August 27, 2012

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington D.C. 20581

Re: Proposed Interpretive Guidance Regarding the Cross-Border Application of the Swap Provisions of the Commodity Exchange Act (RIN 3038-AD57) and Exemptive Order Regarding Compliance with Certain Swap Regulations (RIN 3038—AD85)

Dear Mr. Stawik:

The Committee on Investment of Employee Benefit Assets ("CIEBA") appreciates the opportunity to provide to the Commodity Futures Trading Commission (the "Commission") comments to the Commission's proposed (i) interpretive guidance and policy statement regarding the cross-border application of the swap provisions of the Commodity Exchange Act (the "CEA") that were enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), and the Commission's regulations promulgated thereunder (the "Proposal");[1] and (ii) exemptive order regarding compliance with certain regulations applicable to swap dealers and major swap participants (the "Exemptive Order").[2]

CIEBA represents more than 100 of the country's largest pension funds. Its members manage more than $1.5 trillion of defined benefit and defined contribution plan assets on behalf of 17 million plan participants and beneficiaries. CIEBA members are the senior corporate financial officers who individually manage and administer ERISA-governed corporate retirement plan assets.

I. Background

The Proposal sets forth the Commission's interpretation of Section 2(i) of the CEA with respect to the application of the Dodd-Frank Swap Regime to cross-border transactions of swap dealers, major swap participants and other persons, and provides guidance regarding factors to be considered and policy implications to be taken into account in the implementation of such interpretation. Section 2(i) of the CEA (as added by Section 722(d) of the Dodd-Frank Act) provides that the provisions governing swaps enacted by the Dodd-Frank Act and the rules and regulations promulgated thereunder (collectively, the "Dodd-Frank Swap Regime") only apply to "activities outside the United States" *if* such activities "have a direct and significant connection with activities in, or effect on, commerce of the United States", or violate rules adopted by the

1 The Proposal was published at 77 F.R. 41214-41242 (July 12, 2012).

2 The Exemptive Order was published at 77 F.R. 41110-41120 (July 12, 2012).

Commission to prevent the evasion of otherwise applicable provisions of the Dodd-Frank Swap Regime.[3]

The Proposal and its impact on U.S. pension plans' overseas investing are important to CIEBA's members. ERISA pension plans are active in investing outside the United States. ERISA requires that plan assets be "prudently diversified" and many ERISA fiduciaries believe that prudent diversification may require investing in markets outside the United States. Plans often hedge their foreign investments' currency and/or other risks and utilize derivatives to do so. The best hedging instruments, most liquid markets and most active market makers for foreign investments are often found in countries outside the United States. ERISA plan fiduciaries often utilize managers located in foreign markets due to their familiarity with such markets and their trading relationships with local market makers, their geographic proximity to those markets and their ability to trade during those markets' business hours. The ability to utilize foreign investment managers and to invest in foreign markets can be important to pension plan performance and diversification. Accordingly, CIEBA is writing to share with the Commission the following comments about the Proposal.

II. Comments

A. Congress did not intend that every activity outside the United States be deemed to have a "direct and significant connection" with the United States solely because one of the parties to such transaction is a U.S. person.

As indicated above, Congress authorized the extra-territorial application of the Dodd-Frank Swap Regime only to activities outside of the United States that "have a direct and significant connection with activities in, or effect on, commerce of the United States" or violate anti-evasion rules of the Commission.[4] Congress clearly did not intend under the Dodd-Frank Swap Regime to give the CFTC the power to regulate swap transactions made outside the United States on foreign instruments between foreign persons on foreign markets. It was implied in the Dodd-Frank Swap Regime that the CFTC's jurisdiction would only apply if the swap transaction was conducted in the United States or if a U.S. person was involved in the transaction. Congress then set forth a limitation on when the Commission could regulate a swap transaction by a U.S. person "outside the United States" by requiring that the Commission could only regulate swap transactions outside the United States that have a "direct and significant" connection with activities in, or effect on, commerce of the United States.

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3 The section reads, in full, as follows:

> "The provisions of this Act relating to swaps that were enacted by the Walls Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—
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> (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or
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> (2) contravene such rules or regulations as the Commission may prescribe or promulgate as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010."

