KfW

KfW Bankengruppe, Postfach 111141, 60046 Frankfurt am Main

VIA ONLINE SUBMISSION http://www.regulations.gov

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

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

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

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

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

»» Re: Margin and Capital Requirements for Covered Swap Entities

Date: 18/12/2014

Dr. Svenja Brinkmann
Our ref.: Bkm
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Svenja.Brinkmann@kfw.de

Ladies and Gentlemen:

We are submitting this letter as a supplemental comment in response to the September 24, 2014 Notice of Proposed Rulemaking on Margin and Capital Requirements for Covered Swap Entities (the "Proposed Rule") as promulgated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (the "Prudential Regulators").[1] We appreciate the opportunity to submit a further comment on the Proposed Rule, issued 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 KfW, and the views expressed herein are those of KfW only. KfW previously submitted a comment letter on the Proposed Rule, dated November 17, 2014 (the

1 *See* 79 Fed. Reg. 57348 (September 24, 2014).

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"Prior Letter"). In the Prior Letter, for the reasons described therein, KfW expressed the view that the use of swaps and security-based swaps ("Swaps"), as defined under Dodd-Frank, by KfW do not pose the same types of systemic risk concerns which can be associated with uncleared Swaps transactions concluded by other market participants. As explained in the Prior Letter, KfW is a foreign government-linked entity owned by the Federal Republic of Germany (the "Federal Republic") and the German states and the obligations of KfW, including its obligations under Swaps it has entered into, are backed by the full faith and credit of the Federal Republic, due to a full, unconditional, explicit, statutory guarantee. Accordingly, we respectfully requested in the Prior Letter that the Prudential Regulators make clear in the final rule that KfW and entities like it, which are backed by the full faith and credit and the irrevocable guarantee of a sovereign government, are either (i) within the definition of a "sovereign entity" and therefore not subject to the margin rules otherwise applicable to Swaps not cleared by a registered derivatives clearing organization ("DCO"); or (ii) otherwise excluded from the definition of "financial end user" and not required to post or collect initial or variation margin under the margin rules.[2] We refer the Prudential Regulators to the Prior Letter for further background on KfW and its use of Swaps, and for additional detail on the recommendations made by KfW with respect to the Proposed Rule.

The purpose of this letter is to provide the Prudential Regulators with suggested language for inclusion in the Proposed Rule to address the issue raised above and in the Prior Letter regarding the status of entities such as KfW as "sovereign entities" under the Proposed Rule. The term "sovereign entity" is currently defined under the Proposed Rule to mean "a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government." KfW proposes to (1) amend this definition in the final rule by inserting the term "guaranteed public sector entity," immediately following the term "ministry;" and (2) adding a definition of "guaranteed public sector entity" as follows: "The term 'guaranteed public sector entity' means an entity owned by or established and sponsored by a central government, which is mandated to serve a public purpose specified by statute, and which is backed, with respect to its obligations in connection with any Swaps it has entered into, by an explicit, unconditional, full, statutory guarantee provided by the central government by which it is owned, established or sponsored."

For the reasons set forth in the Prior Letter, we believe that this clarification is needed in order to ensure that swap dealers are able to conclude that they are not required to collect margin from, and post margin to, entities such as KfW that satisfy the foregoing criteria. Without this clarification, we believe that the uncertainty regarding the

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[2] We note that the margin regulation proposals issued by the Prudential Regulators and the Commodity Futures Trading Commission ("CFTC") are substantially the same in this respect. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 59898 (Oct. 3, 2014). As such, KfW will submit its comments in response to both proposals for consideration.

scope of the exclusion for sovereign entities may cause certain dealers to apply the margin requirements to such entities. This result is unnecessary and unwarranted, is contrary to the intent of Congress and the Prudential Regulations and will result only in increased costs for KfW and the borrowers to which it is mandated by statute to provide lending and related services. We therefore respectfully request that our proposed amendment be included in the final rules on margin requirements.

* * *

Thank you for your consideration of our comments and please do not hesitate to contact David J. Gilberg of Sullivan & Cromwell LLP at 212-558-4680 or gilbergd@sullcrom.com if you have questions or would find further background helpful. We have sent a copy of this letter to the Federal Ministry of Finance of Germany in its capacity as KfW's owner and in its capacity as KfW's legal supervisory authority.

Sincerely,
KfW

Name: Andreas Müller
Title: Senior Vice President

Name: Dr. Frank Czichowski
Title: Senior Vice President and Treasurer