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By electronic submission to www.cftc.gov

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
U.S.A.

Re: Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties (RIN 3038-AD25)

Dear Mr. Stawick:

Ontario Teachers' Pension Plan Board ("OTPP") appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the "Commission") on the proposed rules on Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties.¹ OTPP is the largest single-profession plan in Canada and one of the world's largest pension plans, with CAD \$96.4 billion in net assets at December 31, 2009. The plan's approximately 289,000 beneficiaries are teachers of Ontario, most of whom are government employees.²

The Proposed Rules implement Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and are intended to increase market transparency, mitigate systemic risk, and provide greater protections for certain "Special Entities." While we strongly support Dodd-Frank's goals, we do not believe that Congress intended for foreign pension plans to be considered "Special Entities." We

¹ 75 Fed. Reg. 80638 (Dec. 22, 2010) (the "Proposed Rules").

² For more information, visit <http://www.otpp.com>.

urge the Commission to make clear that foreign pension plans such as OTPP would not be treated as Special Entities under the Proposed Rules.

Currently, Section 4s(h)(2)(C) of the CEA defines a "Special Entity" to include:

- (i) a Federal Agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State;
- (iii) any employee benefit plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974 ("ERISA");
- (iv) any governmental plan, as defined in Section 3 of ERISA; and
- (v) any endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

In the preamble to the Proposed Rules, the Commission specifically requested comment on whether the definition "employee benefit plan, as defined in Section 3" of ERISA should be limited to plans *subject to* regulation under ERISA. We believe that limiting Section 4s(h)(2)(C)(iii) of the CEA to "employee benefit plans *subject to* ERISA" is an important and necessary interpretation that would properly reflect Congressional intent.

Section 3(3) of ERISA defines an employee benefit plan as an "employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." While this definition might be interpreted broadly, we believe that, for purposes of defining a Special Entity, Congress clearly intended to cover only those employee benefit plans that are subject to ERISA. If Congress intended to include all employee benefit plans, whether or not subject to ERISA, Congress would not have expanded the definition of Special Entity to separately cover "any governmental plan as defined in Section 3 of ERISA." The separate prong for governmental plans would have been superfluous since governmental plans are a type of employee benefit plan but are not subject to ERISA.³

³ Section 4(b)(1) of ERISA provides that the Act does not apply to governmental plans as defined in Section 3(32). Section 3(32) of ERISA specifically provides that the term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

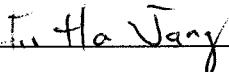
Accordingly, we believe that the Commission should interpret Section 4s(h)(2)(C)(iii) to encompass only those employee benefit plans that are *subject to* ERISA.⁴

If OTPP is included in the definition of Special Entity under the Proposed Rules, we are concerned that the Proposed Rules would decrease the number of potential swap counterparties in the United States with whom we would be able to transact as well as add other economic and operational burdens in connection with swaps executed in the U.S. markets.

* * *

OTPP appreciates the opportunity to comment on the Proposed Rules. If you have any questions about the foregoing, please do not hesitate to contact In Ha Jang, Senior Legal Counsel, Investments at (416) 730-6425.

Respectfully submitted,



per/ Melissa Kennedy
General Counsel and Secretary
Senior Vice-President, Corporate Affairs
Ontario Teachers' Pension Plan Board

⁴ For the avoidance of doubt, plans maintained primarily outside the United States for the benefit of persons substantially all of whom are nonresident aliens are not subject to ERISA. See ERISA Section 4(b)(4).