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Via Agency Web Sites

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November 24, 2014

Office of the Comptroller of the Currency
Attn: Docket ID OCC-2011-0008
Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
Attn: Docket No. R-1415 & RIN 7100 AD74
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attn: Comments RIN 3064 AE-21
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA45
Federal Housing Finance Agency
Constitution Center (OGC Eighth Floor)
400 7th Street SW
Washington, DC 20024

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: Margin and Capital Requirements for Covered Swap Entities

Ladies and Gentleman:

We are submitting this comment letter in response to the September 24, 2014 Notice of Proposed Rulemaking on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 57348 (September 24, 2014), issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (the "Prudential Regulators"). We appreciate the opportunity to comment on the proposed requirements set forth in the Notice of Proposed Rulemaking, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

This comment letter is submitted on behalf of FMS Wertmanagement ("FMS-WM"), and the views expressed herein are those of FMS-WM only. For the reasons described herein, we believe that the use of swaps and security-based swaps ("Swaps"), as defined under Dodd-Frank, executed by FMS-WM with registered swap dealers, major swap

participants, security-based swap dealers, and major security-based swap participants subject to oversight and regulation by the Prudential Regulators ("Swap Entities"), does not pose the systemic risk concerns ordinarily associated with uncleared Swap transactions. As explained below, FMS-WM is a wind-up institution (*Abwicklungsanstalt*) organized under public law of the Federal Republic of Germany (the "Federal Republic"), the obligations of which are backed by the full faith and credit of the Federal Republic, including full loss compensation and an explicit statutory guarantee.

In addition, FMS-WM is engaged solely in the management and wind-up of certain legacy portfolios on behalf of the Federal Republic and uses Swaps only for the purpose of hedging such portfolios. Accordingly, we respectfully request that the Prudential Regulators clarify in the final interpretive guidance that a legacy portfolio entity backed by the full faith and credit of a sovereign government, such as FMS-WM, is encompassed within the definition of a "sovereign entity" and as such not required to post or collect initial and variation margins on Swaps not cleared by a registered derivatives clearing organization, or, in the alternative, that FMS-WM is otherwise excluded from the definition of "financial end user" and not required to post or collect margin.

I. Background on FMS-WM

A. FMS-WM's Origins in the Global Financial Crisis

Government Measures to Support German Financial Institutions and the Role of Liquidation Institutions. In connection with the financial crisis in October 2008, the German Federal Government, with broad support of the German Parliament, adopted a comprehensive package of measures to support German financial institutions, most notably HRE Group (as defined below). This comprehensive package included the German Financial Market Stabilization Fund Act (*Finanzmarktstabilisierungsfondsgesetz*, "FMStFG"), which provided for the implementation of the German Financial Market Stabilization Fund (*Sonderfonds für Finanzmarktstabilisierung*, "SoFFin") and established the German Federal Agency for Financial Market Stabilization (*Bundesanstalt für Finanzmarktstabilisierung*, "FMSA").

SoFFin is a special pool of assets (*Sondervermögen*) of the Federal Republic, established by law and designated to fulfill specific tasks of the German Federal Government assigned to it under the FMStFG. SoFFin's purpose is to stabilize the German financial sector by extending liquidity guarantees, providing equity capital, assuming risk positions and setting up liquidation institutions. To this end, SoFFin has been authorized by the German legislature to extend liquidity guarantees in a total aggregate amount of up to €400 billion and to incur debt in a total amount of up to €80 billion. Any financing required by SoFFin is obtained in the manner used by the Federal Republic to finance itself, i.e., through the issuance of debt instruments by the Federal Republic of Germany – Finance Agency (*Bundesrepublik Deutschland – Finanzagentur GmbH*). When the Federal Republic incurs debt for SoFFin it leads to an increase in the net borrowings and debt of the Federal Republic. Applications for stabilization measures extended by SoFFin could initially be made only until the end of 2010. However, as a consequence of developments in the euro area, the German Federal Government re-

opened the application period until the end of 2012, and, subsequently, until the end of 2014.