4 See *supra* note 3.

Congress's approach was practical in that it leaves the regulation of conduct to the sovereign in whose territory the conduct takes place, and only exceptionally (*i.e.,* when the "direct and significant" connection or effect test is satisfied) seeks to export its regulatory regime overseas. Such an approach is more workable than one in which the citizens of each country carry with them their legal system throughout the world. If other countries adopted such an approach with respect to their own nationals, international swap activities would be severely hampered and market participants could be subject to conflicting regulatory demands for a single transaction.[5]

B. The Commission should provide guidelines both as to when an activity (i) is deemed to occur "outside the United States" for purposes of Section 2(i) of the CEA and (ii) satisfies the "direct and significant" connection or effect with United States test.

Because the statute uses the term "activities outside the United States", CIEBA believes that the Commission should first provide guidance on when an activity is deemed to occur "outside the United States" for purposes of Section 2(i) of the CEA. Second, with respect to such activities that do occur "outside the United States" for purposes of Section 2(i) of the CEA, the Commission should provide guidance as to when such activities satisfy the "direct and significant" connection with, or effect on, the United States test. The CFTC's guidelines as to when a swap activity is deemed to occur outside the United States should not conclude, however, that all swap transactions involving a U.S. person are deemed to have occurred "inside" the United States or have a direct and significant connection to the United States, even when the relevant agent for the U.S. person is acting outside the United States. We believe that conclusion would frustrate Congress's intent for the CFTC to regulate only a portion of U.S. persons' swap activities outside the United States.

CIEBA believes that Congress intended the Commission to go through an analysis of when a transaction outside the United States involving a U.S. person has a direct and significant connection or effect with the United States and not to forego such analysis by concluding that all transactions by a U.S. person meet such test. When a U.S. pension plan, in a transaction outside of the United States, hedges a risk related to an investment outside the United States or linked to an offshore event (*e.g.* default by a country other than the United States), there should be a presumption that no direct and significant connection with activities in, or effect on commerce of, the United States exists. Similarly, where a swap transaction is cleared outside the United States, or made on a foreign exchange, a similar presumption should also exist. The adoption of these principles would help clarify for U.S. pension plans the application of the Dodd-Frank Swap Regime to their activities and help them, their foreign investment advisers and market intermediaries avoid the legal and other costs and expenses that they would need to incur in order

[5] In a letter to the Commission dated July 5, 2012, the Swiss Financial Market Supervisory Authority (FINMA) objected to the Proposal's extraterritorial application of the Dodd-Frank Regime to Swiss banking entities. FINMA's objection was based, in part, on the potential extraterritorial reach of the Commission's rules on margin and reporting. For margin, FINMA observed that "[i]f such margin requirements are applied to a Swiss-based entity, this may duplicate the requirements and may possibly conflict with international and domestic capital adequacy rules, thereby leading to prudential inefficiencies." For reporting, FINMA stated that the Commission's rules may raise privacy and data protection issues.

to minimize the risk of inadvertent violations of the Dodd-Frank Swap Regime due to the ambiguity that such principles are meant to dispel. [6]

C. The definition of "U.S. person" should be amended to exclude U.S. investors acting outside the United States through a non-U.S. discretionary investment adviser or similar fiduciary.

On the basis of the foregoing, CIEBA respectfully requests that the definition of U.S. person be amended to exclude U.S. investors acting through a foreign investment adviser or similar fiduciary who acts on a discretionary basis on behalf of such investor. Such a modification would not affect the objectives of the Dodd-Frank Swap Regime. More importantly, the modification requested would extend the same treatment to U.S. investors entering into derivatives transactions outside the United States through a non-U.S. investment adviser as the treatment granted by the Proposal to derivatives transactions entered into by foreign branches of U.S. persons outside the United States with non-U.S. counterparties. In the case of this second group of transactions, the Proposal would allow "substituted compliance"[7] "given that the counterparty is a non-U.S. person" and in deference to "the supervisory interest of the foreign jurisdiction in the execution and clearing of trades occurring in that jurisdiction."[8] Given that the Commission has found that swap transactions between a non-U.S. swap dealer and the foreign branch of a U.S. financial institution can, without jeopardizing the policies and objectives underling the Dodd-Frank Swap Regime, be exempted from compliance with such regime, the same outcome should apply in the case of swap transactions between a U.S. investor and the same non-U.S. swap dealer outside the United States. It is clearly the case that the activities of U.S. pension plan investors in the overseas derivatives markets are less likely to create the type of systemic risk to the financial markets that the Dodd-Frank Act sought to prevent.

