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By Electronic Submission

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

Re: Title VII Capital and Margin Proposals

Dear Mr. Stawick:

This comment letter is submitted on behalf of Canadian special purpose vehicles, Master Asset Vehicle I and Master Asset Vehicle II (collectively, the "Canadian MAVs") and at the request of investors holding significant investments in the Canadian MAVs. The Canadian MAVs appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") on its proposals (the "Proposed Rules") regarding capital requirements for swap dealers and major swap participants ("MSPs") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and regarding margin requirements for uncleared swaps under Title VII of the Dodd-Frank Act[1].

I. Introduction

The Canadian MAVs commend the efforts of the Commissions with respect their rulemaking efforts in connection with the Dodd-Frank Act. On February 22, 2011, the Canadian MAVs submitted a comment letter (the "February 22 Comment Letter") with respect to the proposed definition of Major Swap Participant and Major Security-Based Swap Participant (collectively. "Major Participants").

[1] Capital Requirements of Swap Dealers and Major Swap Participants (RIN 3038-AD54) and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AC97).

The Canadian MAVs were established as part of the restructuring of certain Canadian third-party asset-backed commercial paper ("ABCP") trusts under the so-called Montréal Accord. In August 2007, the Canadian non-bank ABCP market froze in the wake of extreme volatility in the credit markets. The ABCP trusts were extensive protection sellers under leveraged bespoke portfolio and index credit default swaps ("CDS"). The Canadian MAVs inherited these outstanding derivatives positions. Under the restructuring, investors relinquished old short-term ABCP and received new long-term Canadian MAV-issued notes, whose maturity now matches the collateral held by the Canadian MAVs.

The Canadian MAVs are liquidating trusts, prohibited from raising new capital, entering into new CDS or increasing exposure under existing CDS. The Canadian MAVs are not participants in derivatives markets (other than with respect to limited hedging activities through interest rate and currency swaps for managing assets) and are only passive holders of CDS. The Canadian MAVs' activities are limited to managing the orderly unwind and liquidation or run-off of their remaining CDS and amortizing cash assets. Unless unwound earlier, all CDS mature over the next few years, and no swaps will be outstanding as of December 2016.

The Commission previously requested comment on whether its proposed rules further defining Major Participants should exclude such entities from the Major Participant definitions if their swap and security-based swap positions (collectively, "swap positions") are limited to legacy positions. In the February 22 Comment Letter, the Canadian MAVs expressed support for the creation of an exclusion from Major Participant treatment is appropriate for entities whose swap positions consist of legacy portfolios of swap positions (i) that are being run off until their natural expiration or unwound in an orderly fashion, (ii) who are not engaged in the business of entering into new swap positions (except for the limited purpose of directly hedging or mitigating risk in the legacy portfolio) and (iii) who do not engage in any other ongoing business activities unrelated to the run-off and termination of their remaining swap positions and the liquidation or amortization of remaining cash assets (such entities shall be referred to herein as "Legacy Portfolio Entities").

II. Exception for Legacy Portfolio Entities

CDS counterparties to the Canadian MAVs include both U.S. and non-U.S. financial institutions. The payment obligations of the Canadian MAVs to the CDS counterparties are supported by pools of collateral pledged to the CDS counterparties and by margin funding facilities. The CDS counterparties affirmatively and actively negotiated and agreed to the restructuring to avoid significant losses that would have arisen from terminating trades due to the collapse of Canada's ABCP conduits. CDS counterparties not only retained existing collateral but are now better secured with a much lower probability of suffering losses. As of the date of this letter, the combined value of the collateral pools and margin facilities exceed the mark-to-market exposure of the CDS by approximately 14 times (a significant increase from 5.6 times as of the date of the February 22 Comment Letter).

If the Canadian MAVs fall within the definition of Major Participant and are unable to rely on a Legacy Portfolio Entity exemption, they are very likely to be unable to comply with the proposed capital and margin requirements for Major Participants. Canadian MAV noteholders and other creditors could once again be facing substantial losses. Triggering defaults and losses upon market participants by imposing Major Participant regulatory requirements on entities that cannot and should not have to comply with such regulations is contrary to one of the primary goals of Dodd-Frank of reducing systemic risk.

The Canadian MAVs are liquidating trusts with a limited duration, with no employees, no operating businesses, no access to capital and no ability to enter into new credit default swaps. In the Proposed Rules, the Commission noted that to offset the greater risk to MSPs and the financial system arising from the use of swaps that are not cleared, the Proposed Rules are intended help ensure the safety and soundness of the MSP and be appropriate for the risk associated with non-cleared swaps. Because Legacy Portfolio Entities, such as the Canadian MAVs are not engaged in any ongoing swap activities, they are not "generators" of the type of activities which are the focus of the Dodd-Frank Act and the Proposed Rules.

Other provisions of the Dodd-Frank Act further support a Congressional intent not to regulate Legacy Portfolio Entities. The Dodd-Frank Act sets forth prescriptive requirements for the ongoing comprehensive regulation of Major Participants. These conduct and compliance requirements imposed on Major Participants by the provisions of the Dodd-Frank Act and the proposed rules thereunder include duties to: (1) register with the CFTC or SEC, as appropriate; (2) comply with recordkeeping and reporting requirements; (3) monitor trading to prevent position limit violations; (4) establish risk management procedures for managing day-to-day business; (5) provide disclosures of general information relating to swaps trading, practices, and financial integrity; (6) establish and enforce internal systems and procedures to obtain information needed to perform all of the duties prescribed by Commission regulations; (7) implement conflict-of-interest systems and procedures; (8) appoint a compliance officer; (9) establish documentation standards and (10) refrain from taking any action that would result in an unreasonable restraint of trade or impose a material anticompetitive burden on trading or clearing. These requirements serve no useful purpose for a Legacy Portfolio Entity not engaged in an ongoing swaps business.

The same conclusion applies with respect to the Proposed Rules. While the Canadian MAVs support the need for the Proposed Rules with respect to Major Participants who are active and ongoing players in swap markets, the Proposed Rules serve no beneficial purpose for Legacy Portfolio Entities. The Commission itself recognizes the distinction between existing and ongoing swap activities. Under the Proposed Rules, the requirements with respect to margin would not apply to swaps executed before the effective date of the final margin regulations. Thus, the Commission itself recognizes the difference between legacy swap positions and future, ongoing swap activity. In the Proposed Rules, the Commission states that "the pricing of existing swaps reflects the credit arrangements under which they were executed and that it would

be unfair to the parties and disruptive to the markets to require that the new margin rules apply to those positions." This position is consistent with and fully supports the need for an exemption generally for Legacy Portfolio Entities such as the MAVs.

The same rationale applies with respect to the capital requirements set forth in the Proposed Rule. While the Canadian MAVs appreciate the role that capital can play in reducing market risk in connection with future swap activity, capital requirements cannot be applied retroactively to existing portfolios in circumstances where it is not possible for the entity holding existing swap positions to raise or set aside new capital. This is exactly the case for Legacy Portfolio Entities operating in run-off mode.

It simply would not be possible for the Canadian MAVs, as Legacy Portfolio Entities, to comply with or implement the Proposed Rules. If the Canadian MAVs are subjected to capital and margin requirements with which they cannot comply, the likely unintended outcome could be to place the Canadian MAVs in a position of noncompliance with the capital and margin regulations to which Major Participants are subject and to potentially create events of default under their legacy swap portfolio. This would not advance, and could potentially undermine, the legislative intent of the Dodd-Frank Act and could adversely affect investors, counterparties and other creditors of the Canadian MAVs.

Whether achieved by exempting Legacy Portfolio Entities from the Major Participant definitions or by treating Legacy Portfolio Entities as Major Participants but providing exemptions from the regulatory compliance requirements imposed on Major Participants that are inapplicable to or unfeasible for Legacy Portfolio Entities such as the capital and margin requirements of the Proposed Rules, exempting holders of legacy portfolios from the full extent of the Major Participant compliance requirements with respect to such legacy portfolios is an appropriate action that (a) avoids placing an unnecessary and undue burden on these entities that serves no useful purpose and (b) avoids the disruptions and defaults that may be incurred by Legacy Portfolio Entities subjected to the full extent of the regulatory compliance requirements imposed on Major Participants.

The Canadian MAVs believe that the Commission has broad rulemaking authority under the Dodd-Frank Act and under the Commodity Exchange Act to provide such an exemption for Legacy Portfolio Entities. Section 712(f) of the Dodd-Frank Act provides that the Commission may, in preparing for the effective date of provisions of the Dodd-Frank Act, exempt persons and transactions from provisions of the Dodd-Frank Act. Section 712(f) also provides that no such action can become effective prior to the effective date applicable to such exemptive action. However, Section 712(f) does not temporally limit such an exemption from the relevant regulations under the Dodd-Frank Act such that the exemption must expire upon the date that the relevant regulation becomes effective. Accordingly, the Commission may permanently grant exemptive relief for Legacy Portfolio Entities.

The Canadian MAVs appreciate the opportunity to provide their comments on the Proposed Rules, and look forward to continued dialogue moving forward.

Respectfully submitted,

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Partner
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