The FMSA was established to manage SoFFin and to implement and monitor the stabilization measures extended by it. The FMSA is a federal agency under public law with legal personality (*rechtsfähige Anstalt öffentlichen Rechts*). The FMSA is supervised by the German Federal Ministry of Finance (*Bundesfinanzministerium*), which ensures that the FMSA acts in the public interest. In particular, the German Federal Ministry of Finance supervises the FMSA's activities, nominates the members of FMSA's management committee (*Leitungsausschuss*) and delegates decision-making powers to the management committee. The FMStFG also grants the FMSA the power to create liquidation institutions. The purpose of these institutions is to assume distressed and non-strategic assets from systemically important financial institutions and to eventually dispose of or liquidate the risk positions transferred to them. The FMSA has created two liquidation institutions: Erste Abwicklungsanstalt, which was established in December 2009, and FMS-WM. A chart providing an overview of the ownership and supervision of FMS-WM is attached hereto as Annex A.

FMS-WM was established on July 8, 2010 and charged with liquidating a portfolio of risk positions and non-strategic assets/businesses with an initial total (nominal) volume of approximately €175.7 billion that it assumed from HRE in order to stabilize HRE Group and the German financial market, in particular the German covered bond market[1]. FMS-WM is wholly owned by SoFFin, which acts on behalf of the Federal Republic and is managed by the FMSA.[2]

On May, 13, 2014, the FMSA's inter-ministerial steering committee and and extraordinary general meeting of Hypo Real Estate Holding AG decided in favor of the preparation of a takeover and wind-down of Depfa by FMS-WM. Depfa will have to be wound down in accordance with an EU state aid decision promulgated on July 18, 2011.

Background on Government Rescue Measures for HRE Group. As of 2007, Hypo Real Estate Holding AG and its subsidiaries and special purpose entities ("HRE Group" or "HRE") was one of the largest commercial property lenders and providers of public finance in Germany. Most of the commercial property loans were refinanced by the issuance of covered bonds, making HRE Group the leading German issuer of covered bonds. In the course of the liquidity crisis in September 2008, HRE Group encountered financial difficulties primarily caused by the heavy debt burden held by one of its subsidiaries, Depfa Bank plc ("Depfa"). Depfa had borrowed short-term

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1 Covered bonds (*Pfandbriefe*) are recourse obligations secured or "covered" by pools of loans, e.g., mortgage loans or public sector loans.

2 Given SoFFin's liquidity support and loss compensation obligations as well as the statutory guarantee described and the Federal Republic's liability for SoFFin's obligations discussed in section VI below, all major rating agencies have aligned the rating of FMS-WM with the rating of the Federal Republic. Cf. Fitch Ratings, FMS Wertmanagement Anstalt des oeffentlichen Rechts, Full Rating Report, December 20, 2013 (AAA/Stable); Moody's Investors Service, Rating Action: Moody's assigns Aaa to FMS Wertmanagement, stable outlookpress release February 28, 2014 (AAA/Stable); Standard & Poor's, FMS Wertmanagement Anstalt des oeffentlichen Rechts, October 10, 2013.

money to fund higher interest bearing long-term positions in the area of public sector finance on a large scale. When the interbank lending market collapsed in September 2008, Depfa faced substantial refinancing problems. Within a short period of time, the entire HRE Group faced solvency issues as well. Due to HRE Group's importance for the German financial system, the Federal Republic initiated various support measures, which led to SoFFin becoming the sole owner of Hypo Real Estate Holding AG in October 2009.

Following its acquisition of HRE Group, SoFFin began to reorganize HRE Group's business. Risk positions and non-strategic assets/businesses in a nominal amount of €175.7 billion were transferred to FMS-WM on October 1, 2010.

As described above, FMSA's inter-ministerial steering committee an extraordinary general meeting of Hypo Real Estate Holding AG decided in favor of the preparation and wind-down of Depfa by FMS-WM on May 13, 2014.

FMS-WM's Mandate. FMS-WM's mandate is to un-wind the portfolio of risk positions and non-strategic assets/businesses that it assumed from HRE Group in ways that maximize value. In order to achieve its object and purpose, FMS-WM may engage in all kinds of banking and financial services transactions and all other transactions that directly or indirectly serve its purposes. FMS-WM is, however, neither a financial institution nor a financial services institution within the meaning of the German Banking Act (*Kreditwesengesetz*, "KWG"), nor a financial service provider within the meaning of the German Securities Trading Act (*Wertpapierhandelsgesetz*, "WpHG"), nor an insurance company within the meaning of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) nor regulated accordingly. As a consequence, FMS-WM is prohibited from engaging in transactions that would require a license under the EU Banking Directive (2006/48/EC)[3] or the EU Directive on markets for financial instruments (2004/39/EC). Nonetheless, pursuant to its charter and the FMStFG, FMS-WM is subject to certain provisions of the KWG and the WpHG. In particular, FMS-WM is subject to banking supervision by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "BaFin") and it must comply with the organizational obligations and restrictions on certain activities imposed by the KWG applicable to banks and financial institutions. FMS-WM is, however, exempted from the regulatory capital and liquidity requirements and the banking license requirement under the KWG. FMS-WM is also deemed to be a financial institution for purposes of the German Money Laundering Act (*Geldwäschegesetz*).

