November 21, 2014

Commodity Futures Trading Commission

Via Electronic Submission to Regulations.gov

Re: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AC97)

Dear Sirs and Madams,

The undersigned Canadian public sector pension funds, Alberta Investment Management Corporation, British Columbia Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Healthcare of Ontario Pension Plan Trust Fund, OMERS Administration Corporation and Public Sector Pension Investment Board (collectively "Canadian Pension Fund Managers", "we" or "our"),[1] are grateful to have the opportunity to provide comments on the proposed rule relating to "Margin Requirements for Uncleared Swaps for Swap Dealers ('SDs') and Major Swap Participants ('MSPs')" (the "Proposed Rule").

While Canadian Pension Fund Managers typically deal with U.S. banks that would fall under the scope of the uncleared margin regulations of the U.S. prudential regulators, we are providing comments to the Commodity Futures Trading Commission ("Commission" or "CFTC") on its Proposed Rule for the purposes of: (i) promoting the harmonization of international non-cleared OTC derivative regulations, and (ii) providing our perspective to the CFTC in the event that, as a result of the push-out rule, Canadian Pension Fund Managers face non-prudentially regulated U.S. SDs that are subject to the Proposed Rule.

Our group represents many of the largest Canadian pension fund managers. While we operate under different governance regimes,[2] we have common features and objectives including that of maximizing the returns for beneficiaries while satisfying our fiduciary duties. On an aggregate basis, we manage over CAD 825 billion (approximately USD 734 billion) in assets.

SUMMARY

Canadian Pension Fund Managers support the overarching goal of the Proposed Rule in reducing systemic risk to the financial system arising from the use of non-cleared swaps and non-cleared security-based swaps. However, there are several aspects of the Proposed Rule that we believe should be revised to avoid or minimize financial impacts and operational and legal burdens of compliance for buy side market participants by better accommodating current market practices, while minimizing credit, currency and liquidity risks.

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[1] Please refer to the Appendix for a detailed description of each Canadian Pension Fund Manager.

[2] Some Canadian Pension Fund Managers are governmental provincial entities, others are crown-corporations and others are provincially-regulated.

Our comments pertain to seven components of the Proposed Rule, which are outlined in further detail below, including: (i) the appropriateness of limiting variation margin to cash; (ii) establishing a mutually agreed upon base currency for non-cleared swap agreements; (iii) consistency with international Over-the-Counter ("OTC") derivatives regulations; (iv) the importance of a standardized formula for initial margin; (v) negotiation timelines for netting arrangements; (vi) rehypothecation of initial margin; and (vii) the threshold for defining material swap exposures.

1. The Appropriateness of Limiting Variation Margin to Cash

The Commission requests comment on all aspects of the proposal relating to the nature and timing of variation margin. The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the Commodity Exchange Act ("CEA").

We respectfully submit that the scope of eligible collateral for variation margin be broadened to include, at a minimum, debt securities issued by U.S. and certain foreign governments (e.g. U.S. and Canadian T-bills and G-7 nation nominal and inflation-linked bonds) and not limited to U.S. cash or cash in the currency in which payment obligations under a swap are required to be settled. As noted by the Basel Committee on Banking Supervision ("BCBS") and the Board of the International Organization of Securities Commissions ("IOSCO") in their 2013 international policy framework *Margin Requirements for Non-Centrally Cleared Derivatives* ("International Framework"), high-quality sovereign debt securities are liquid assets. As such, they pose virtually no liquidity risk and very limited credit risk. BCBS and IOSCO also included high-quality corporate bonds, liquid equity securities, and gold in their list of eligible collateral for initial and variation margin, all with appropriate haircuts to their valuation for margin purposes. Accordingly, we also recommend that the Commission consider including high-quality corporate bonds, liquid equity securities, and gold in their list of eligible collateral for variation margin.

In addition to U.S. and Canadian cash, Canadian Pension Fund Managers currently include high-quality sovereign bonds in our list of permitted collateral for variation margin (and where applicable, initial margin) in all of our OTC derivative agreements, such as: U.S. Treasury bills, bonds and securities, Canadian and provincial government bonds (including Canadian Government Agencies) and Treasury Bills, and other G-7 nation nominal and inflation-linked bonds, all with appropriate haircuts to their valuation. In our experience, the value of high-quality government bonds has never been an issue given that any volatility in these assets is addressed through mutually agreed-upon haircuts, as specified in our agreements, which factor in exchange rate adjustments as well as interest rate volatility.

Restricting variation margin to cash would severely impede Canadian Pension Fund Managers' ability to hedge our liabilities. We would also suffer a reduction in our overall returns if forced to hold a greater percentage of our assets in cash, given our inability to make a material return on these assets, and the resulting impact on our long-term returns for our plan beneficiaries. Moreover, a requirement to hold a greater percentage of pension plan assets in cash would potentially increase our overall funding risks. In contrast, the ability to post high-quality government bonds as variation margin supports portfolio diversification and our long-term return objectives.

