February 22, 2011

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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Definitions of Major Swap Participant and Major Security-Based Swap Participant; RIN 3235-AK65

Dear Mr. Stawick and Ms. Murphy:

The Government of Singapore Investment Corporation Pte Ltd (GIC) appreciates the opportunity to comment on the proposed definitions of Major Swap Participant and Major Security-Based Swap Participant (collectively, Major Participants) pursuant to Sections 721 and 761 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] GIC supports the Commodity Futures Trading Commission's (CFTC) and the Securities and Exchange Commission's (SEC) (collectively, Commissions) efforts in implementing the Dodd-Frank Act, which we believe will enhance the regulation and supervision of financial institutions, promote greater transparency, and reduce risks in the global financial system.

I. BACKGROUND

GIC is a global investment management company established in 1981 by the Government of Singapore to manage the nation's foreign reserves. GIC is indirectly wholly owned by the Government of Singapore. The Government of Singapore and its central bank, the Monetary Authority of Singapore (MAS), are our only clients. GIC acts as fund manager for the Government and the MAS, who together own all the assets under our management.

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, Jul. 21, 2010, 124 Stat. 1376, §§ 721, 761.

As previously stated in our letter of September 20, 2010, GIC believes the Major Participant definitions should exclude all long-term financial investors (*i.e.*, pension funds, endowments, sovereign wealth funds (SWFs), etc.).[2]

This letter focuses on a unique set of issues relating to the potential applicability of the Major Participant definitions specifically to SWFs, such as GIC. In particular, we are responding to the Commissions' joint request to provide comments on the following:

- "whether [the Commissions] should exclude, conditionally or unconditionally, certain types of entities from the major participant definitions, on the grounds that such entities do not present the risks that underpin the major participant definitions and/or to avoid duplication of existing regulation;"
- "whether ... exclusions are necessary and appropriate in light of the proposed rules that would be applicable to major participants;" and
- "whether sovereign wealth funds or other entities linked to foreign governments should be excluded from the major participant definitions, particularly in light of the provisions in the Dodd-Frank Act governing its territorial reach, and whether the answer in part should be determined based on whether the entity's obligations are backed by the full faith and credit of the foreign government."[3]

In addressing these issues, we set forth three grounds that could support the establishment of a categorical exclusion for SWFs, which we believe would be wholly consistent with Congress's purpose in establishing the Major Participant definitions: (1) SWFs generally do not present risks of the kind contemplated by the Major Participant definitions; (2) SWFs are typically subject to comparable home country supervision that would render CFTC and/or SEC regulation largely duplicative; and (3) extraterritorial and sovereignty questions may complicate the regulation of SWFs outside the United States. Alternatively, should a categorical exclusion of SWFs not be acceptable, we believe the Commissions should at least consider a specific exclusion by way of a listing periodically of SWFs which have comparable supervision in their home countries.

II. RISKS UNDERPINNING THE MAJOR PARTICIPANT DEFINITIONS

It is difficult to imagine that SWFs could pose the kinds of risks Congress contemplated when it created the Major Participant categories. As a general matter, Congress's chief aim in enacting Title VII of the Dodd-Frank Act was the reduction of counterparty risk and its concomitant threat to U.S. financial stability.

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[2] Letter from Lee Ming Chua, General Counsel, GIC, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Sept. 20, 2010), http://www.sec.gov/comments/s7-16-10/s71610-22.pdf; See also Letter from Lee Ming Chua, General Counsel, GIC, to David A. Stawick, Secretary, Commodity Futures Trading Commission (Sept. 20, 2010), http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmissionmult_092010-email1.pdf.

[3] Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant and "Eligible Contract Participant," 75 Fed. Reg. 80174, 80203 (Dec. 21, 2010).

As the Senate Report noted, "counterparty credit exposure in the derivatives market was largely seen as a source of systemic risk during the failures of both Bear Stearns and Lehman Brothers."[4] The bilateral and customized nature of certain segments of the swaps markets led to the emergence of "daisy chains" of counterparties, some of whom were highly-leveraged and entered into trades lacking sufficient collateralization. The failure of a single, but significant counterparty—when combined with an overall lack of transparency—created the specter of a massive string of successive defaults. In this way, the swaps markets fostered dangerous interconnections that spread and amplified risk throughout the U.S. financial system and beyond.