The portfolio assumed by FMS-WM is managed and liquidated in accordance with a winding-up plan (*Abwicklungsplan*), which describes the winding-up measures FMS-WM intends to take. Depending on the market situation and the asset

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[3] As interpreted by BaFin, the prohibition on FMS-WM to engage in transactions that would require a banking license requires FMS-WM to include a selling restriction in its debt issuance programs that permits the issuance of its debt securities only to central banks and certain institutional investors (such as banks, insurers or funds, or entities which are regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets).

category, the winding-up plan provides for the following strategies in connection with liquidating the portfolio assumed by FMS-WM:

- Holding assets, which includes active management of loans and securities with a view to repaying outstanding amounts (e.g., where the risk/return profile is acceptable).

- Selling assets to the extent it makes economic sense (e.g., to reduce positions with a higher risk profile and when market opportunities arise).

- Restructuring, including workout, wind-up and reorganization measures, relating to both performing and non-performing financial instruments, especially in the segments Infrastructure and Real Estate, with a view to maximizing the value of the liquidation measure related to the financial instrument (including by reducing risk).

The winding-up plan has been established with a view to ensuring that FMS-WM at all times has sufficient liquidity to cover its three-month liquidity requirements under stress scenario assumptions over the entire winding-up period, independently of SoFFin's duty to provide liquidity to FMS-WM and to offset losses incurred by it as described below. FMS-WM's management board and supervisory board as well as SoFFin are bound by the winding-up plan. FMS-WM monitors prevailing market conditions to determine whether the winding-up plan needs to be adapted. In its supervisory capacity, the FMSA has the right to request changes to the winding-up plan.

FMS-WM engages in funding activities, including the issuance of debt securities and/or the taking out of bank loans, in order to refinance funding instruments associated with the portfolio it has assumed as they expire. FMS-WM will be required to engage in refinancing activities on the capital markets until its portfolio has been liquidated. FMS-WM monitors its financing needs and liquidity requirements by means of a liquidity management system similar to the ones used by financial institutions. FMS-WM seeks to ensure that it has sufficient liquidity to cover its three-month liquidity requirements under stress scenario assumptions at all times.

B. As a Public Law Institution, FMS-WM is an Instrumentality of the Federal Government

Federal Republic as 100% Beneficial Owner. FMS-WM was created by an administrative act of the FMSA, which itself is a public law institution, pursuant to Section 8a of the FMStFG as a public law institution with partial legal capacity (*teilrechtsfähige Anstalt des öffentlichen Rechts*) within the FMSA. FMS-WM may act in its own name, may bring suit and may be sued in court. FMS-WM is fully owned by SoFFin, which is, as described above, a special pool of assets (*Sondervermögen*) of the Federal Republic. As such, FMS-WM is effectively owned by the Federal Republic. Any transfer of ownership interests in FMS-WM would require the express written consent of the FMSA. The assets and liabilities of FMS-WM are kept separate from the assets and liabilities of other liquidation institutions established by the FMSA and from other assets and liabilities of the FMSA.

Administrative Law Institution Existing for a Limited Duration. FMS-WM is an institution created pursuant to German administrative law. According to its charter, FMS-WM was established for such period of time as will be required for it to wind up the portfolio acquired from HRE Group. Upon completion of such winding up, FMS-WM will be dissolved and any remaining assets will be distributed to SoFFin. According to Section 16(1) of FMS-WM's charter, the winding up may not be completed until either all creditors have been satisfied or SoFFin has directly assumed liability for any remaining debt outstanding.

