STRUCTURED FINANCE ASSOCIATION

May 12, 2025

To Whom It May Concern,

The Structured Finance Association ("***SFA***")[1] appreciates this opportunity to provide feedback (the "***SFA Comment Letter***") to the Office of Management and Budget ("***OMB***") regarding its Notice of request for information ("***RFI***").[2]

We recognize that the intention of the OMB in making this inquiry to the public is to eliminate "unnecessary, unlawful, unduly burdensome, or unsound"[3] regulation. Specifically, the RFI asks commenters to "address the background of the rule and the reasons for the proposed rescission, with particular attention to regulations that are inconsistent with statutory text or the Constitution, where costs exceed benefits, where the regulation is outdated or unnecessary, or where regulation is burdening American businesses in unforeseen ways."[4]

Driven by these goals, the SFA suggests that certain amendments to the regulations of the U.S. Commodity Futures Trading Commission (the "***CFTC***") may enhance the functioning of the securitization markets. Securitizations and structured finance vehicles, which primarily issue securities supported by self-liquidating financial assets such as loans, leases, mortgages and receivables, have historically utilized hedging and other swaps but do not invest in more traditional commodity interests such as futures contracts. As such, prior to the enactment of the Dodd-Frank Act, they were wholly outside the purview of the CFTC and they have continued to be largely excluded from CFTC jurisdiction through a series of interpretive letters. However, various rules relating to swaps, especially those relating to margin, do affect the ability of securitization vehicles to utilize swaps and thus make the securitization markets less efficient than they would otherwise be.

For context, in 2024, securitization provided $12.7 trillion in financing and funded more than 50% of U.S. household debt. Through securitization and structured finance, more families, individuals, and businesses have access to essential credit, seamlessly and at a lower price. Securitization is a vital source of alternative liquidity for bank and non-bank lenders, and finances virtually all types of consumer and commercial debt. Due to strong investor demand and the stability of the sector, the width and depth of assets financed by securitization continues to grow, with securitization financing in 2024 accounting for (i) $12.7 trillion of total financing, (ii) 17% of auto loan and lease

[1] SFA is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, to be advocates for the securitization community, to share best practices and innovative ideas and to educate industry members through conferences and other programs. Further information can be found at www.structuredfinance.org.

[2] Office of Management and Budget, Request for Information: Deregulation, 90 Fed. Reg. 15481 (Apr. 11, 2025).

[3] *Id* at 15482.

[4] *Id* at 15482.

debt, (iii) 71% of residential mortgage debt, (iv) 6% of credit card debt, (v) 7% of student loan debt, (vi) 27% of commercial real estate debt, (vii) $1 trillion of corporate borrowings, and (viii) 40% of multi-family debt.

We recognize that the OMB is seeking guidance on eliminating rules in their entirety. We note, however, that deregulation can also be achieved by introducing new exemptions or exclusions to current regulations, thereby narrowing the scope of those regulations. That is the form of relief we are focused on for purposes of this letter.

SFA is uniquely situated to respond to the RFI given the effects that CFTC's regulation has on the structured finance and securitization markets. As an association representing participants across the full spectrum of the structured finance and securitization markets – including lenders, dealers, securities issuers, institutional investors, financial intermediaries, credit rating agencies, law firms, accounting firms, technology firms, servicers and trustees – SFA plays a vital role in the development of market-consensus solutions that support efficient and stable markets. While SFA's members often have conflicting views and interests, our governance structure requires consensus from all engaged stakeholder groups before SFA takes an advocacy position on legislative or regulatory matters.

I. Rule Amendments

A. Initial Margin, Variation Margin and "Financial End User" Definition

The CEA in § 1a(10) defines a "commodity pool" as "any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any— (i) commodity for future delivery, security futures product, or swap; (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (iii) commodity option authorized under section 4c; or (iv) leverage transaction authorized under section 19." This section goes on to state that the CFTC "by rule or regulation, may include within, or exclude from, the term "commodity pool" any other business entities.[5]

Many securitization vehicles are already excluded from the definition of "commodity pool" pursuant to interpretive guidance provided by the Staff of the CFTC. However, such securitization vehicles may still be unable to utilize swaps for managing interest rate and currency risk because of the margin requirements. In our view, securitization vehicles that are not commodity pools should also be excluded from the requirement to post initial margin and variation margin with respect to their swaps. Securitization vehicles have numerous existing cash controls and protections but are ill-suited to provide variation margin because they only distribute (and often only receive) cash on a monthly or less frequent basis.