SWFs, however, do not seem to present the sort of counterparty risk contemplated by Congress. Given the nature of a SWF, default by a SWF seems highly improbable regardless of aggregate net exposure. In addition, SWFs—in comparison to private entities—bear a far greater reputational risk, and therefore can be expected to take the necessary risk management measures. Consequently, it is unsurprising that most commentators agree that SWFs pose little if any threat to U.S. financial stability.[5]

Indeed, history suggests the very opposite is true. While serving as Deputy U.S. Treasury Secretary, Robert Kimmitt explained to Congress that "SWFs may be considered a force for financial stability, supply liquidity to the markets, raising asset prices, and lowering borrowing yields in the countries in which they invest."[6] During the financial crisis, a number of SWFs (including GIC) made critical capital investments in U.S. and European financial institutions—investments that either prevented or lessened the degree of taxpayer-funded bailouts.[7] Because regulation of SWFs as Major Participants would appear to do little to reduce counterparty defaults, the Commissions would be acting consistent with congressional objectives in construing the Major Participant definitions to exclude SWFs.

III. DUPLICATION OF EXISTING REGULATION AND SUPERVISION

Apart from the likelihood of having a negligible impact on systemic risk, regulation of SWFs as Major Participants would be largely duplicative where the SWFs are subject to comparable home country supervisory measures. An exclusion for those SWFs in such cases would erase an unnecessary layer of regulation, easing the burden on the resource-stretched staffs of the CFTC and the SEC as well as reducing substantial costs already borne by U.S. taxpayers.[8]

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[4] THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010, S. REP. NO. 111-176, at 31.

[5] "[M]ost experienced observers with whom I have spoken do not see SWF posing a threat to financial-market stability on the basis of the past behavior of the owners and managers of these funds." Sovereign Wealth Fund Acquisitions and Other Foreign Government Investments in the United States: Assessing the Economic and National Security Implications: Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs, 110th Cong. 6 (2007) (statement of Edwin M. Truman, Senior Fellow, Peterson Institute for International Economics).

[6] Robert M. Kimmitt, *Public Footprints in Private Markets*, FOREIGN AFFAIRS, Jan/Feb 2008, at 119.

[7] Lloyd Sakazaki, *Sovereign Wealth Funds: The Financial Crisis' Secret Weapon*, SEEKING ALPHA (Oct. 17, 2008), http://seekingalpha.com/article/100612-sovereign-wealth-funds-the-financial-crisis-secret-weapon.

[8] Peter Schroeder, *Gensler: Dodd-Frank a strong law, but we need budget to implement it*, THE HILL, (Jan 14, 2011), http://thehill.com/blogs/on-the-money/banking-financial-institutions/137955-gensler-

A sovereign government has clear incentives for establishing and maintaining an effective oversight and supervisory framework for its SWF. GIC, for example, is subject to such a framework. An investment mandate from the Government of Singapore to GIC sets out the terms of appointment, investment objectives, investment horizon, risk parameters, and investment guidelines for managing the portfolio. The Ministry of Finance, representing the Government, ensures that a competent board of directors is in place. As a Fifth Schedule company under the Constitution of Singapore, GIC is accountable in various key areas to the President of Singapore. The Constitution empowers him to obtain information to enable him to safeguard the country's reserves. Furthermore, no one may be appointed to or removed from our board without the concurrence of the President of Singapore. This additional layer of control ensures that only people of integrity who are competent and can be trusted to safeguard these assets are appointed.

The main companies within the GIC group, and the Government's portfolio managed by GIC, are independently audited by the Auditor-General of Singapore. The Auditor-General—who is appointed by the President of Singapore—submits an annual report to the President and Parliament on his audit.

GIC provides monthly and quarterly reports to the Accountant-General, a department under the Ministry of Finance. These reports list investment transactions executed, as well as our holdings, bank accounts, and balances. The reports provide detailed performance and risk analytics as well as the distribution of the portfolio by asset class, country, and currency. GIC's management meets annually with the Minister for Finance to report formally on the risk and performance of the portfolio in the preceding financial year.

In addition, like many SWFs, GIC participated in the framing of, and ultimately adopted, the International Monetary Fund (IMF)-endorsed Santiago Principles.[9] Principle 22 requires each SWF to establish a comprehensive framework that identifies, assesses, and manages the risks of its operations.[10] Our internal processes are in compliance with Principle 22.

Identifying and managing risk is a clear and integral part of management responsibility at all levels in GIC. In addition to the board and its risk committee, different bodies and groups are specifically charged with the task of identifying, analyzing, monitoring, reporting and on-the-ground managing of risks.

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dodd-frank-has-good-provision-but-we-need-budget-to-implement-them; Melanie Waddell, *With Lack of Funding, Congress is 'Pulling the Rug Out' From Mary Schapiro*, ADVISOR ONE (Feb. 8, 2011), http://www.advisorone.com/article/lack-funding-congress-pulling-rug-out-mary-schapiro.

[9] *Sovereign Wealth Funds: Generally Accepted Principles and Practices "Santiago Principles"* THE INTERNATIONAL WORKING GROUP (IWG) OF SOVERIEGN WEALTH FUNDS (Oct. 2008), http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf.

[10] *Id.* ("GAPP 22. Principle: The SWF should have a framework that identifies, assesses, and manages the risks of its operations. GAPP 22.1 Subprinciple: The risk management framework should include reliable information and timely reporting systems, which should enable the adequate monitoring and management of relevant risks within acceptable parameters and levels, control and incentive mechanisms, codes of conduct, business continuity planning, and an independent audit function. GAPP 22.2 Subprinciple: The general approach to the SWFs risk management framework should be publicly disclosed.").

GIC's policies and internal controls comprehensively address a variety of risks—including credit, liquidity, market, operational, counterparty, legal, and regulatory risks. The risk and performance management department independently sets and monitors performance and risk review thresholds. Risk and concentration limits are clearly set out. Information systems monitor risk criteria, relevant trading limits, and investment guidelines within each of our managed portfolios. These systems allow for both pre-trade and post-trade compliance verification. Our portfolio managers and senior management use performance and risk attribution tools to derive timely feedback. Moreover, stress tests are conducted on a variety of scenarios to determine how potential changes in market conditions or the occurrence of risk events may impact GIC's overall portfolio. GIC also adopts a strong control orientation in managing counterparty credit risks, trading only with financially sound and reputable counterparties, which are subject to a stringent selection and approval processes. Counterparty exposures are monitored against set limits and counterparty profiles are reported to senior management regularly. Other measures to mitigate credit risk include using netting agreements and programmes requiring counterparties to pledge collateral. GIC's credit support annexes with counterparties are two-way,[11] and collateral is exchanged on a daily basis for mark-to-market profit and losses.

IV. EXTRATERRITORIALITY AND SOVEREIGNTY ISSUES

We understand that regulating SWFs outside the United States as Major Participants raises a complex set of legal and policy issues relating to extraterritoriality and sovereignty.[12] In determining whether to extend their authority under the Dodd-Frank Act extraterritorially, the Commissions will no doubt consider whether doing so will strengthen the U.S. swaps regulatory regime and protect U.S. investors. Based on the foregoing discussion relating to the lack of systemic risk posed by SWFs and the likelihood of duplicating supervisory efforts, we believe there is little to be gained from applying the Major Participant definitions extraterritorially, *i.e.*, to the swaps operations of SWFs like us outside the United States. We believe the Commissions should apply principles of international comity and cooperation with even greater force when the entity in question is a foreign sovereign or its instrumentality.

In the context of swaps entity registration requirements, the CFTC recently emphasized the important role "considerations of international comity play in determining the proper scope of extraterritorial application of federal statutes."[13] Because there is "no bright-line rule that says ... the statute applies to its fullest [extraterritorial] extent in every single possible application," Congress has implicitly afforded the Commissions with considerable discretion to create an exclusion for foreign persons—and SWFs in particular. Other commentators have observed that

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[11] Thresholds for GIC and its counterparties may be different, reflecting the different credit standings.

[12] For example, we understand that some nations have so-called "blocking" statutes and secrecy laws that could prevent some SWFs from providing detailed disclosures and reporting requirements of the kinds required for Major Participants. *See, e.g.,* Sandra N. Hurd, *Insider Trading and Foreign Bank Secrecy,* 24 AM. BUS. L.J. 25 (1986) (estimating that 26 countries have blocking statutes that either require refusal of compliance with foreign informational requests or disallow recognition of foreign judgments).

[13] *See* Proposed Rule – Registration of Swap Dealers and Major Swap Participants, 75 Fed. Reg. 71379, 71382 (Nov. 23, 2010).

the Dodd-Frank Act builds formal considerations of international comity into key regulatory issues where foreign institutions and regulatory frameworks are implicated.[14] We would highlight the importance the Dodd-Frank Act places on the views of home country regulators—particularly in those instances where U.S. regulatory measures may be applied extraterritorially.[15] It stands to reason that Congress's respect for international comity would above all extend to situations where the foreign government itself or its SWF is the entity over which the Commissions would be extending their jurisdiction extraterritorially.