C. FMS-WM Serves a Public Purpose

Important Role in Stabilizing the German Financial Market. FMS-WM was established to stabilize HRE Group and the German financial market. To this end, risk positions and non-strategic assets/businesses were transferred from HRE Group to FMS-WM, which involved the use of public funds. As such, the transfer constituted state aid pursuant to EU law and had to be approved by the European Commission. Under EU law, state aid may be considered compatible with the internal market if it remedies a serious disturbance in the economy of a member state and thus serves a public purpose. In approving the rescue measures extended to HRE Group, the European Commission in effect acknowledged that HRE Group was a bank of systemic relevance and that the stabilization measures extended to it served an important public purpose.[4]

Long-Term Winding-Up and Incurrence of Substantial Losses in the Public Interest. A significant portion of the portfolio assumed by FMS-WM from HRE Group consists of claims based on public sector financing and other assets that were, and continue to be, difficult to refinance in the wake of the global financial markets crisis and the European sovereign debt crisis. Under its charter, FMS-WM is required to liquidate the assumed risk positions and assets/businesses in a profit-oriented manner, which FMS-WM seeks to do by managing and winding-up its portfolio in a value-preserving manner over an extended period of time. Due to the quality of FMS-WM's portfolio, FMS-WM has incurred and may continue to incur substantial losses. In accordance with Section 7 of FMS-WM's charter, SoFFin is required to compensate FMS-WM for these losses.

D. FMS-WM Uses Swaps Solely for Hedging Purposes

In connection with its winding-up of the portfolios under its management, FMS-WM utilizes Swaps solely for hedging purposes. In particular, the management of its portfolios and FMS-WM's financing of the activities give rise to interest rate and currency risks that result in exposures that need to be hedged through the use of interest rate and currency swaps. FMS-WM manages such risk exposures by entering into interest rate and currency swaps with a variety of major financial institutions, including a limited number of U.S. entities that are subject to oversight and regulation by the Prudential Regulators and that likely are registered or will be required to register as Swap

[4] Commission Decision of 18 July 2011 on State aid C 15/09 (ex N 196/09), which the Federal Republic implemented and is planning to implement for Hypo Real Estate (notified under document C(2011) 5157) (2012/118/EU).

Entities. While FMS-WM is in the process of winding down the portfolios under its management, it is nevertheless necessary to enter into new Swap transactions from time to time as risk management positions need to be adjusted, increased or decreased.

E. FMS-WM is Controlled and Supervised by the FMSA

Governmental Supervision. FMS-WM operates under the supervision and control of the Federal Republic, which is exercised through the FMSA. Specifically, the FMSA is supervised by the German Federal Ministry of Finance as described in Section I.A. above, which ensures that the FMSA acts in the public interest. The FMSA, in turn, is responsible for the regulatory and legal supervision of FMS-WM. In particular, the FMSA has to approve and supervise FMS-WM's implementation of the winding-up plan as well as any material deviations from, or amendments to, the winding-up plan. The FMSA may give instructions to FMS-WM's executive board and supervisory board in order to ensure that FMS-WM complies with applicable law and the requirements of its charter. Comprehensive reporting obligations by FMS-WM ensure that the FMSA has a solid basis for exercising its control and instruction rights.

The FMSA May Dismiss FMS-WM's Management. The FMSA appoints the members of FMS-WM's supervisory board. The supervisory board members, in turn, appoint the members of FMS-WM's executive board. Both the supervisory board and the FMSA may dismiss a member of the executive board for good cause. Under German corporate law, members of the executive board of a corporation may only be dismissed by the supervisory board, and not by the corporation's shareholders. In this respect, the powers of the FMSA go beyond those granted to shareholders of a German corporation and provide an effective means of governmental supervision and control over the operations of FMS-WM.

F. FMS-WM's Obligations are Backed by the Full Faith and Credit of the Federal Republic

FMS-WM's obligations are ultimately backed by the full faith and credit of the Federal Republic. Pursuant to Section 7 of FMS-WM's charter, SoFFin is obligated to provide FMS-WM liquidity support and loss compensation and under Section 8a of the FMStFG, FMS-WS's obligations benefit from a statutory guarantee by SoFFin. The Federal Republic, in turn, is directly liable for SoFFin's obligations pursuant to Section 5 of the FMStFG.

SoFFin's Liquidity Support and Loss Compensation Obligations. SoFFin is obligated to provide FMS-WM with such amounts as are necessary for FMS-WM to fully satisfy its obligations when due and to compensate it for losses it may incur. This includes all obligations of FMS-WM under any of its Swap positions.

