December 9, 2019

Board of Governors of the Federal Reserve
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Housing Finance Agency
Office of the Comptroller of the Currency

Re: Margin and Capital Requirements for Covered Swap Entities

Dear Madam or Sir:

The Structured Finance Association ("**SFA**") appreciates the opportunity to respond to the proposed amendments to uncleared swap margin rules published by the Board of Governors of the Federal Reserve ("**Board**"), Farm Credit Administration ("**FCA**"), Federal Deposit Insurance Corporation ("**FDIC**"), Federal Housing Finance Agency ("**FHFA**"), and the Office of the Comptroller of the Currency ("**OCC**") (collectively, the "**Agencies**") on November 7, 2019.[1]

I. Background on the Structured Finance Association

SFA represents over 360 members from all sectors of the securitization market, and our core mission is to support a robust and liquid securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. In balancing the interests of our diverse membership, SFA values consistency and clarity across applicable regulations and welcomes the opportunity to provide feedback on the Proposal.

II. Proposal

This Proposal would amend the agencies' regulations governing margin requirements for uncleared swaps and security-based swaps. Among other things, the Proposal would provide that swaps entered into prior to an applicable compliance date would retain their "legacy" status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate and thus would not be subject to the margin requirements.

[1] 84 Fed. Reg. 59970 (Nov. 7, 2019) (the "**Proposal**")

SFA has been intensely focused on the forthcoming transition away from LIBOR given the outsize impact this will have on our membership, which as noted above includes all sectors of the securitization market. SFA serves on the Alternative Reference Rates Committee ("ARRC"), is co-chair of the ARRC's Securitization Working Group, and convenes a very active member-only LIBOR Task Force. Our comments focus exclusively on the first part of the proposal; i.e., allowing legacy swaps to retain their legacy status if they are amended to facilitate the replacement of LIBOR or another discontinued rate.

Our engagement on LIBOR over the past nearly two years has made it abundantly clear that potential basis risk is a key concern for financial market participants, particularly changes that would force unexpected changes on deal structures and mechanics. One specific area of concern is alignment between derivatives and the debt they hedge. If, in anticipation of LIBOR's cessation, a LIBOR-based bond has incorporated robust trigger and fallback language, but an associated derivative has not (*e.g.*, due to fear of losing its legacy status under the Rule), there is basis risk between the bond and the hedge.. For example, if LIBOR were to cease to exist, the bond would have a clearly stated fallback rate (*e.g.*, SOFR), while the derivative might end up relying on language developed many years ago in contemplation of a temporary unavailability in LIBOR, and thus create a misalignment between the reference rates used in the security and the derivative.[2]

SFA agrees with the Agencies, therefore, that in order to enable covered swap entities and their counterparties to "avoid the risk of future financial instability, it is appropriate to permit covered swap entities to amend the reference rates in a legacy swap contract and to adopt necessary follow-on amendments without converting the legacy swap into a swap subject to the … Rule."[3] As the ARRC stated in a November 2019 letter, this relief is necessary "both to encourage—and not disincentivize—market participants to engage in early IBOR transitions."[4]

SFA agrees that changes to a reference rate should happen as seamlessly as possible. We are indifferent as to whether amendments are made via adherence to a protocol, written agreement, or a "tear up" of the original transaction. We also appreciate the agencies' willingness to allow for the replacement of the reference rate more than one time. This aligns with the "retesting" feature in the ARRC recommended fallback language for securitizations where, if term SOFR (the first step in the waterfall) were to develop some time following a LIBOR cessation event, an entity could switch in step two (an average of overnight SOFR) to a term SOFR rate. Finally, SFA members believe that the LIBOR transition should be as value-neutral as possible; *i.e.*, it should not result in any "winners" or "losers" among transaction participants. We agree, therefore, that changes that would help prevent value transfer should be permitted, including spread adjustments and more administrative and technical changes.

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2 Common "fallbacks" used previously have included (i) polls of dealers in the interbank market and (ii) referring to the last-published LIBOR.

3 Proposal at 59974.

4 Letter dated Nov. 5, 2019 from the ARRC to staff of the Commodity Futures Trading Commission at 9.

III. Conclusion

SFA appreciates the effort put forth by the Agencies to help ensure that the transition away from LIBOR take place with as little disruption as possible. We believe that this Proposal, with a particular focus on relief for legacy swaps from margin requirements in the event of reference rate changes, is a welcome development for the financial markets. If you have any questions or would like to discuss further, please contact Kristi Leo at Kristi.Leo@structuredfinance.org or 202-847-4556.

Sincerely,

Kristi Leo

President, SFA