Freddie Mac
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September 20, 2010

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 20549-1090

Re: Advance Notice of Proposed Rulemaking: Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act; RIN 3235-AK65; 3038-AD06

Dear Mr. Stawick and Ms. Murphy:

Freddie Mac is pleased to submit these comments in response to the Advance Notice of Proposed Rulemaking (ANPR) published by the Commodity Futures Trading Commission and the Securities and Exchange Commission (together, "the Commissions") on August 20, 2010.[1] The ANPR is designed to assist the Commissions in implementing certain sections of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted on July 21, 2010.

The Commissions are inviting comment with respect to certain "Key Definitions" contained in Title VII of the Dodd-Frank Act, as may be necessary to carry out the purposes of Title VII. Our two comments pertain to the definitions of "swap" and "swap dealer." As explained in more detail below, we recommend that the Commissions confirm that our forward transactions in mortgages and mortgage-backed securities (MBS), and our hedging activities for risk management, respectively, are not covered by these definitions. This confirmation would prevent unnecessary disruption and potential chilling effects in the market.

Freddie Mac was chartered by Congress in 1970 with a public mission to stabilize the nation's residential mortgage markets and expand opportunities for homeownership and affordable rental housing. Our statutory mission is to provide liquidity, stability and affordability to the U.S. housing market. Freddie Mac currently operates under the direction of the Federal Housing Finance Agency as our Conservator.

I. "Swap" Definition

As explained below, we respectfully request that the Commissions confirm that the definition of "swap" does not include buying and selling mortgages and forward trading of agency (*i.e.*, Freddie Mac, Fannie Mae and Ginnie Mae) MBS in the "To-Be-Announced" (TBA) market,

[1] 75 Fed. Reg. 51429.

thereby providing the certainty needed to avoid unnecessary disruption of the securitization market.

A. Background

Freddie Mac participates in the secondary mortgage market by purchasing mortgage loans and mortgage-related securities for investment and by issuing guaranteed mortgage-related securities. The securities issued by Freddie Mac are exempt from registration and certain other requirements of the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), but are subject to the anti-fraud provisions of these laws. Freddie Mac uses interest rate swaps to hedge the interest rate risk related to our mortgage and MBS purchases and investments.

As part of our business, Freddie Mac also engages in forward transactions in mortgages and MBS in our three business segments: (1) Single-Family Guarantee; (2) Multifamily; and (3) Investments. Our forward transactions in mortgages and MBS play a central role in allowing Freddie Mac to fulfill our statutory mission. These transactions can occur in the TBA market. A TBA trade in Freddie Mac securities represents a contract for the purchase or sale of Participation Certificates (a type of MBS) to be delivered at a future date; however, the specific PCs that will be delivered to fulfill the trade obligation, and thus the specific characteristics of the mortgages underlying those PCs, are not known (*i.e.*, "announced") at the time of the trade, but only shortly before the trade is settled.

In the Commissions' efforts to further define "Key Definitions," we suggest clarifying what types of forward transactions could be subject to regulation as swaps under the Dodd-Frank Act. The statutory definition of "swap" provides, among other things, a general definition (at subparagraph (A)) and certain exclusions (at subparagraph (B)).[2] The general definition of "swap" does not appear to include buying and selling mortgages and forward trading of agency MBS in the TBA market.

Nevertheless, the fact that certain statutory exclusions exist for contracts for future delivery raises the concern that such contracts might otherwise be included within the general definition of "swap." If the "swap" definition were interpreted to include such forward transactions, it is not clear that the exclusion for transactions "intended to be physically settled" would be available for forward purchase and sale commitments on mortgages, given that the parties to such forward transactions typically have post-trade discretion to pair-off or cash settle such trades. In addition, even where the asset to be delivered under the forward is clearly a security, there is a lack of clarity regarding whether an exclusion would apply because it is not specified: (1) how the intent requirement would be applied under the physical delivery exclusion (particularly where the parties may subsequently elect a cash-settlement or pair-off); and (2) whether the exclusion for purchases on a fixed or contingent

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[2] Dodd-Frank Act at § 721(a)(21)(47)(A) and (B).

basis that are "subject to" the Securities Act and the Exchange Act would apply and whether exempted securities and forwards are covered by this exclusion.