- Liquidity Support Obligation. FMS-WM has established a liquidity management system that seeks to ensure that FMS-WM has sufficient liquidity to cover its three-month liquidity requirements under stress scenario assumptions at all times. According to Section 7 of FMS-WM's charter, SoFFin would, however, be obligated to provide FMS-WM, upon first demand by FMS-WM's executive board

and within three business days, such amounts as are necessary for FMS-WM to fully satisfy its obligations when due. FMS-WM's executive board is in turn specifically required to make such demands in a timely manner. In its supervisory capacity, the FMSA may, to the extent required, direct the executive board to take such action. To date, FMS-WM has not required liquidity support from SoFFin.

- Loss Compensation Obligation. As permitted by the FMStFG, Section 7(1) of FMS-WM's charter provides that SoFFin is required to offset any losses sustained by FMS-WM. FMS-WM has incurred and may continue to incur substantial losses. Specifically, FMS-WM realized losses of €3.0 billion in 2010 and €9.9 billion in 2011. In accordance with its loss compensation obligation, SoFFin fully compensated FMS-WM for these losses.

Guarantee. In addition, effective January 1, 2014, Section 8a of the FMStFG was amended to explicitly provide that SoFFin guarantees all existing and future obligations of FMS-WM with respect to moneys, debt securities and derivative transactions as well as obligations of third parties that are expressly guaranteed by FMS-WM, which FMS-WM has borrowed, issued, entered into or incurred or which have been transferred to FMS-WM during the time period for which SoFFin is the sole obligor of the loss compensation obligation (*alleiniger Verlustausgleichspflichtiger*). SoFFin's obligation under the guarantee ranks equally, without any preference, with all of its other present and future unsecured and unsubordinated indebtedness. Given the Federal Republic's direct liability for SoFFin's obligations, in the event that SoFFin fails to make any payment of principal or interest or any other amount required to be paid with respect to securities issued by FMS-WM, or derivative transactions entered into by FMS-WM, when that payment is due and payable, under the guarantee, the Federal Republic will be liable for that payment as and when it becomes due and payable pursuant to Section 5 of the FMStFG as described below.

The Federal Republic's Liability for FMS-WM's obligations. Section 5 of the FMStFG provides that the Federal Republic is directly liable for the obligations of SoFFin. In fact, any debt incurred by SoFFin is accounted for as direct debt of the Federal Republic. SoFFin's obligations are thus effectively obligations of the Federal Republic.

II. Exception from the Margin Requirements for Entities Such as FMS-WM

As previously noted, in implementing its mandate to liquidate its portfolio of risk positions and assets acquired from HRE Group, FMS-WM makes use of interest rate and currency-based swaps solely for hedging purposes and to mitigate risk. If the Prudential Regulators' regulations requiring initial and variation margin posting for Swaps not cleared through a derivatives clearing organization are adopted as currently proposed without clarification that FMS-WM is encompassed within the definition of a "sovereign entity" or otherwise not considered a "financial end user", FMS-WM could be required to post and collect margin in connection with its Swaps transactions if its counterparties are registered Swap Entities under the supervision of a Prudential Regulator, notwithstanding FMS-WM's limited purpose in entering into Swaps and despite the fact that it is backed by the full faith and credit of the Federal Republic. We do not believe that this result is

warranted or appropriate, or that it will operate to reduce systemic risk or to protect market participants. To the contrary, it will serve only to increase the cost, and reduce the efficiency, of necessary hedging transactions entered into by FMS-WM, and perhaps force it to transact primarily or exclusively with non-U.S. counterparties.

In their proposed rules, the Prudential Regulators stated their belief that "risk-based distinctions can be made" between types of counterparties, and specifically excluded certain parties from the definition of "financial end user" and, accordingly, from the margin requirements of the rules. Such excluded parties are identified as: sovereign entities; multilateral development banks; the Bank for International Settlements, captive finance companies that qualify for the exemption from clearing under section 2(h)(7)(C)(iii) of the Commodity Exchange Act ("CEA") and implementing regulations; or persons that qualify for the affiliate exemption from clearing pursuant to section 2(h)(7)(D) of the CEA or section 3C(g)(4) of the Securities Exchange Act and implementing regulations. The proposed rules further define a "sovereign entity" as "a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government." The Prudential Regulators note that the exclusion of these types of entities "is consistent with the statute, which requires the margin requirements to be risk-based, and is appropriate in light of the lower risks that these types of counterparties generally pose to the safety and soundness of covered swap entities and U.S. financial stability." The release further notes that the exclusion for sovereigns, multilateral development banks and the Bank for International Settlements is generally consistent with the 2013 international framework for margin requirements finalized in September 2013 by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions.

