



European Federation  
for Retirement Provision

David A. Stawick  
Secretary to the Commission  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street N.W.  
Washington, DC 20581  
USA

Brussels and Amsterdam, 23 December 2011

Dear Mr. Stawick,

**SUBJECT: THE PROPOSED RULES FOR PROTECTION OF CLEARED SWAPS CUSTOMER CONTRACTS AND COLLATERAL; CONFORMING AMENDMENTS TO THE COMMODITY BROKER BANKRUPTCY PROVISIONS, PUBLISHED IN THE FEDERAL REGISTER ON JUNE 9, 2011 (THE “PROPOSED RULES”)**

As a result of recent events, we, the European Federation for Retirement Provision (“**EFRP**”) and APG Algemene Pensioen Groep N.V. (“**APG**”) wish to express our strong support for the adoption by the Commodity Futures Trading Commission (the “**CFTC**”) of regulatory infrastructure to protect collateral posted for cleared swaps by end users such as ourselves. Specifically, we urge the CFTC to establish rules that require Derivative Clearing Organizations (“**DCOs**”) to offer end users the option to post collateral under the full physical segregation model.

EFRP and APG support the CFTC’s efforts to reduce risk, enhance transparency, and promote market integrity, as the U.S. Congress intended by enacting Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It should be clear though that such reform will only improve financial stability, if it is prudent from the perspective of end users, such as pension funds. However, as currently framed the Proposed Rules subject us to increased risks. Central clearing of swaps based on the legally separated but operationally comingled model (“**LSOC**”) will disproportionately impact pension funds and entail unintended consequences for the pensioners because under LSOC, we are unnecessarily exposed to the loss of our collateral in the event of a default by a futures commission merchant.

APG and the European pension funds represented by EFRP rely on swaps to effect hedging strategies necessary to manage our currency and interest rate risks and to seek a suitable match between the assets and the retirement commitments.<sup>1</sup> Under the LSOC model, and in particular as a result of the insolvency of MF Global Holdings Ltd., client positions and collateral are not

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<sup>1</sup> Article 18d of the European IORP Directive (2003/41/EC) provides that “investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management.”

adequately protected in case of a defaulting clearing member. The portability of our collateral is not guaranteed; we are exposed to replacement risk because our collateral may be liquidated.

Instead, we support permitting end users the option of electing for full physical segregation so that collateral is held at the level of a third party and in no event transferred to a clearing member. Adopting rules for cleared swaps based on the full physical segregation model would be an important step in establishing the market infrastructure necessary to adequately protect end user collateral and thus promote the goals of the Dodd-Frank Act of reducing risk and increasing market transparency.

We note that the European Parliament and the Council of the European Union intend to grant pension funds an exemption from mandatory clearing while the infrastructure necessary for central clearing of a market with the scale and breadth of swaps trading is firmly established. In the absence of adequate protection and guaranteed portability of collateral for cleared swaps in the United States, we urge the CFTC to consider a similar delay in implementation clearing requirement in order to enable DCOs and their clearing members to develop clearing structures which mitigate the (unintended) negative impact on pensioners.

We are confident that the full physical segregation model is cost effective and achievable in the short term. Several European clearing houses are working on segregation models which offer sufficient protection. We are deploying our resources to assist such clearing houses in the construction of the necessary infrastructure, notwithstanding the pension fund exemption from the mandatory clearing obligation. We would pursue the same policy in support of building the capacity for full physical segregation in the US, if it were available. The availability of adequate protections for pension fund transactions is a prerequisite for doing business in the United States.

We very much appreciate the opportunity to explain the position of pension funds in more detail. If you have any questions or like additional clarification, please do not hesitate to contact us.

With kind regards,



Chris Verhaegen  
Secretary-general / CEO

European Federation for Retirement  
Provision



Guus Warringa  
Chief Counsel, Legal, Tax, Regulations &  
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APG Algemene Pensioen Groep N.V.

**About the EFRP:**

*The European Federation for Retirement Provision (EFRP) represents the national associations of pension funds and similar institutions for occupational pension provision. The EFRP has 26 Member Associations in EU Member States and non- EU countries with significant workplace pension systems. These associations together represent 83 million EU citizens. Through its Member Associations the EFRP represents approximately 3.5 trillion euro of assets managed for future occupational pension payments.*

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**About APG:**

*APG Algemene Pensioen Groep N.V. ("APG AM") is a wholly-owned subsidiary of Stichting Pensioenfonds ABP ("ABP"), one of the largest pension funds in the world. APG AM manages collective investment arrangements (the "APG Pools") with assets in excess of EUR 275 billion. Participation in the APG Pools is limited to pension funds. ABP and other Dutch pension funds investing in the APG Pools collectively represent over four million pension beneficiaries.*

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