



ADVISORY BULLETIN 2011-AB-01

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*Federal Housing Finance Agency
Division of Federal Home Loan Bank Regulation*

To: Federal Home Loan Bank Chairs, Presidents and Chief Financial Officers,
Chief Executive Officer, Office of Finance

From: Stephen M. Cross 
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Federal Housing Finance Agency

Subject: Operational Readiness for Swaps-Related Reporting, Clearing, and
Recordkeeping Requirements

Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) amended the Commodity Exchange Act to, among other things, provide for:

- The mandatory reporting of (i) initial and ongoing swap terms and (ii) any changes in value of both cleared and uncleared swaps to a Swap Data Repository (SDR) or the Commodity Futures Trading Commission (CFTC); and
- The mandatory submission to a derivatives clearing organization (DCO) of every swap or type of swap identified by the CFTC, in its sole discretion, as appropriate for such treatment.

The CFTC's implementation of Title VII includes three Notices of Proposed Rulemaking (NPRs) that are of particular relevance to the Federal Home Loan Banks (FHLBanks). Those NPRs would set forth recordkeeping, reporting and related requirements with respect to swaps data, and establish the processes by which the CFTC shall designate certain swaps or types of swaps as those that must be submitted for clearing. Specifically, the CFTC on December 7, 2010 issued an NPR on the Real Time Public Reporting of Swap Transaction Data, which proposes a reporting process to make all swap transaction and pricing data available to the public in real

time.¹ The proposed rule would apply to both cleared and non-cleared swaps and may affect both CFTC-registered entities and entities not registered with the CFTC. On December 8, 2010, the CFTC issued an NPR on Swap Data Recordkeeping and Reporting Requirements, which would apply regardless of whether an entity is registered with the CFTC and regardless of whether it is using cleared or uncleared swaps.² On November 2, 2010, the CFTC issued an NPR on the Process for Review of Swaps for Mandatory Clearing, which would implement the Dodd-Frank statutory clearing mandate.³

Guidance

Many of the requirements proposed by the CFTC would apply regardless of whether an entity is required to register with the CFTC as a swap dealer or major swap participant or not at all. Each FHLBank should be prepared to comply with all relevant aspects of the swaps reporting requirements and to continue to transact in a fully compliant manner in any swaps or types of swaps that are necessary and appropriate for prudent risk management. To that end, we recommend that each FHLBank immediately begin to develop a comprehensive implementation plan and to work with futures commission merchants (FCMs) and others, as necessary, to be prepared to comply with the CFTC rules when they are finalized. FHFA examination and supervision staff will review and assess the FHLBanks' planning and operational readiness for complying with swaps-related reporting, clearing, and recordkeeping requirements through examinations and other supervisory reviews.

An appropriate implementation plan would:

- Identify critical milestones for establishing recordkeeping and related capabilities to support swaps reporting and establishing the third-party relationships and internal systems capable of transacting successfully in a cleared swap environment, if necessary;
- Identify resources required to comply with the CFTC rules, including staff, systems, and operating policies and procedures;
- Set forth plans for executing contractual agreements with FCMs to process any swaps that the FHLBank would be required to clear;
- Identify sources of liquidity to meet all margin requirements that may be required in connection with both its cleared and non-cleared swap transactions; and
- Identify any other issues that could affect compliance with the swaps reporting requirements or the elective or mandatory clearing of swaps traded by the FHLBank.

¹ 75 Fed. Reg. 76139 (December 7, 2010).

² 75 Fed. Reg. 76573 (December 8, 2010).

³ 75 Fed. Reg. 67277 (November 2, 2010).

In addition, each FHLBank should update its policies and procedures to ensure the capability to:

- Evaluate FCMs with respect to clearing capabilities, financial integrity and creditworthiness, customer base, collateral segregation procedures, processing fees, and the resiliency and security of their systems;
- Evaluate DCOs with respect to capital and margin requirements, valuation methods, FCM membership criteria, safeguards, and the effects of their rules, systems, and practices on the recordkeeping, reporting, and systems capabilities of the FHLBank; and
- Support the timely and accurate reporting of all required data with respect to both its cleared and non-cleared swap transactions.

We recommend that each FHLBank's implementation plan be approved by its board of directors, which should occur no later than May 31, 2011. Once the implementation plan has been approved by the FHLBank's board of directors, senior management should prepare progress reports for the board of directors, including progress in developing and implementing new policies and procedures and monitoring rulemaking that may affect the FHLBank's operational readiness for swap reporting, clearing, and recordkeeping.

Board minutes should reflect a substantive assessment of the FHLBank's progress towards compliance and should identify actions needed to remedy actual or anticipated non-compliance with Title VII and applicable CFTC and FHFA Guidance.

For Further Information

The CFTC has provided information on its website for entities that may be affected by these new requirements:

<http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules/index.htm>

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