

November 4, 2011

By Electronic Delivery

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

Re: Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA, RIN 3038-AC96; 3038-AC97

Dear Mr. Stawick:

We are pleased to submit this comment letter, on behalf of the undersigned public pension funds who in aggregate represent approximately \$539 billion in assets under management, regarding the Commodity Future Trading Commission's proposed rule on Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the Commodity Exchange Act ("CEA").¹

We applaud the Commission for recognizing that "requiring immediate compliance with the new requirements could indirectly impose costs on market participants" and we support a phased compliance schedule that would give certain entities "adequate time to modify or create the requisite documentation."² We agree with the Commission when it states that additional time is necessary to "facilitate the transition to the new regulatory regime established by the Dodd-Frank Act in an orderly manner that does not unduly disrupt markets and transactions."³

As a result, we are encouraged that the Commission has proposed to facilitate an orderly transition to the new rules by giving state pension funds an additional 180 days to comply with the new Trading Documentation and Margin Requirements by phasing us in as Category 2 entities (*i.e.*, governmental plans under Section 3 (32) of the Employee Retirement Income Security Act of 1974).

However, we are concerned that the proposed schedule may not afford state pension funds adequate time to comply with these documentation rules and the related business conduct standards documentation rules. The Commission has addressed this potential concern by requesting comment on whether other factors should have been considered when designing this tiered implementation schedule and whether tiered

¹ 76 FR 58176 (September 20, 2011).

² 76 FR at 58179.

³ 76 FR at 58177.

implementation should also apply to the Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties rule.⁴

We believe that the documentation requirements in the Business Conduct Standards rules are so similar to the documentation requirements covered by the tiered implementation proposal that they will require a similar tiered implementation schedule to facilitate orderly implementation. In addition, we believe that there are factors specific to state pension plans that the Commission should consider in designing a tiered implementation plan.

Business conduct standards requirements may be met through swap trading relationship documentation similar to the documentation covered by the tiered implementation schedule.

We believe that the documentation requirements in the Business Conduct Standards rules are very similar to the documentation requirements covered by the tiered implementation proposal for several reasons. For one, the Dodd-Frank Act and the CFTC's proposed Business Conduct Standards rules require swap dealers to verify that a Special Entity (such as a state pension plan) has an independent representative prior to engaging in any over-the-counter swaps. The Commission has recognized the "disclosure and documentation requirements proposed under the Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties," such as the independent representative requirement, "could be met through the use of swap trading relationship documentation (e.g., in the ISDA master agreement)."⁵

Nonregistrants will need additional time to execute business conduct standards documentation just like they will need for the other documentation rules covered by the proposed phasing.

Further, the proposed implementation schedule states that the reason that the "Commission is focusing on phasing swap transaction compliance" is to give swap dealers time to "to work with each of their counterparties, including nonregistrants, to review, negotiate, execute, and deliver the documentation" required.⁶ For the same reasons that the Commission has recognize state pension funds will require additional time to negotiate and execute these documentation requirements, we will require additional time to negotiate and execute the documentation required by the Business Conduct Standards rules. Given these similarities, we believe the Commission should apply tiered implementation to the Business Conduct Standards rules in a manner consistent with its approach to the other documentation rules.

Additional factors and procedural challenges to implementation specific to state pension funds.

In addition to these overarching concerns, there are other factors—such as procedural challenges specific to state pension plans—that the Commission should consider in designing a tiered rule implementation schedule. One factor is that state pension funds are instrumentalities of state governments, subject to various laws and administrative procedures. While state legislatures have imposed these sometimes-strict procedures on our plans to protect investors, they can also make structural changes an arduous, slow-moving process. In addition, some new rules may require time-consuming legislative approval. For example, in Texas—where the legislature meets only once every two years—their state pension fund may require up to two years to comply with new documentation changes that will require a legislative vote.

⁴ 75 FR 80638 (December 22, 2010).

⁵ 75 FR at 58179.

⁶ 75 FR at 58179.

Because of the highly-regulated nature of state pension funds and the complexity of the new documentation requirements, such as Business Conduct Standards, we respectfully request that the Commission allow us one year to comply with the proposed rules. Without additional compliance time, we fear we may not have sufficient time to comply with the new requirements. This could disrupt the market and impair our access to sound risk management practices by forcing us to exit our transactions.

We appreciate that the Commission is carefully weighing the costs and benefits of the proposed rules and working to decrease unnecessary costs to state pension plans. We believe the proposed phased implementation schedule, with the modifications we suggested, will help facilitate the orderly implementation of the new rules. We would welcome the opportunity to discuss phasing in greater detail with Commissioners and staff at your convenience.

Sincerely,



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