transparency; counterparty risk mitigation can be achieved in other manners without the need for VM segregation;
- Requiring custodians to be independent and located in a jurisdiction that applies the same insolvency regime as the posting party may not be practical in all instances; and
- Margin rules should be consistent across regulatory bodies to the greatest extent practicable.

Segregation of VM and Prohibiting Rehypothecation

Under Section 1221.11(d) of FHFA's proposed rules[3] each regulated entity[4] (including Fannie Mae) must require that any IM it posts to a counterparty in connection with a non-cleared swap be held by an independent custodian. Section 1221.11(d) applies such segregation requirement to VM as well. FHFA and FCA requested comment regarding whether the extension of segregation to VM is appropriate and, if not, how VM posted by the regulated entities would be protected if the counterparty defaults.[5]

Currently, Fannie Mae does not require that its counterparties to non-cleared swaps segregate VM that we post. Our dealer counterparties typically have the right to rehypothecate VM. For example, if we sell an option on an interest rate swap (i.e., sell a swaption) to a dealer, the dealer may look for another party to buy an economically identical swaption.[6] If such a buyer is found, two trades will exist: Fannie Mae (swaption seller) with Dealer A (swaption buyer); and Dealer A (here, swaption seller) with Counterparty X (swaption buyer). If we are obligated to post $100 of VM on our swaption, Dealer A also should owe $100 of VM to Counterparty X on its mirror trade. Under our current swap documentation, since Dealer A is economically flat on this trade, Dealer A could forward to Counterparty X the $100 of VM that Fannie Mae posted to Dealer A. However, segregating in a custodial account the $100 of VM that Fannie Mae posted prevents Dealer A from sending such $100 of VM to Counterparty X, meaning that Dealer A must

---

2 See § 4s(e)(III)(D). We note that on June 17, 2011, the CFTC published in the Federal Register, a Notice of Proposed Order entitled "Effective Date for Swap Regulation," in which, among other proposals, the CFTC proposes to postpone the effective date of (a) the "swap dealer" and "major swap participant" registration requirements and (b) margin and capital requirements for these swap entities, and to grant temporary exemptive relief for non-compliance with the relevant DFA provisions until the earlier of the effective date of the applicable rule defining the relevant term or December 31, 2011. 76 Fed. Reg. 35372 (2011).

3 The FCA proposes similar rules in Section 624.11.

4 "Regulated entities subject to this provision include the Federal Home Loan Banks, Fannie Mae and its affiliates, Freddie Mac and its affiliates, and all Farm Credit System institutions including Farmer Mac (collectively, regulated entities, and each a regulated entity)." 76 Fed. Reg. 27564, 27582 (2011).

5 See id. at 27583.

6 In that manner, the dealer creates a market and eliminates its risk (other than counterparty risk).

separately fund that $100, even when Dealer A is simply creating a market between two end-users. This would increase the costs of the trade to the dealer. To compensate, the dealer will charge Fannie Mae for such increased cost.

In reality, the economic impact is much larger. As of March 31, 2011, the estimated value of our liability derivatives was $(733) million. Given that Fannie Mae has multiple derivatives counterparties,[7] and we will invariably be in-the-money with some counterparties (i.e., Fannie Mae does not post VM; counterparty posts VM to Fannie Mae) while being out-of-the-money with others. Thus, the aggregate VM collateral posted (even factoring in thresholds) will be substantially in excess of $733 million.[8]

The FHFA and FCA proposed rules prohibiting rehypothecation of VM will have a variety of consequences, including:

1. **Increased Costs and Competitive Disadvantage.** If our VM is segregated and cannot be rehypothecated, Dealer A would need to fund its posting of VM to Counterparty X. If Dealer A knows that it will need to fund VM, Dealer A will factor that funding cost into the price that it quotes. FHFA- and FCA-regulated entities are the only market participants that would be subject to VM segregation rules. As such, Fannie Mae would be at a competitive disadvantage compared to the vast majority of participants in the market.