D. The costs of compliance with Dodd-Frank are so significant that some foreign investment advisers may either refuse to manage U.S. pension plan assets or limit the types of investments they are willing to make on behalf of such plans. Subjecting transactions by foreign investment advisers for their U.S. clients on overseas markets to Dodd-Frank compliance could also result in U.S. pension plans (i) losing the benefits of trade aggregation and (ii) not being able to avail themselves of better client protections than those available in the United States.

The costs of reviewing, analyzing and ascertaining the applicability of CFTC regulations to a foreign adviser, together with the costs of putting in place the technical and other systems and

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6 If all global regulators took the view that the locations of the underlying beneficiaries to a transaction determined the location of the transaction then a transaction could be deemed to have occurred in multiple jurisdictions leading to strange and complex compliance regimes. See *supra* note 5.

7 As used in the Proposal, "substituted compliance means that a non-U.S. [swap dealer] is permitted to conduct business by complying with its home regulations, without additional requirements under the CEA." (77 F.R. 41229). Substituted compliance is not automatic; it must be authorized by the Commission on a case-by-case basis, subject, in most cases, to satisfactory showing that the non-U.S. swap dealer is subject to home regulation and requirements "that are comparable to cognate requirements under the CEA and Commission regulations." (*Id.*)

8 77 F.R. 41230.

procedures necessary to ensure compliance, and to have the relevant staff properly trained in the operation of such systems and the implementation of such compliance are expected to be very significant.[9][10] As a result, CIEBA believes that a significant number of foreign advisers will either (i) choose not to accept U.S. pension plan assets to manage or (ii) only manage U.S. pension plan assets on an unhedged basis rather than deal with the legal and operational costs that result from a requirement to comply with the provisions of the Dodd-Frank Swap Regime for swap transactions conducted outside the United States. Alternatively, they may agree to incur the additional compliance costs referred above, and transfer the expense to their U.S. pension plan customers. In either situation, the implementation of the Proposal in its current form could adversely affect the U.S. pension plans' ability to retain the services of experienced international advisers.

Foreign investment advisers may view complying with Dodd-Frank as creating trading disadvantages and inefficiencies. For example, investment advisers typically aggregate, for trading purposes, the trades of their clients which have similar investment objectives. This practice of "aggregate trading" allows for operational efficiency and quicker trade execution, ensuring that similarly situated clients receive the same trading price for a particular instrument, obtaining lower trading commission charges and reduced legal expenses.

Foreign investment advisers may not be able or willing to aggregate transactions of U.S. pension plans with those of other non-U.S. clients because those non-U.S. clients could, as a result of such aggregation, lose benefits not available to U.S. pension plans. For example, European pension plans are currently exempt from mandatory clearing under European law. Also, European law requires clearing members and central clearing platforms to provide full segregation of client margin. U.S. regulators currently prohibit clearing facilities from offering

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9 The Commission has promulgated at least twenty notices of final rulemaking adopting regulations that make part of the Dodd-Frank Swap Regime and cover matters that could potentially apply to a foreign adviser. Such notices cover the following matters: large trading reporting for physical commodity swaps, privacy of consumer financial information, business affiliate marketing and disposal of consumer information, anti-manipulation and anti-fraud, definition of agricultural commodities, process for review of swaps for mandatory clearing, agricultural swaps, retail foreign exchange transactions, position limits for futures and swaps, registration of foreign boards of trade, swap data recordkeeping and reporting requirements, real-time public reporting of swap transaction and pricing data, protection of cleared swaps customer contracts and collateral, business conduct standards, compliance obligations of commodity pool operators and commodity trading advisors, swap dealer and major swap participant record-keeping and reporting duties, customer clearing documentation, commodity options, entity definitions and swap data recordkeeping and reporting requirements for pre-enactment swaps. In addition, the Commission has published one order and two amendments thereto regarding effective dates of compliance for the different provisions of the Dodd-Frank Swap Regime, and the Proposal. These materials cover approximately 1,100 pages in the Federal Register, and do not include the 600 pages of still-to-be-published set of rules containing the so-called "product definitions" (which the Commission has made available on its website).