The agency TBA market is already regulated by the SEC as part of securities regulation inasmuch as TBA transactions must generally be effected with or through registered broker-dealers. Reporting of transactions must be accomplished through the Trade Reporting and Compliance Engine (TRACE) and are cleared and traded through the Mortgage Backed Securities Clearing Corporation, which provides for multilateral netting and for the trading positions to be marked to market on a daily basis. In addition, treatment of TBA transactions as "swaps" would not appear to provide additional useful information to regulators, but would create unnecessary burdens in the market.

B. Recommendations Regarding the "Swap" Definition

We suggest that the Commissions should confirm that the definition of "swap" does not include TBA forward transactions in mortgages or MBS. At a minimum, we suggest that the Commissions' final definitions should differentiate such forwards from swaps, so that parties may have reasonable certainty at the time of contracting that a forward transaction will not be regulated as a swap. The final definition should recognize that flexibility to effectuate a cash-settlement or pair-off in these types of forward transactions is important to the efficient functioning of the residential housing market.

Neither forward trades on mortgages nor forward trades on TBA MBS constitute a contract that provides for an exchange of payments without conveying a future ownership interest, because the transaction is entered into with the intent to convey such an interest. We respectfully recommend that the Commissions clarify that there is an intent to physically deliver where the transaction occurs between parties in a context in which delivery is the norm, even if it is reasonably anticipated that physical delivery will not occur in some cases.

We suggest that the Commissions make clear that the exclusion for purchase or sale of securities "subject to" the Securities Act and the Exchange Act covers forward purchases of exempted securities. While exempt from registration requirements, exempt securities are subject to the anti-fraud provisions of both the Securities Act and Exchange Act.

II. "Swap Dealer" Definition

We respectfully recommend that the Commissions confirm that an entity who regularly buys and sells swaps for hedging purposes, rather than market-making purposes, does not qualify as a "swap dealer." Any uncertainty around this definition could have a chilling effect on market activity due to the potentially severe consequences of not properly registering as a dealer.[3]

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[3] The effects of being an unregistered dealer are significant. For example, under Section 29(b) of the Exchange Act, transactions in securities (including security-based swaps) would be voidable.

The statutory definition of "swap dealer" sets forth a list of activities that would qualify an entity as a "swap dealer," including "any person who ... [r]egularly enters into swaps with counterparties as an ordinary course of business for its own account...."[4] The uncertainty arises due to lack of clarity concerning the phrase "as an ordinary course of business," which is not defined or explained in the Dodd-Frank Act. As a result, the definition of "swap dealer" does not adequately distinguish between those entities within the scope of the definition from investors, traders and other parties who regularly buy and sell swaps for hedging purposes but who are not properly considered swap dealers.

We recommend that the Commissions clarify the "ordinary course of business" standard in order to provide greater certainty to the market. Notably, the definition of "dealer" under the Exchange Act uses a similar formulation and the SEC staff has issued a number of no action letters describing activities that would, or would not, be considered dealer activities. These letters exclude from the definition of "dealer" those entities that buy and sell securities "but not as part of a regular business." We believe promulgation of similar standards would be appropriate here. In addition, Congress likely intended for this to be the case as it used similar language in the Dodd-Frank Act and Section 3(a)(5) of the Exchange Act.

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Freddie Mac appreciates the opportunity to provide our views in response to the ANPR. Please contact me if you have any questions or would like further information.

Sincerely,

Lisa M. Ledbetter

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[4] Dodd-Frank Act at § 721(a)(21)(49)(A).