2. **Decreased Transparency.** One of the central purposes of DFA is to increase transparency.[9] In fact, the proposed rule will decrease transparency for Fannie Mae. If the proposed VM segregation rules were implemented, information about trades recently executed in the markets would not reflect a price at which Fannie Mae could execute trades, since those recent trades will be for counterparties that do not require VM segregation. In other words, information on recently executed trades would need to be adjusted by dealer assumptions on funding, given the increased costs described in paragraph 1 above. Such price adjustments will make the end price less transparent to Fannie Mae and more variable from dealer to dealer.

---

[7] Fannie Mae had outstanding interest rate and foreign currency derivative transactions with 15 counterparties as of March 31, 2011, and a master netting agreement with one more counterparty with whom Fannie Mae may enter into interest rate derivative or foreign currency derivative transactions in the future.

[8] However, it should be noted that collateral thresholds apply. A threshold is a flat dollar amount or percentage of net worth that does not need to be collateralized. If, for example, Fannie Mae was $15,000 out-of-the-money but a $10,000 threshold applied to us, we only would post VM in the amount of $5,000.

[9] The preamble of DFA refers to DFA as an Act "[t]o promote...*transparency* in the financial system," and the full title of Title VII of DFA is the "Wall Street *Transparency* and Accountability Act of 2011" (emphasis added). As Ranking Member Collin Peterson (D-MN) stated: "As everybody knows, this committee played the primary role in writing Title VII of [DFA] with a goal of bringing greater transparency and accountability to the derivatives marketplace." *General Farm Commodities and Risk Management Holds Hearing on Global Derivatives, Competitiveness and Market Stability: Hearings Before the Subcomm. on General Farm Commodities and Risk Management of the House Comm. on Agriculture* (May 25, 2011).

3. **Decreased Competition Among Dealers for Non-cleared Swaps.** Another goal of DFA is to increase competition in the derivatives markets.[10] As dealers would need to charge for funding in the absence of being able to utilize VM, the proposed rules would reward dealers with the lowest cost of funds. Accordingly, small dealers could encounter additional barriers to trading with us in the non-cleared swap market.

While the proposed rules do not explain the benefit of segregating VM, it seems that the intent was to protect VM posted to a swap entity that subsequently fails.[11] We believe that current practice, as well as anticipated practices under the proposed rules – each as described in greater detail below – should alleviate those concerns without the need to segregate VM.

By way of background, upon a default by either party, the remedy under International Swap Dealers Association, Inc. ("ISDA") documentation is generally that the agreement and all transactions will be terminated. The non-defaulting party calculates termination values for each transaction, and the net amount is paid by the appropriate party. If VM was accurately calculated pre-default, the net amount owed should be minimal[12] and the segregation of collateral will have yielded no risk mitigation benefits. To the extent that the valuations overstated VM, the non-defaulting party may have a claim for the return of collateral.[13] If VM was posted by the non-defaulting party and not segregated, the claim will be an unsecured claim in bankruptcy; if the VM was segregated, the claim will be a secured claim in bankruptcy.[14]

The following mechanisms can be used to mitigate counterparty default risk on posted VM:

1. **Current Practices under ISDA Documentation:** Dispute resolution practices serve as the first tool to mitigate the risk of posting excess VM. Under our ISDA documentation, the secured party (in-the-money party) is the party charged with calculating the value of all transactions. In practice, regardless of whether or not Fannie Mae is the secured party, we provide daily trade valuations to each of our counterparties. If trade value comparison yields a material difference in collateral calls, we will undertake a trade reconciliation with the counterparty and attempt to resolve disputes.

---

10 See, *e.g.*, "One Year Later - The Wall Street Reform and Consumer Protection Act - Implementation of Title VII," Hearing Before the U.S. Senate Committee on Agriculture, Nutrition & Forestry, June 15, 2011 (statement of CFTC Chairman Gary Gensler) ("The more transparent a marketplace is, the more liquid it is, the more competitive it is and the lower the costs for hedgers, borrowers and their customers.").

11 76 Fed. Reg. at 27583 (asking if the VM segregation requirement "...is not applied, how [would] the regulated entities...be protected in the event [VM] is posted to a swap entity that subsequently fails").

12 See Robert D. AICHER, DERIVATIVES: LEGAL PRACTICE AND STRATEGIES at 7-23 – 24 (2009) ("Assuming the calculation of Exposure is being done accurately, the [collateral related to such] Exposure is not at risk. If either party were to default on any given day, the amount of collateral that has been posted ...should be very close to what [one party would owe the other].")

13 If valuations were understated then, regardless of whether the defaulting party posted or received VM, the proposed VM segregation rules would not mitigate counterparty risk.

14 Assuming properly documented, and subject to negotiation with the defaulting party's estate.

In addition, the ISDA documentation contains a dispute resolution process. The parties will identify trades that are not subject to dispute first and provide collateral for those trades. If the parties cannot agree to valuations on the disputed trades, the parties may contact four market-makers in swaps to value the disputed trades. The average of the valuations received will be used. If no valuations can be obtained, the parties will use the secured party's original calculations.

Resolving disputes in such a manner should lead to more accurate valuations, and increase the correlation between posted VM and the net amount owed upon default.[15]

2. **IM Provides Protection for any VM Over- or Under-Collateralization:** IM posted by a counterparty could be used to compensate for any loss of posted VM. Under our current ISDA documentation, Fannie Mae does not post or collect IM for our non-cleared swaps.[16] However, under the proposed rules, FHFA-regulated entities would post IM to, and collect IM from, their counterparties.[17] Notwithstanding independent valuations and the dispute resolution process described above, if Fannie Mae posts too much VM, under the proposed rules Fannie Mae would be able to use IM posted by our counterparty to reimburse for any VM losses if a counterparty defaults.[18] An example may help to illustrate this point. Assume that each party posted $5 of IM to the other party. Fannie Mae also posted $100 of VM for our trade because interest rates moved favorably to our counterparty. Our counterparty defaults, and we calculate a termination value of $(99). Fannie Mae demands a payment of $1. Since our counterparty is insolvent, counterparty does not pay. In that event, Fannie Mae could withdraw $1 from the $5 of IM that defaulting counterparty posted.

3. **Voluntary Segregation of VM:** If a party becomes concerned about a potential default by the other party, nothing prohibits the parties from agreeing to segregate VM posted by one or both parties.[19]

Given these methods of mitigating counterparty risk, we believe that VM segregation requirements (and the related prohibition of rehypothecation) should be removed from the FHFA and FCA proposed rules. By so doing, FHFA- and FCA-regulated entities would be subject to the same rules as entities regulated by the OCC, the Board and the FDIC. This result is also

---

15 Our agreements also provide for steps to be taken in the event that the valuation of particular securities posted as collateral is in question.

16 Swap dealers typically do not post IM. Fannie Mae does not post IM, largely as a result of our credit ratings.

17 See Section __.3 of the proposed rules; Section 1221(a) of FHFA's proposed rules.

18 If the non-defaulting party is the secured party, and VM posted by the defaulting party was insufficient, the non-defaulting party also could use IM to compensate for any such deficiency.

19 Clearly certain market participants have elected to utilize VM segregation, since the release notes that segregation of VM reflects the "current practice of at least some of the regulated entities." 76 Fed. Reg. at 27583.

consistent with the legislative history and final text of the DFA. Prior versions of the DFA expressly included VM in the scope of collateral that can be segregated.[20] Several industry participants voiced opposition to the inclusion of VM. In the end, Congress agreed and DFA section 724(c) states that the requirement to segregate margin for non-cleared swaps "...shall not apply to variation margin payments."[21]

Custodian Independence and Insolvency Regime

Section __.7(a) of the proposed rules provides that, when a covered swap entity ("CSE")[22] enters into a non-cleared swap with a swap entity[23] and posts IM to the swap entity, all funds the CSE provides as IM must be held by a "third-party custodian that is independent of the [CSE] and the counterparty." Section __.7(b) prohibits such custodian from rehypothecating the IM. Section __.7(d) requires that the "custodian is located in a jurisdiction that applies the same insolvency regime to the independent custodian as would apply to the [CSE]." Section 1221(d) of FHFA's proposed rules mirrors the Section ___.7 proposed rules.

