



Via Agency Web Site

February 10, 2011

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: *RIN number 3038–AD25—Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*¹

Dear Mr. Stawick:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of public, union and corporate pension funds with combined assets that exceed \$3 trillion dollars. Member funds are major shareowners with a duty to protect the retirement savings of millions of American workers.² Significantly affected by the financial crisis, Council members have a deep, abiding interest in strong financial regulatory reform. The purpose of this letter is to share our views on two specific areas of the above mentioned proposed rule. Our comments are based on the findings and recommendations of the July 2009 report of the Investors' Working Group (IWG), an independent non-partisan panel of investment and regulatory experts established with the sole purpose of ensuring that investors' views are heard in the national debate on financial regulatory reform.³

Proposed § 23.410—Prohibition on fraud, manipulation and other abusive practices

In order to restore trust in the U.S. financial markets and safeguard the needs of investors, the IWG recommends that all participants in the over-the-counter (OTC) derivatives market should be subject to federal fraud and manipulation prohibitions.⁴ We believe that the Commodity Futures Trading Commission's (CFTC) proposed rule to explicitly prohibit a swap dealer or major swap participant from engaging "in any act, practice or course of business that is fraudulent, deceptive or manipulative" is largely consistent with that recommendation.⁵ As proposed, the rule would strengthen the protection of market participants, encourage investor confidence and promote integrity within the financial system.

¹ Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 Fed. Reg. 80,638 (Dec. 22, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/2010-31588.pdf>.

² For more information about the Council of Institutional Investors (Council) and its members, please visit the Council's website at <http://www.cii.org>.

³ Investors' Working Group, U.S. Financial Regulatory Reform: The Investors' Perspective 10 (July 2009), [http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20\(July%202009\).pdf](http://www.cii.org/UserFiles/file/resource%20center/investment%20issues/Investors%27%20Working%20Group%20Report%20(July%202009).pdf). [Following its issuance, the IWG Report was reviewed and subsequently endorsed by the Council board and membership. For more information about the Investors' Working Group, please visit the Council's website at <http://www.cii.org/iwglInfo>.]

⁴ *Id.* at 11.

⁵ *Supra* note 1, at 80,658.

Proposed § 23.431—Disclosures of material information

We also support the CFTC's proposed rule to require a swap dealer or major swap participant to disclose information necessary to enable a counterparty to assess the material risks of certain swap contracts.⁶ We note that the proposed rule is generally consistent with the IWG recommendation that OTC derivatives dealers be subject to "business conduct standards, including requirements to disclose contract terms and risks to their customers."⁷ If adopted, we believe the measure would help ensure that market participants are better able to accurately assess risk and make informed decisions. The role OTC derivatives played in the financial turmoil demonstrates that increased transparency is necessary for the protection of investors and for restoring market stability.⁸

For all the aforementioned reasons, the Council generally supports the proposed prohibition on fraud, manipulation and other abusive practices and the proposed requirement for disclosure of material risks associated with a swap. We appreciate the opportunity to share our views with you. Please feel free to contact me at (202) 261-7086 or laurel@cii.org, or General Counsel Jeff Mahoney at (202) 261-7081 or jeff@cii.org, if you should have any additional questions or comments.

Sincerely,



Laurel Leitner
Senior Analyst

⁶ *Id.* at 80,643.

⁷ *Supra* note 3, at 11.

⁸ *Supra* note 1, at 80,657.