10 The costs for simply reading this volume of rules is significant: assuming that a foreign investment adviser has the equivalent of two internal counsel and two external counsel read the rules, and using the hourly rates estimated by the Commission, the total cost would be over $200,000. And, of course, reading the rules is simply the first step in implementation. The implementation will include decisions about structuring the relevant businesses, adopting the complex compliance and operational procedures, adjusting documentation and implementing the very extensive system requirements that will be needed.

full segregation of client margin. Also, a U.S. clearing firm may not have the most economically advantageous margin requirements. Accordingly, a foreign adviser may believe it is in the best interests of its clients to take advantage of such laws and client protections and clear on a non-U.S. clearing platform. Such a foreign adviser would not aggregate for trading purposes assets of U.S. pension plans and foreign clients for overseas transactions, thereby eliminating the operational efficiencies, speedy trade execution, client margin protections and pricing advantages that such aggregation can provide to U.S. pension plans.

E. Substituted compliance (*i.e.*, compliance with comparable foreign regulatory requirements rather than Dodd-Frank regulations) should be allowed with respect to swaps between a U.S. pension plan and a non-U.S. dealer.

In its current form, the Proposal calls for the application of all so-called U.S. transaction-level requirements to any transaction between a U.S. pension plan and a non-U.S. swap dealer.[11] In the absence of the modification requested below, cross-border swaps between U.S. pension plans and non-U.S. swap dealers would be subject to both U.S. and the swap dealer's home country transaction-level rules. Such duplication could result in rules that are potentially contradictory and expensive to comply with.

The effects of such duplication are best illustrated by clearing and margin requirements. With duplicative or contradictory jurisdictional clearing requirements, it would not be possible to enter into a cross-border swap at all unless a single clearing organization was recognized in both jurisdictions. Even if the clearing organization was recognized in multiple jurisdictions, some clearing issues will be extremely difficult to reconcile between both jurisdictions. Even if there are no obvious inconsistencies between two countries' requirements, the technical details of models, timing, and segregation are unlikely to be identical. It may be impractical for a U.S. pension plan to comply with both sets of rules.

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[11] As defined in the Proposal, such transaction-level requirements govern:

1. Clearing and treatment of margin for cleared swaps;
2. Margin and segregation of customer assets for uncleared swaps;
3. The facilities where the transaction can be executed;
4. The trade documentation that must be executed by the parties;
5. Periodic portfolio reconciliation and compression obligations of the parties;
6. Real-time public reporting obligations;
7. Trade confirmation requirements;
8. Daily trading records; and
9. Certain external business conduct standards which, in the case of "special entities" (such as U.S. pension plans) would impose enhanced duties on the non-U.S. swap dealer.

The Proposal advocates the application of the foregoing requirements to non-U.S. swap dealers for all of their swaps with U.S. persons as counterparties.

Accordingly, CIEBA requests that the Commission apply substituted compliance with foreign jurisdictional transaction regulations to the transaction-level requirements of the Dodd-Frank Swap Regime for swaps between a U.S. investor and non-U.S. swap dealer if the Commission has found that the non-U.S. swap dealer is subject to a comparable home-jurisdiction regulatory regime. This view on substituted compliance is supported by the Commission's position with respect to foreign futures and options, as set out in Part 30 of the Commission's regulations and the exemptive relief that has been granted under Section 30.10. The Commission's exemptions for foreign futures brokers provide that, if the broker is subject to comparable home country jurisdiction, then the full range of CEA regulation will not apply. In addition, this view is consistent with the consultative document on uncleared swap margin recently issued by an international group of regulators (including the Commission). This document states that "margin requirements in a jurisdiction should be applied to legal entities established in that local jurisdiction, which would include locally established subsidiaries of foreign entities, in relation to the initial and variation margins that they collect."[12]

In addition, the approach suggested would be consistent with appropriate allocation of systemic risk and principles of international comity.[13] The Proposal states that "[j]urisdiction is generally construed 'to avoid unreasonable interference with the sovereign authority of other nations.'"[14] Recognizing home country transaction-level requirements for a swap between a U.S. investor and a non-U.S. swap dealer (assuming the requirements meet the comparability determination or the transactions involved are within the *de minimis* exception) would be more in keeping with international comity than seeking to impose an additional layer of U.S. regulation on such a swap.

As in the case of our request regarding modifications to the definition of U.S. person,[15] allowing substituted compliance would also result in extending to U.S. pension plans acting overseas in derivatives transactions with non-U.S. swap dealers the same treatment that the Proposal finds appropriate with respect to similar transactions between foreign branches of U.S. persons and non-U.S. counterparties. For the reasons explained above, we believe that this equal treatment will not undermine the policies underlying the Dodd-Frank Swap Regime. CIEBA believes that those policies are not more at risk when a U.S. pension plan enters into a swap with a non-U.S. swap dealer, than when the same non-U.S. swap dealer enters into a similar swap with the foreign branch of a U.S. financial institution.