Independence of Swap Collateral Custodians

Mandating that the custodian be independent of both swap counterparties may not be a manageable standard. The custodian market for derivatives is concentrated. Two of the largest custodians – one of which is our current derivatives collateral custodian – are swap dealers. This situation is not unique to the derivatives market. For example, the nearly $3 trillion tri-party repurchase (repo) market has a similar structure.[24] The Bank of New York and JPMorgan are the two primary custodians for the repo market, even though JPMorgan is an active repo dealer. The Federal Reserve Bank of New York ("FRBNY") formed a task force to study and reform the tri-party repo market's infrastructure, and to our knowledge, no serious effort has been made to require that the repo custodians be independent of repo dealers.

---

[20] See H.R. 4173, 111th Cong. § 3108 (2009) (creating Commodity Exchange Act § 4t) ("At the request of a swap counterparty who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the variation or initial margin or collateral in an account which is carried by an independent third-party custodian...").

[21] Commodity Exchange Act § 4s(l)(2)(B)(i).

[22] A "covered swap entity" is a swap entity (see infra note 23) that is prudentially regulated by the Agencies. See 76 Fed. Reg. at 27566

[23] A "swap entity" means "...a security-based swap dealer as defined in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(71)), a major security-based swap participant as defined in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(67)), a swap dealer as defined in section 1a(49) of the Commodity Exchange Act (7 U.S.C. § 1a(49)), or a major swap participant as defined in section 1a(33) of the Commodity Exchange Act (7 U.S.C. § 1a(33))." 76 Fed. Reg. at 27588 (Section __.2(y)).

[24] See FRBNY Staff Reports, The Tri-Party Repo Market before the 2010 Reforms, Staff Report no. 477, at 1 (Nov. 2010).

Lack of custodian independence should not pose a legal issue if the agreement underpinning the custodial arrangement is properly documented. Agency requirements in custodian agreements clarify the role of the custodian and direct to whom the custodian owes its duties. In addition, liability standards serve to protect the collateral and ensure that the custodian is acting pursuant to valid instructions from the authorized party. Outside of these agreements, dealer firewalls (information barriers) should compensate for any theoretical conflicts if the custodian is related to one of the parties to a trade. Accordingly, we believe that "...third-party custodian that is independent of the [CSE] and the counterparty" should be deleted from each of Section __.7(a) of the proposed rules and Section 1221(d) of FHFA's proposed rules, and replaced with "...a custodian".

Insolvency Regime of the Custodian

Requiring that the custodian be located in a jurisdiction that applies the same insolvency regime to the custodian as the CSE or regulated entity may not be feasible in all circumstances. With regard to FHFA-regulated entities, such a standard seems impossible to meet, given the unique structure of the government-sponsored enterprises.

Moreover, a simpler approach may provide sufficient legal protection while also allowing flexibility. Our ISDA documentation requires collateral to be held by highly-rated commercial banks or trust companies, treating New York as the custodian's jurisdiction. Requiring that the custodian or its relevant branch be located in the United States (and hold the collateral in the US), and that the custodian submit to US law, may be a preferable approach in drafting Section __.7(d) of the proposed rules and Section 1221(d) of FHFA's proposed rules.

Consistency of Margin Rules

We appreciate that the Agencies, the CFTC and the SEC face the daunting task of effectuating an array of DFA rulemakings at the same time that they have other regulatory priorities. While the progress made to date has been impressive, we are concerned that regulatory divergence on the topic of margin and capital requirements for non-cleared swaps could have broad consequences on the liquidity, transparency and overall function of the derivatives market. Accordingly, we believe it is imperative that the Agencies, the CFTC and the SEC act in unison on the issues described in greater detail below.

Impact of VM Requirements on Pre-Effective Date Swaps

We believe that the rules relating to the impact of VM requirements on swaps entered into before the effective date of the proposed rules require modification and clarification. Section __.4(d) of the proposed rules states:

> To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to a qualifying master

> netting agreement between a [CSE] and its counterparty, a [CSE] may calculate and comply with the [VM] requirements of this paragraph *on an aggregate basis with respect to all swaps and security-based swaps governed by such agreement, so long as the [CSE] complies with these [VM] requirements with respect to all swaps and security-based swaps governed by such agreement regardless of whether the swaps and security-based swaps were entered into on or after the effective date.*

That language envisions an all-or-nothing approach. If we have an ISDA (qualified master netting) agreement, then the CSE is permitted to determine if all trades are governed by these new rules – regardless of when the trades were executed.

In contrast, the IM rules in Section __.3 and Section __.8 of the proposed rules allow market participants to a qualified master netting agreement to apply such IM rules either: (i) *only to trades entered into on or after the effective date of the proposed rules; or* (2) to all trades governed by such qualifying master netting agreement, regardless of whether they were entered into before, on, or after the effective date.[25]

Page 27583 states:

> Because the requirements would not be applied retroactively, no new [IM or VM] requirements would be imposed on derivatives transactions entered into prior to the effective date *until such time as those transactions are rolled-over or renewed.* The only requirements that would apply to a pre-effective date covered derivative would be the [IM and VM] requirements to which the parties to the transaction had previously agreed to by contract.

Given the language in Sections __.3, __.4(d) and __.8 of the proposed rules, we are uncertain whether the statement on page 27583 is correct. In addition, we are uncertain in many contexts what the Agencies mean when they refer to pre-effective date swaps being "rolled-over or renewed." Greater clarity would aid market participants. In the context of trades that we execute – interest rate swap and swaptions – these concepts are not applicable. We do not interpret rolling or renewing to occur when the parties to a trade agree to a recoupon[26] or a novation.[27] Similarly, if a party to a swaption elects to exercise its option and enter into the underlying swap trade, we do not view such an election to be a roll or renewal of a transaction.

---

[25] See Section __.8(b) of the proposed rules.

[26] In a "recoupon," unrealized gain or loss on a swap transaction is cash settled between the counterparties to reduce the credit risk, and a new swap at on-market terms is transacted to the same maturity as the original swap.

[27] Novation is an agreement to replace one party to a trade with a new party.

We offer two recommendations:

1. **Mutual Consent:** In order to amend ISDA documentation, both parties must consent. Given that the proposed rules could impact pre-effective date trades, we believe that Section __.4(d) of the proposed rules should recognize the need for mutual consent.

2. **Revising the proposed VM rules to align with the proposed IM rules:** We believe that prospective application of the VM rules is the only fair application of regulation.[28] If the all-or-nothing approach of the VM proposed rules is implemented, and the CSE unilaterally elects such, material terms of existing trades may be amended. These provisions include, for example, thresholds, minimum transfer amounts, segregation and rehypothecation obligations, etc.

   If VM rules were applied retroactively, we believe that those rules:

   - **Could harm the price of pre-effective date trades:** Retroactive application could harm the price and risk profile of pre-effective date trades because, if the parties applied thresholds[29] to posting of VM, those thresholds would effectively be invalidated by these proposed rules. Similarly, if parties negotiated for one or both parties to not post VM, that provision would be negated.
   - **May limit one or both parties' ability to assign trades:** If rules impact price, collateral and risk associated with pre-existing trades, parties may be unable to novate those trades.
   - **May represent a change in law that could be grounds for ISDA terminations:** Under ISDA documentation, a trade or the ISDA agreement can be terminated due to an "Illegality."[30] Illegality includes a change in law that makes it unlawful for a party to perform an obligation under the agreement or to comply with a material provision of the agreement. Retroactive application of VM rules may rise to such a level.[31]

---

[28] To the extent that the FHFA proposed rules regarding VM segregation are not removed from the final rules, we believe that a prospective application is warranted.

[29] See supra note 8 for a discussion of thresholds. In our ISDA agreements, thresholds apply to the VM delivery requirements of Fannie Mae and its counterparties. Thus, retroactive application would be a change to our existing contracts.

[30] See 1992 ISDA Master Agreement (Multicurrency—Cross Border), section 5(b)(i) (defining a termination event as, among other things, an event that "[d]ue to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into...it becomes unlawful...for such party...to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction.").

[31] It is not readily apparent to us whether exercising such an alleged right would be valid under federal law, including DFA section 739.

Other Areas Where Regulatory Convergence is Recommended

Markets would benefit from uniformity of regulation across products, market participants and regulators. Some of the areas that require the greatest uniformity seem to be:

- Whether IM must be posted;
- IM methodology, model approval and look-up tables; and
- Whether VM must be segregated.

Without uniformity in these areas, pricing will differ between parties – such as between a party that must segregate VM and one that does not. Those differences will compromise transparency. Such an uneven and opaque playing field may, in turn, increase the difficulty of implementing trading via swap execution facilities.

We encourage the Agencies to contact their respective regulated entities regarding whether 180 days provides sufficient time to operationalize and obtain regulatory approval of IM models. At this time, we are uncertain whether such a period allows sufficient time for operational readiness and regulatory approval. In the absence of being able to utilize IM models, market participants would need to use IM look-up tables. We believe that IM look-up tables should reflect offsetting exposures under a qualifying master netting agreement. Without incorporating the concept of offsetting trades, these tables would overstate exposures beyond the actual potential exposure at any time.[32]

It should be noted that the imposition of IM posting requirements for non-cleared swaps may not necessarily provide the intended motivation for market participants to clear trades. For example, the clearinghouses cannot currently clear swaptions, interest rate caps or floors, and certain non-vanilla interest rate swaps. In addition, our preliminary analysis indicates that existing (for example, pre-DFA) non-cleared swaps cannot be moved to central clearing without realizing a taxable event.[33] That taxable event may serve as another barrier to "backloading" of existing bilateral trades to central clearing.[34] Higher IM requirements for non-cleared swaps may encourage central clearing of a particular trade only if: (1) the trade is a new trade; (2) a clearinghouse is capable of accepting such new trade; (3) the parties have the ability to elect

---

[32] See also Comment Letter from J.P. Morgan Chase & Co. (Don Thompson) to the Agencies, dated June 24, 2011, at 5.

[33] If Fannie Mae assigns an existing ISDA-governed trade from swap dealer A to clearinghouse A, then we would need to terminate the ISDA confirmation between swap dealer A and Fannie Mae. Thereafter, we would confirm a trade with an executing broker. The trade will be given-up to our futures clearing merchant ("FCM"), who will submit the trade for clearing with clearinghouse A pursuant to the terms of our futures account agreement, the related addendum for cleared derivatives and clearinghouse A's rules. Our preliminary analysis indicates that such a process would constitute a taxable event, even if all economic terms of the trade (notional amount, interest rate, maturity date, payment dates, etc.) are identical.

[34] Which, in turn, represents another argument against the retroactive application of VM segregation rules and all-or-nothing VM calculation rules. See supra notes 3-21 and 25-31 and accompanying text.

whether to clear or execute a non-cleared swap; and (4) the barriers to entry to clearing and clearing costs[35] are less punitive than the imposition of additional IM requirements.

Regulatory uniformity with respect to eligible collateral also will aid pricing, liquidity, transparency and operational efficiency. Given the huge volume of collateral posted pre-DFA, as well as the anticipated increase in collateral that will occur under DFA rules, eligible collateral should reflect the most liquid markets.[36] We believe markets would benefit from the inclusion of senior debt obligations and mortgage-backed securities issued by Fannie Mae, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks and Farmer Mac as eligible IM and VM.

* * *

Thank you for the opportunity to comment on this proposed rulemaking.

Sincerely,

Stephen H. McElhennon
Vice President & Deputy General Counsel
Fannie Mae

---

35 These include, but are not limited to, clearinghouse fees, FCM and executing broker fees, operational costs, ongoing maintenance, legal and documentation fees, etc.

36 In its 2009 report, ISDA estimated that there was over $4 trillion in collateral outstanding. See ISDA Collateral Steering Committee, *Market Review of OTC Derivative Bilateral Collateralization Practices*, Release 2.0 (Mar. 1, 2010) available at http://www.isda.org/c_and_a/pdf/Collateral-Market-Review.pdf; Matt Cameron, *US margin proposals could lock down $2 trillion in assets*, Risk Magazine (June 2, 2011).

<u>Schedule A</u>

To: Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Gary K. Van Meter
Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102–5090

Cc: David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549