Swap counterparties have traditionally been given a security interest in all assets of the securitization vehicle, cash in securitization vehicles is held in high quality liquid assets, and the swap counterparties have had positions at or near the top of the distribution priority of payments.

[5] *See* § 1a(10) of the CEA.

We suggest that securitization vehicles be expressly excluded from requirements to provide initial and variation margin.[6]

B. Reporting of Swaps with Securitization Vehicles

Many securitization vehicles enter into swaps not only with registered swap dealers or security-based swap dealers, but also with *de minimis* swap dealers who would be required to set up reporting facilities under the CFTC Part 43 and 45 regulations. The CFTC has previously exempted several classes of transactions that qualify as "swaps"[7] from reporting (*e.g.*, relating to foreign exchange swaps and forwards as well as commodity trade options). Securitization swaps with excluded securitization vehicles with counterparties that are not registered swap dealers or registered security-based swap dealers should be exempted from reporting, and Parts 43 and 45 should be amended accordingly.

C. Restoration of CFTC Rule 4.13(a)(4) Exemption for Private Funds

In connection with regulations adopted under the Dodd-Frank Act, the CFTC repealed the exemption for commodity pool operators of funds sold only to sophisticated investors, which had previously aligned with Section 3(c)(7) of the Investment Company Act of 1940. The exemption was useful for structured finance and other vehicles that might fall within the definition of "commodity pool" and has reflected a traditional view of both Congress and securities regulators that the most sophisticated investors do not need the same level of regulatory protection as retail investors. We believe that the repeal of Rule 4.13(a)(4) unnecessarily broadened the CFTC's reach and would suggest that it be reinstated.

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[6] To exclude securitization vehicles from the requirement to post IM and VM, CFTC Rule 50.50(a)(1), should be amended to carve securitization vehicles out of the clearing requirement (where, although they are generally passive vehicles, they could be considered to be covered through the reference to "financial entities" as defined in Section 2(h)(7)(C)(i)(VIII) of the Commodity Exchange Act, which defines a financial entity to include "a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 1843(k) of title 12". Securitizations would also need to be excluded from the Rule 23.151 definition of "financial end users" in Rule 23.151, which includes a number of clauses that may cover securitization vehicles, including:

- "a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));
- an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) but for section 3(c)(5)(C);
- an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a-7 (§ 270.3a-7 of this title) of the Securities and Exchange Commission" and
- "an entity, person, or arrangement that is, or holds itself out as being, an entity, person, or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for investing or trading or facilitating the investing or trading in loans, securities, swaps, funds, or other assets"

[7] *See* § 1a(47) of the CEA.

II. Change in Interpretation

Although there is no formal regulation that interprets the phrase "operated for the purpose of trading in commodity interests,"[8] it has been the CFTC's longstanding policy that the inclusion of a single swap in a fund, including a single swap entered into at the inception of the fund for the purpose of hedging an interest rate or currency risk, can cause a fund that is not actively trading in commodity interests to nonetheless be considered a commodity pool.[9] The CFTC should revise its interpretation of the phrase "operated for the purpose of trading in commodity interests" to exclude investment vehicles that do not seek to actively trade in commodity interests but may enter into occasional swaps at inception, in connection with new securities issuances by the investment vehicle, or to hedge interest or currency exposures related to assets or exposures that are not themselves commodity interests.

III. Further Comment

SFA again thanks OMB for the opportunity to submit this SFA Letter in response to the RFI. SFA's membership stands ready to provide further input regarding this important topic and our comments in this letter. If you have any questions about this matter, please contact Frank Tallerico, Director, ABS Policy at frank.tallerico@structuredfinance.org.

[8] *See* § 1a(10) of the CEA.

[9] *See, e.g.*, Final Rule, Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg., 11,252, 11,263 (Feb. 24, 2012) ("As a result, one swap contract would be enough to trigger the registration requirement.").