While we support the Prudential Regulators' measures to enhance the safety and soundness of, and reduce systemic risk to, the overall financial system, the proposed establishment of margin requirements for uncleared Swaps was prompted by the failure of institutions which lacked any sovereign guarantee of their Swap obligations. Backed by the full faith and credit of the Federal Republic, FMS-WM does not pose the type of risk to counterparties, both U.S. and non-U.S., and the wider financial system that the proposed margin requirements seek to rectify. FMS-WM enters into Swap transactions solely for hedging purposes in connection with its mandate to wind up the assets and positions on behalf of the Federal Republic—not for speculative purposes.

Furthermore, as noted above, SoFFin is obligated to provide liquidity support and loss compensation for FMS-WM and is directly liable for the obligations of FMS-WM. As FMS-WM is 100% owned by SoFFin, itself an instrumentality of the Federal Republic, in the event that FMS-WM suffers losses on its Swap positions, those losses would be fully covered by the Federal Republic, and FMS-WM's counterparties would face minimal risk. Due to the explicit backing by SoFFin and resulting full loss compensation, FMS-WM does not pose the same systemic risk concerns as other entities subject to margin requirements. Given FMS-WM's narrow and statutorily defined mandate, in addition to its limited use of Swaps only for hedging purposes, there is minimal likelihood for counterparty loss exposure caused by FMS-WM's entry into Swaps transactions.

In addition, as described above, SoFFin's liquidity support and loss compensation obligation was, with effect of the beginning of this year, supplemented by

an explicit and statutory guarantee by SoFFin of all existing and future obligations of FMS-WM with respect to moneys, debt securities and derivative transactions as well as obligations of third parties that are expressly guaranteed by FMS-WM, which FMS-WM has borrowed, issued, entered into or incurred or which have been transferred to FMS-WM during the time period for which SoFFin is the sole obligor of the loss compensation obligation).

We note that, in related regulatory contexts, the Commodity Futures Trading Commission ("CFTC") has recognized that "foreign governments" should not be required to register as swap dealers or major swap participants and should be exempt from the swap clearing requirements contained in Section 2(h)(1)(A) of the CEA, and that the term "foreign government" includes KfW, a German entity that is substantially similar to FMS-WM.[5] The CFTC in these contexts took into account the non-profit, public sector status of KfW, as well as its mandate to serve a public purpose and the full, explicit and statutory guarantee provided to it by the German federal government, in stating that KfW was considered a "foreign government." Such characteristics of KfW are identical to those of FMS-WM and FMS-WM previously confirmed directly with the CFTC that it may rely on and operate under the relief provided to KfW.

In light of the full loss compensation provided by SoFFin on any losses suffered by FMS-WM, the explicit statutory guarantee by SoFFin as described above, and the public-sector status and public purpose of FMS-WM, we respectfully submit that entities such as FMS-WM, whose sole purpose in entering into swaps is to hedge financial portfolios *and* are also backed by the full faith and credit of a sovereign government, are properly included within the definition of a "sovereign entity" as such term is defined in the proposed rules, and are properly exempt from the Proposed Regulators' margin requirements. Based on the factors and considerations identified herein, we believe that FMS-WM is encompassed within this definition. However, this is not made express in the release and we therefore believe that a further interpretation or clarification of this issue would be helpful, and perhaps necessary. As detailed above, such an interpretation would also align with the understanding of the CFTC in related contexts. In the alternative, even if the Prudential Regulators determine that FMS-WM does not qualify within the definition of a "sovereign entity", we respectfully request that the Prudential Regulators clarify in the final interpretive guidance that FMS-WM, and entities like FMS-WM, are explicitly excluded from the definition of "financial end user" and therefore, like the other entities listed in the proposed rule as excluded from the margin requirements, FMS-WM is also not subject to the margin requirements under the rule.

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[5] 77 Fed. Reg. 30596, 30692 n.1178 (May 23, 2012); 77 Fed. Reg. 42560, 42561 n.12 (July 19, 2012).

The Dodd-Frank amendments to the CEA required that the regulations adopted by the Prudential Regulators to address the risk caused by uncleared Swaps be "appropriate" for the actual risk posed, and the Prudential Regulators have already recognized in the proposed rules that "sovereign entities" are appropriately categorized as excluded from the definition of financial end users and excluded from the margin requirements otherwise applicable to transactions between Swap Entities and other Swap Entities or financial end users. Similarly, we respectfully request that the Prudential Regulators clarify that requiring entities such as FMS-WM to post or collect margin on their Swap transactions would not be an "appropriate" result given the minimal level of systemic risk posed by FMS-WM and would be unnecessary to mitigate any risk caused by FMS-WM's Swap transactions. An exemption for FMS-WM from margin requirements on uncleared Swaps, either through clarification by the Prudential Regulators that FMS-WM and entities like it are considered "sovereign entities" or are otherwise excluded from the definition of financial end-user, would not be inconsistent with the principles guiding the Prudential Regulators' rulemaking and would avoid placing a burden on FMS-WM performing its function as a wind-up institution established for the purpose of stabilizing the financial system.

* * *

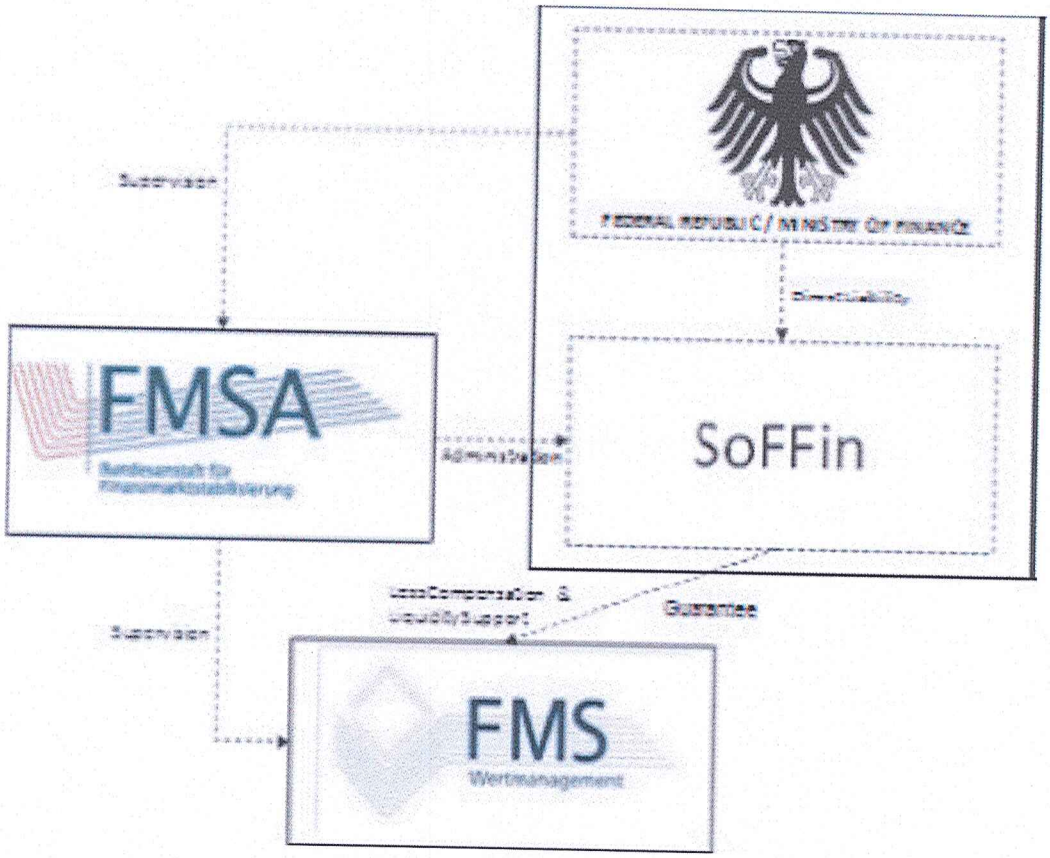
Thank you for your consideration of our comments and please do not hesitate to contact the undersigned or David Gilberg of Sullivan & Cromwell LLP at (212) 558-4680 or gilbergd@sullcrom.com if you have questions or would find further background helpful.

Sincerely,

FMS-WM

Name: Ernst-Albrecht Brockhaus
Title: Member of the Management Board

Name: Dr. Nico Zachert
Title: Authorized Signatory Legal/Compliance

Annex A

The following chart provides an overview of the ownership and supervision of FMS-WM: