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Re: Proposed Rules Relating to "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" (RIN No. 3038-AC97) and "Margin and Capital Requirements for Covered Swap Entities" (RIN Nos. 1557-AD43; 7100 AD74; 3064-AD79; 3052-AC69 and 2590-AA45).

Ladies and Gentlemen:

We are writing to comment on the Agencies' proposed rules entitled "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants" and "Margin

and Capital Requirements for Covered Swap Entities."[1] For the reasons expressed below, we urge the Agencies to exclude covered swap entities' ("CSEs") uncleared swap transactions with non-U.S. governments, their agencies and instrumentalities ("Foreign Governments"), including our clients Canada Mortgage and Housing Corporation ("CMHC") and Canada Housing Trust ("CHT"), from the margin requirements for uncleared swaps.

CMHC is a Canadian agent crown corporation. All acts of CMHC are acts of Canada and all obligations issued by CMHC are obligations of and by Canada. CMHC is Canada's leading provider of residential mortgage insurance. CMHC also administers a mortgage-backed securities guarantee program, funds assisted housing programs for lower-income Canadians and offers housing-related loans and investments. CMHC enters into interest-rate and cross-currency swap transactions with U.S. bank and other counterparties primarily to manage its assisted housing funding obligations.

CHT is a special purpose trust used to issue Canada Mortgage Bonds ("CMBs"). CHT was created under a mandate approved by the Department of Finance and is consolidated on CMHC's balance sheet. CHT was created to help ensure competition in the residential mortgage market and to help ensure an adequate supply of low-cost mortgage funding to financial institutions. CHT invests exclusively in mortgaged-backed securities guaranteed as to principal and interest by CMHC, as well as other obligations issued or guaranteed by Canada. CHT issues CMB notes which are also fully guaranteed as to principal and interest by CMHC and, as such, represent obligations guaranteed by Canada.

CHT uses swaps with U.S. banks and other counterparties to transform the sovereign-guaranteed mortgaged-backed securities' cash inflows into the required non-amortizing bond cash flows on the CMB notes, with fixed or floating interest payments and principal at maturity, through the use of customized interest rate swaps.

Excluding uncleared swap transactions with Foreign Governments from the margin requirements is desirable for several reasons. First, as recognized by the Commodity Futures Trading Commission (the "CFTC"), principles of comity require U.S. regulators to avoid applying U.S. law in such a way as to infringe on the sovereignty of another country. The CFTC applied these principles both to exclude Foreign Governments from the registration requirements for swap dealers and major swap participants[2] and to exclude them from Title VII's clearing requirements.[3] As the CFTC stated in the latter case,

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[1] 76 Fed. Reg. 23732 (April 28, 2011), 76 Fed. Reg. 27564 (May 22, 2011).
[2] "Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant, "Major Security-Based Swap Participant" and "Eligible Contract Participant." 77 Fed. Reg. 30596 (May 23, 2012). ("The CFTC does not believe that foreign governments, foreign central banks, and international financial institutions should be required to register as swap dealers or major swap participants." Id. at 30693.)
[3] "End-User Exception to the Clearing Requirement for Swaps," 77 Fed. Reg. 42560 (July 19, 2012).

> Canons of statutory construction "assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws." In addition, international financial institutions operate with the benefit of certain privileges and immunities under U.S. law indicating that such entities may be viewed similarly under certain circumstances. There is nothing in the text or history of the swap-related provisions of Title VII of the Dodd-Frank Act to establish that Congress intended to deviate from these traditions of the international system by subjecting foreign governments, foreign central banks, or international financial institutions to the clearing requirement set forth in Section 2(h)(1) of the CEA.
>
> Given these considerations of comity and in keeping with the traditions of the international system, the Commission believes that foreign governments, foreign central banks, and international financial institutions should not be subject to Section 2(h)(1) of the CEA. Accordingly, it is not necessary to determine whether these entities are "financial entities" under Section 2(h)(7) of the CEA.[4]

Second, applying the margin requirement to swap transactions with Foreign Governments is not necessary to carry out the purposes of the proposed rule, which is to protect CSEs from the risks of uncleared swaps. Enhanced capital requirements, oversight of risk management, reviews of credit procedures and targeted examinations are among the alternative tools available to the Agencies to ensure that CSEs protect themselves when they enter into this limited subset of uncleared swaps. As the proposed rule recognizes in the case of non-financial end-users, the Agencies will be expecting CSEs to adopt and follow their own credit standards in entering into these transactions. A number of highly rated Foreign Governments would not be viewed as presenting material credit risks to CSEs, and certainly not risks that should cause them to be classified as financial end-users. This would be particularly true in the case of CMHC and CHT, whose obligations are obligations of and by Canada or whose obligations are guaranteed by Canada. The long-term debt securities of Canada, CMHC and CHT are rated triple-A by each of Moody's Investors Service, Inc., Standard & Poor's Financial Services LLC and Fitch, Inc.

Third, the proposed rule will simply deny CSEs healthy and profitable business to the benefit of their non-U.S. competitors. In the case of CMHC and CHT, the effect either of preventing CSEs from entering into uncleared swaps with Foreign Governments or of making such transactions prohibitively unattractive to both parties will be to compel CMHC and CHT to transfer their swap transactions to Canadian and other non-U.S. competitors of CSEs.

Finally, CMHC is precluded by Canadian law from subjecting their assets to any collateral claim. Canada's Financial Administration Act provides that:

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[4] Id. at 42562. (Footnotes omitted.) The CFTC chose to exempt Foreign Governments from Title VII's clearing requirements rather than to designate them as end-users. CMHC urges the Agencies to follow the same approach in the case of margin requirements for uncleared swaps.

> 100. No agent corporation, for the purposes of securing payment of a debt or performance of an obligation, shall charge, mortgage, hypothecate, cede and transfer, pledge or otherwise create an interest in or charge on any real or personal property held by the corporation.[5]

Requiring collateral to be posted by CMHC and CHT would not be possible under CMHC's present authorities and the current CHT structure. All credit support annexes that CMHC and CHT enter into are one-way agreements under which CMHC and CHT accept collateral but do not post collateral. Counterparties in these OTC derivative transactions are comfortable facing the Government of Canada exposure from a credit perspective. For CMHC, mandatory collateral requirements would necessitate a change in the Financial Administration Act and CMHC's governing statute to allow CMHC to post collateral.

As a result, the proposed margin rules effectively amount to a flat prohibition on a CSE's entering into an uncleared swap transaction with CMHC, CHT and other similarly constrained Foreign Governments. We do not believe the Agencies intended this result. Moreover, even if a Foreign Government could amend its constitution or legislation in order to allow for collateral to be posted in connection with swap transactions, negotiated debt covenants may be in place that would preclude such activities.

If the Agencies decide not to follow the CFTC's lead and exclude uncleared swaps with Foreign Governments from the scope of the margin requirements, they should at least classify Foreign Governments as non-financial end-users so that CSEs may rely on their own credit assessments in entering into these transactions. Neither CMHC or CHT is a financial institution. Both use swaps exclusively for hedging and risk-mitigation purposes. Contrary to the assertion of the Agencies, the financial health of CMHC and CHT is not linked with the health of Canada's domestic banking system; it is tied much more directly to the heath of Canada's housing market. We see no reason why the proposed rule should classify CMHC and CHT, or any other Foreign Government, differently than any other non-financial end-user that is only using swaps to manage its risk.

We thank the Agencies for the opportunity to comment on the proposed rule.

Sincerely,

Winthrop N. Brown

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[5] R.S.C., 1985, c. F-11.