F. The Commission should allow U.S. investors to avail themselves of better client protections overseas that aren't available or permitted in the United States

Certain foreign clearing platforms and clearing firms offer better client protections than those available in the United States. A U.S. pension plan may affirmatively choose to use a foreign

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12 Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, *Consultative Document—Margin Requirements for Non-Centrally-Cleared Derivatives*, Part B, Element 7 (p. 29).

13 Proposal, 77 FR at 41214 and 41223.

14 Proposal, 77 FR at 41223, col. 1.

15 See discussion in part III.C above.

clearing organization and foreign margin arrangements for clearing because they better serve the plan's interests and protect the plan's beneficiaries. If these clearing arrangements, including margin, meet the Commission's comparability standards and are preferred by U.S. pension plans, there is no reason to prevent U.S. pension plans from using them. As noted above, the European Union requires that clearing firms and derivative clearing organizations offer clients the ability to have their swap collateral fully segregated. Such segregation is not currently available in the United States even though it provides investors greater protections. Recent experiences involving MF Global and Peregrine Financial Group show the shortcomings of U.S. collateral arrangements for cleared derivatives.[16] Given this experience, it is critical for pension plans to be able to choose the clearing and collateral arrangements, whether U.S. or foreign, that best protect the plans' beneficiaries. Moreover, given that clearing serves to minimize credit risks and that the bankruptcy of the non-U.S. dealer will be subject to the laws of its home country, it is appropriate that the clearing requirements be governed by the home country jurisdiction.

G. The Exemptive Order should defer compliance dates for swaps between U.S. pension plans and non-U.S. swap dealers (and foreign branches of U.S. swap dealers).

The Exemptive Order defers, until July 12, 2013, mandatory compliance with the transaction-level requirements for swaps between non-U.S. persons and non-U.S. swap dealers or foreign branches of U.S. swap dealers. Until that date, swaps between non-U.S. persons and non-U.S. swap dealers are required to comply only with transaction-level requirements applicable in the home jurisdiction of the swap dealer, and swaps between non-U.S. persons and foreign branches of U.S. swap dealers are required to comply only with such transaction-level requirements as are applicable in the jurisdiction where the branch is located.

CIEBA respectfully requests that the same deferred compliance date be extended to swap transactions with U.S. pensions plans. We are asking for deferred compliance because we believe, as discussed above, that the transaction-level requirements of the home country of a non-U.S. swap dealer (or a foreign branch of a U.S. dealer) should apply to swaps with a U.S. pension plan, if an appropriate comparability determination is made or the transaction falls within the *de minimis* exception. We believe that the Exemptive Order should give relief to

[16] In a recent speech in London, Commissioner Chilton indicated:

> We also need to address the protection of customer money. Recently, both in Europe and in the U.S., we've seen the apparent misuse of customer funds. Here is where we can take a good idea from the E.U. The European Market Infrastructure Regulation (EMIR) has some thoughtful protections for customers that the CFTC should adopt. Article 39.5 of EMIR, for example, allows customers to elect to choose between "omnibus client segregation" (which is similar to what the CFTC requires) and "individual client segregation" or what I call "full segregation." While we don't offer full segregation in the U.S., I believe we should. We ought to let customers elect to have their fully segregated funds and the excess margin to be deposited in a separate account under the custody of the clearing organization. We should allow customer money to literally be off-limits to a firm. If that means that a firm charges the customer extra, and the customer agrees to pay it, so be it. Let the firms compete in the free market and customers can choose that, too.

Speech delivered on June 13, 2012 at OpRisk Europe 2012, London, available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opachilton-66 (last visited August 21. 2012).

swaps between a U.S. pension plan and a non-U.S. swap dealer (or foreign branch) for the same reasons that relief is needed for transactions with a non-U.S. counterparty. These reasons include that additional time is needed to make comparability determinations and achieve greater regulatory certainty. Without deferred compliance, U.S. pension plans may abruptly lose their ability to hedge financial risks with non-U.S. dealers, thus losing an important tool for mitigating risk.

H. The Commission should apply 17 C.F.R. Part 30 (which currently exempts foreign brokers from compliance with CEA requirements applicable to foreign futures and options) to cleared swaps so as to preserve the ability of U.S. pension plans to enter into swap transactions with qualifying foreign commodities brokers in compliance with home country regulation.

The Proposal does not address the application of the Dodd-Frank Swap Regime to foreign swap brokers. In the absence of explicit relief, Section 4d(a) of the CEA might be read as requiring foreign brokers to register under the CEA as futures commission merchants if they intend to hold margin for swaps cleared through a foreign clearing facility, even if the local regulatory regime is comparable to the Dodd-Frank Swap Regime. As a result, U.S. pension plans may be deprived of the opportunity to enter into such swap transactions in circumstances where they would be able to enter into foreign futures contracts or options utilizing the services of the same foreign broker.

CIEBA respectfully requests that the Proposal be amended to make it clear that Part 30 relief, which is currently available to foreign brokers for futures and options, be extended to swaps with U.S. pension plans cleared on non-U.S. facilities. As discussed above, it is critical for U.S. pension plans to have access to foreign derivatives markets. As a policy matter, we see no reason for the Commission to distinguish between swaps cleared on a non-U.S. facility and foreign futures and options. The same policy considerations that underlie the regime embodied in Part 30 of the Commission's regulations for foreign futures and options are also applicable to cleared swaps. These policy considerations include the recognition that other countries provide comparable regulation of derivative facilities and the growth and development of international markets.[17]

CIEBA's request is consistent with the CEA's current regime in respect of futures and options traded and cleared through foreign facilities. Indeed, in the proposing release for Part 30, the Commission stated that "the Commission has determined not to propose that all [funds used to margin positions on foreign exchanges] be subject to the requirements of section 4d of the [CEA]. . ."[18] Section 30.10 of the Commission's regulations, together with Annex A thereto, allows foreign brokers "that are subject to a comparable regulatory scheme in the country in which they are located" to apply to the Commission for exemption from some or all of the requirements that Part 30 would otherwise make applicable to them. Pursuant to Section 30.10, the Commission has granted relief to numerous foreign brokers found to be subject to a comparable regulatory scheme in their domestic jurisdictions.

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[17] See 51 FR 12105.

[18] 51 FR 12110 (1986).

The Commission has statutory authority to expand Part 30 to cover cleared swaps under Section 2(i) of the CEA. Section 2(i) provides that the Dodd-Frank Swap Regime (including Section 4d(a) of the CEA) shall not apply to activities taking place outside the United States, unless those activities satisfy a "direct and significant" connection or effect test. In the Proposal, the Commission has interpreted Section 2(i) and the swap dealer requirements so that substituted compliance applies to certain cross-border transactions. The same logic supports the extension of Part 30 to foreign brokers that clear swaps outside the U.S. For foreign brokers clearing swaps in non-U.S. clearing facilities, the critical activities are the taking of collateral and the clearing of the swap through the non-U.S. facility, both of which take place outside the United States. Both activities will be subject to foreign requirements imposed by the relevant clearing facility and by foreign laws and regulations, including laws that govern the treatment of collateral in bankruptcy. In addition, it is widely expected that in the future, cleared swaps will be executed on exchanges and execution facilities, and swaps executed on non-U.S. exchanges or facilities will be subject to another layer of non-U.S. requirements.

I. The Proposal should clarify that, for purposes of the computation of the position limits provisions of the Dodd-Frank Swap Regime, offshore investments by U.S. persons will be disregarded.

The rules comprising the Dodd-Frank Swap Regime in respect of position limits take into account, not only a person's positions in one particular type of derivative itself, but also such party's positions in all "economically equivalent" derivatives. In the absence of the clarification requested below, an argument could be made that a U.S. pension plan should include in its computation of aggregate positions, positions taken in the same or "economically equivalent" derivatives by a foreign vehicle in which the U.S. pension plan invests if such investments are aggregated under the Commission's rules at 17 C.F.R. Section 151.7. If this interpretation were to prevail, a U.S. pension plan's ability to comply with the position limits regime would depend on the foreign investment vehicle's willingness to share with the pension plan all necessary information regarding all of the vehicle's derivatives positions. It is likely that some foreign investment vehicles will simply exclude U.S. pension plans from eligibility to participate in such vehicles. In addition, swaps cleared overseas pose risks for foreign markets and, for all the reasons discussed above, such positions and the related risks should be addressed by foreign regulators. CIEBA therefore respectfully requests that the Proposal make it clear that, for purposes of the computation of the position limits provisions of the Dodd-Frank Swap Regime, offshore fund investments by U.S. persons will be disregarded.

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We thank the Commission for the opportunity to comment on the Proposal and the Exemptive Order.

THE COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS