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COMMENT

February 18, 2011

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

Re: RIN Number 3038-AD25

Dear Mr. Stawick:

The undersigned, State Teachers Retirement System of Ohio (hereinafter "STRS" or "System") is submitting this comment letter in response to the rules proposed by the Commodity Futures Trading Commission ("CFTC") concerning the Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties.

STRS is the statutorily created retirement system for Ohio's public educators. We are a \$65 billion plus fund serving over 175,000 active members and over 133,000 retirees. Our system internally manages approximately 80% of our funds' assets and 100% of our swap transactions which exceed \$2 billion annually. Swap transactions greatly facilitate the implementation of the system's long-term strategic asset allocation plan. Additionally, swap transactions are utilized to manage risk and investment exposures in a low cost and efficient manner. As I am sure you are aware, swaps are an excellent investment tool for these purposes. As a fiduciary, STRS is obligated to follow best business practices and the prudent expert standard in the course of managing investment assets. Therefore, having the ability to enter into swap transactions is very important to STRS.

STRS has been advised by several of its counterparties that the CFTC's proposed business conduct rules, if implemented in their current form, would prevent those counterparties from doing swap transactions with STRS and other public pension plans such as STRS for the reasons set forth below.



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The proposed rules require a swap dealer who acts as an advisor to a “Special Entity” to act in the “best interests” of the Special Entity and undertake “reasonable efforts” to obtain information necessary to determine that the recommended swap transaction is therefore in the best interests of the Special Entity. In conjunction with these obligations, a swap dealer must have a reasonable basis to believe that the Special Entity has a representative independent of the swap dealer that meets certain criteria including having sufficient knowledge to evaluate transaction risks.

1. Definition of “Special Entity”.

The definition of Special Entity is broad and includes “any governmental plan as defined in Section 3 of the Employee Retirement Income Security Act” (hereinafter “ERISA”). STRS falls within this definition but under 29 USC 1003 (b) (1) STRS is exempted from ERISA requirements because it is a governmental plan. As discussed below, the “best interests” requirement forces an ERISA fiduciary status upon the swap dealer but this is a *non sequitur* where the entity for which the dealer has fiduciary obligations is not subject to ERISA.

2. Qualification Issue.

If a swap dealer is to act in the best interests of the Special Entity, it must make a reasonable determination that any swap recommended by it includes information such as financial and tax status of the Special Entity, verification of counterparty eligibility (in the case of STRS this creates additional problems since STRS manages all its swap transactions internally), investment objectives of the Special Entity, material risks, material characteristics and incentives, conflicts of interest, etc. The time and expense (and delays) that this would require of the swap dealers and their counterparties is obvious and in and of itself would reduce or even eliminate swap transactions with Special Entities especially since this information gathering is required on a trade by trade basis.

3. Fiduciary Status Issue.

As stated above, if a swap dealer acts as an advisor or makes recommendations (even just a single recommendation) involving the use of swaps, it must act in the best interests of the Special Entity thereby creating a fiduciary relationship with its counterparty. Practically speaking this creates an impossible situation since the parties’ interests are necessarily adverse. Legally speaking, a fiduciary is prohibited from entering into transactions with its subject plan’s assets. This prohibition would absolutely eliminate the ability of swap dealers to enter into swap transactions with

STRS and all other public pension funds (literally hundreds) because these dealers at most would only be able to quote pricing information since any additional communication concerning the transaction could be deemed to be giving advice or making a recommendation. Without more information, STRS would be unable to make informed evaluations of the quality and risks of proposed swap transactions.

STRS has engaged in various types of swap transactions for over 15 years. As an integral component of STRS's investment policy swap transactions have been utilized to achieve our long-term investment objectives in a low cost and efficient manner. We are concerned the proposed rules may inadvertently disrupt STRS' ability to transact in the swap market.

STRS strongly urges CFTC to review its proposed business conduct rules in light of the above comments and to modify them accordingly. If you have questions about the information provided herein, please contact us at your convenience.

Very truly yours,

State Teachers Retirement System of Ohio

By:   
Michael J. Nehf, Executive Director