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HEALTHCARE OF ONTARIO PENSION PLAN

**Comments on the U.S. Commodity Futures Trading Commission (CFTC)
Proposed Regulation to Implement Title VII
of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010**

February 22, 2011

Background

Healthcare of Ontario Pension Plan ("HOOPP") is a large, multi-employer, defined benefit pension plan originally formed in 1960 and settled as a jointly-governed pension trust in 1993. HOOPP, one of the largest pension plans in Canada, serves approximately 170,000 active members and 350 participating employers operating in Ontario's healthcare sector. HOOPP is currently paying lifetime pensions to approximately 88,000 pensioners with a pension payroll that exceeds $1 billion (Cdn.).

Defined benefit pension plans like HOOPP are designed to operate over the long term where pension contributions made today to fund benefits may not be paid out for many years.

HOOPP manages and invests its trust fund (with assets valued at $31.1 billion (Cdn.), as at December 31, 2009) with a relatively small team of investment professionals operating internally as part of the HOOPP organization.

HOOPP participates in the swap market regulated by the CFTC and would appear to fall within the definition of "Special Entity" under Section 4s(h) of the *Commodity Exchange Act* intended to implement the provisions of Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* based on the fact HOOPP is an employee benefit plan "maintained outside the U.S. primarily for the benefit of persons substantially all of whom are nonresident aliens" (section 3 of ERISA).

Proposed Rules for Swap Dealers and Major Swap Participants Dealing With Special Entities

HOOPP is pleased to have the opportunity to respond to the Request for Comment by the CFTC.

As an organization whose mandate is limited to serving the retirement needs of Ontario healthcare workers and thereby supporting the recruitment and retention activities of its Ontario-based participating employers, HOOPP is reluctant to advocate in matters that pertain to United States

domestic laws and regulations. However, HOOPP has a vested interest in the continued openness and efficiency of swap markets wherever it may wish to invest, including U.S. swap markets. There appears to be risks of unintended consequences in the "Proposed Rules for Swap Dealers", essentially resulting in market impediments and inefficiencies flowing from the CFTC's objective of imposing fiduciary or quasi-fiduciary obligations on swap dealers and other counterparties that wish to trade with "Special Entities". The imposition of such obligations on U.S. swap dealers will also directly or indirectly eliminate U.S. market access for such "Special Entities" and concurrently shift market activity away from U.S. swap markets to foreign swap markets.

The proposed rules deem swap dealers to be advisers to "Special Entities" solely on the basis that they provide market information to clients. The proposed rules would then operate to compel these swap dealer "advisors" to act in the "best interests" of their "Special Entity" counterparties. As a result, we can expect that such rules will discourage, if not completely eliminate, swap market-making by the U.S. firms to which the proposed rules would apply. It is commercially unreasonable to expect that a dealer will take the risk that a swap loses money on its own books while also being accountable if the swap loses money on its counterparties' books. The only viable alternative for the swap dealer will be to avoid trading with such "Special Entity" counterparties.

It is also problematic to impose on swap dealers the responsibility to verify whether or not its "Special Entity" counterparty is represented by a "qualified investment representative". This proposed requirement will create an additional risk for swap dealers in addition to the investment risk they accept when they trade with a "Special Entity" when they may have little, if any independent access, to verify whether or not information about a "Special Entity's" "qualified investment representative" is true. Once again, the swap dealer's commercial judgment may weigh in favour of not trading with "Special Entities" at all or possibly charging a higher price for the trades to compensate the dealers for this increased risk.

There are other proposed requirements that affect swap counterparties and carry possible unintended adverse results. One is the proposed rule that would require a swap dealer to be responsible for determining whether a given transaction is suitable for its counterparty, including "Special Entity". Without direct knowledge of the client's business, staff, other risks, etc., this determination may be difficult for a swap dealer or counterparty to make with certainty. The likely result is the swap dealer or counterparty which must meet this requirement will simply not trade in situations where there is any doubt at all about suitability.

Others are the "know your counterparty" provisions, prohibitions on "front running", mandates to release conflicts of interest, and requirement to provide scenario analyses to counterparties. These will all increase the administrative and compliance burden on swap dealers that must comply. The combined effect of these new rules will likely be to significantly slow the process of swap trading and make it more expensive for counterparties: swap dealers will have to charge for this additional time and administration as well as for the increased risks taken in trading swaps.

While the "know your counterparty" principle makes sense generally for financial advisors, HOOPP does not consider itself a "client" of the swap dealers or counterparties with whom it trades. HOOPP has a fiduciary duty to exercise its own due diligence and to understand the products it trades and the risks associated with them. If HOOPP requires financial advisory services, it would engage a financial advisor and enter into an appropriate contract for such services.

As a sophisticated market participant, the "Proposed Rules for Swap Dealers" should not be made to apply to HOOPP or any other pension or employee benefit plan similar to it, particularly plans such as HOOPP that are not even subject to ERISA regulations. It should be noted that swaps are a critically important tool in our financial risk management and the removal of access will increase rather than reduce our financial risk. The assumed intent of the proposal is to protect organizations like ourselves but will in fact do the opposite in that it will make it more challenging to manage our financial risk.

Further information and explanation to supplement this response to the CFTC's Request for Comment may be obtained by contacting either David Long, Vice-President, Derivatives & Fixed Income; email: dlong@hoopp.com; phone: 1-416-350-4775; or David Miller, General Counsel & Senior Vice President, Governance; email: dmiller@hoopp.com; phone 1-416-369-8038; at Healthcare of Ontario Pension Plan Trust Fund, 14th Floor, 1 Toronto Street, Toronto, Ontario, M5C 3B2, Canada.