Furthermore, nowhere in the Dodd-Frank Act's more than 2300 pages does Congress express any clear intent to apply extraterritorially regulatory measures directly to foreign sovereigns and their instrumentalities. The legislative history is similarly silent. While certainly not dispositive, the absence of unambiguous language addressing the applicability of the Major Participant definitions to foreign sovereigns should, at the very least, caution against regulating SWFs as Major Participants without considering some kind of exclusion apart from the quantitative thresholds applied to all other persons. On a related note, we understand that policy prescriptions for SWFs have historically been worked out by the Treasury Department either directly[16] or through international bodies such as the IMF, World Bank, or the OECD due in large part to the delicate issue of sovereignty and other foreign relations considerations.[17]

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[14] Letter from Laura Schisgall, Managing Director and Senior Counsel, Societe Generale, to David A Stawick, Secretary, Commodity Futures Trading Commission, and Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Feb. 18, 2011); Letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers, to to David A Stawick, Secretary, Commodity Futures Trading Commission, and Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Jan. 10, 2011).

[15] For instance, the Dodd-Frank Act directs regulators to consider the extent to which a foreign entity is comprehensively regulated in its home country before deciding whether to extend U.S. regulation to that entity and requires U.S. regulators to consult with non-U.S. regulators before making certain decisions that could affect a foreign-regulated entity. *See, e.g.,* Dodd-Frank Act § 113(f) (requiring the Financial Stability Oversight Council (FSOC) to consult with the appropriate home country supervisor of a foreign nonbank financial company before making certain determinations); § 113(i) ("in exercising its duties ... with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the [FSOC] shall consult with appropriate foreign regulatory authorities, to the extent appropriate."); *see also* § 175(c) (Requiring the Federal Reserve Board and the Treasury Secretary to "consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies."); § 752(a) (Requiring the Commissions and the prudential regulators to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards," concerning among other things, swaps and security-based swaps.).

[16] Tom Bawden and James Rossiter, *Sovereign Wealth Funds Reach Agreement with US Treasury*, THE TIMES (Mar. 21, 2008), http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article3594541.ece.

[17] *Statement of G-7 Finance Ministers and Central Bank Governors October 19, 2007*, THE U.S. DEPARTMENT OF TREASURY (Oct. 19, 2007) http://www.treasury.gov/press-center/press-releases/Pages/hp625.aspx. Perhaps the most notable example of an international framework is the IMF, which has created a working group of SWFs who—together with guidance from the IMF and the financial ministries of member nations—reached agreement on the Santiago Principles discussed above. Member countries of the SWF IMF working group include: Australia, Azerbaijan, Bahrain, Botswana, Canada, Chile, China, Equatorial Guinea, Iran, Ireland, South Korea, Kuwait, Libya, Mexico, New Zealand, Norway, Qatar, Russia, Singapore, Timor-Leste, Trinidad & Tobago, the United Arab Emirates, and the United States. Oman, Saudi Arabia, Vietnam, the OECD, and the World Bank,

V. CONCLUSION

We appreciate that the Commissions' task is not an easy one, and we fully support CFTC and SEC implementation of measures intended to reduce systemic risk in the international swaps markets. To that end, GIC believes an exclusion for SWFs from the Major Participant definitions would be consistent with the text, structure, and underlying policy rationales of the Dodd-Frank Act. Regulation of SWFs could largely duplicate the efforts of home countries with comparable supervisory measures and have negligible impact on the reduction of counterparty defaults and systemic risk. Extraterritoriality and sovereignty issues additionally complicate the direct regulation of SWF activities outside the United States.

GIC believes that the reasons detailed in this letter could support the establishment of a categorical exclusion for SWFs.

Should a categorical exclusion not be acceptable, the Commissions should at least consider a specific exclusion for SWFs by way of a listing periodically of SWFs which have home country supervisory frameworks that are sufficient to ensure that the SWFs neither present risks that could threaten the stability of the U.S. financial system nor otherwise harm U.S. investors.[18] Such an exclusion would have the added benefit of fostering greater international regulatory harmonization and coordination.

Thank you once again for this opportunity to give our comments.

Respectfully submitted,

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Government of Singapore Investment Corporation Pte Ltd

cc: Heath P. Tarbert, Senior Counsel
Weil, Gotshal & Manges, LLP

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participate as permanent observers. The IMF continues to facilitate and coordinate the working group's agenda by providing a secretariat.

[18] We understand that an analogous policy of deference is effective under CFTC Regulation 30.10, which allows persons located outside the United States to avoid duplicative application of certain Commission regulations (including those with respect to registration) if they are subject to a comparable regulatory framework in their home country. We further note that Singapore's derivatives exchange is exempted. *See* 72 Fed. Reg. 50645 (Sep. 4, 2007).