Canadian Pension Fund Managers currently execute all of our OTC derivative agreements using either the 1994 or 1995 ISDA Credit Support Annex ("CSA") (the "New York Law Security Annex" or "U.K. Law Transfer Annex" respectively). We do not currently use ISDA's standard CSA nor do we anticipate using it in the near future. It is our understanding that ISDA's standard CSA was adopted by select sell side participants; however, for buy side participants such as ourselves, it creates additional costs (for the reasons mentioned above) and new market challenges without any additional benefits. It would be burdensome to have to renegotiate all of our U.S. non-cleared swap counterparty agreements in order to restrict variation margin requirements to cash, with the effect of reducing our returns, without any accompanying material risk mitigation benefits.

Market participants could meet increased cash collateral obligations through the use of repurchase transactions ("repos"); however, there are several issues with this approach. First, it would increase funding costs to counterparties through the repo rate, which currently ranges anywhere from 2 to 20 basis points for a typical transaction. Second, an increased use of repos would involve market participants taking on additional counterparty risk and would require margin to be posted for the repo agreements themselves (for instance, under the ICMA's Global Master Repurchase Agreement). Third and lastly, an increased use of repos in the market would increase contagion risk and susceptibility to liquidity shocks. In such an event, counterparties would not have the funds to meet collateral calls, exacerbating the crisis in the event of multiple defaults.

2. Establishing a Mutually Agreed Upon Base Currency for Non-Cleared Swap Agreements

The Commission requests comment on all aspects of the proposal relating to the nature and timing of variation margin. The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

The Proposed Rule requires variation margin to be collected or paid with immediately available cash funds and that such payments are denominated in either USD or the currency in which payment obligations under the swap are required to be settled. We propose that alternatively, market participants should continue to have the discretion to mutually agree upon a base currency in their counterparty agreements on a case-by-case basis.

Canadian Pension Fund Managers invest in OTC derivatives denominated in many different currencies (USD, Euro, British Pound, etc.). Operationally, it would be quite difficult if we were required to net collateral payments based on either the USD or the currency of each individual swap transaction. Under our current ISDA CSA agreements, Canadian Pension Fund Managers agree upon a base currency with our counterparties, typically CAD or USD, which allows us to arrive at market-to-market currency exposure calculations for: (i) all derivative transactions under the ISDA Master Agreement, and (ii) collateral, including cash and bonds, posted under the CSA. Working in CAD or USD as the base currency for all of our non-cleared swap counterparty agreements reduces our currency exposures as well as the risk of operational error when netting variation margin, while posing no additional credit or liquidity risk to our counterparties.

Another operational concern for Canadian Pension Fund Managers related to the currency requirements in the Proposed Rule is that we would be forced to renegotiate all of our U.S. non-cleared swap counterparty agreements, which would be extremely costly and would consume

considerable resources. As such, we strongly support amending the Proposed Rule to permit counterparties to mutually agree upon a base currency applicable to CSAs on a case-by-case basis. In our experience, negotiating CSAs with swap dealers can be time consuming (sometimes taking years to complete). Consequently, if buy-side swap market participants have the ability to continue to use existing CSA agreements for the purposes of posting variation margin, we could avoid future no action relief (given that most major buy-side swap market participants should have their CSA documentation in place by December 1, 2015).

3. Consistency with International OTC Derivatives Regulations

We believe that including high-quality sovereign bonds in the list of eligible collateral for variation margin would be consistent with current market practices and proposed international margin requirements for non-cleared OTC derivatives, as well as initial margin requirements under the Proposed Rule. Ensuring global consistency in margin requirements will help to achieve the international objective of applying consistent OTC derivative regulatory standards across global jurisdictions in order to avoid overlaps and inconsistencies and limit negative extraterritorial effects.[3]

As mentioned in Section 1 above, in their International Framework, BCBS and IOSCO proposed a broad, diversified list of eligible collateral for both initial and variation margin requirements, including: cash and high-quality sovereign debt (identified as the most liquid, top-quality assets), as well as high-quality corporate bonds, liquid equity securities, and gold, all with appropriate haircuts to their valuation for margin purposes.

In its consultation paper on risk-mitigation techniques for uncleared OTC-derivative contracts, issued in April 2014 ("Consultation Paper"), the Joint Committee of the European Supervisory Authorities ("ESA") also specified a diverse range of eligible collateral for initial and variation margin for non-centrally cleared OTC-derivatives, including debt securities issued by central, regional and local governments, corporate bonds, equities and gold (Article 1 LEC (1)).

We respectfully submit that the Commission adopt a broader list of eligible collateral for variation margin, including, at a minimum, high-quality sovereign bonds (including U.S. Treasury bills, bonds and securities, Canadian and provincial government bonds (including Canadian Government Agencies) and Treasury Bills, and other G-7 nation nominal and inflation-linked bonds), consistent with proposed global non-cleared OTC derivative frameworks and proposed regulations. We also propose that the Commission consider including high-quality corporate bonds, liquid equity securities, and gold in their list of eligible collateral for variation margin. Regional inconsistencies have the potential to impact the decision of buy-side participants as to where they wish to transact.

4. The Importance of a Standardized Formula for Initial Margin

The Proposed Rule permits a covered swap entity to select from two methods (the standardized look-up table or the internal margin model) for calculating its initial margin requirements. While we understand that an agreed-upon universal model for calculating initial margin using a standardized formula has not yet been finalized, Canadian Pension Fund Managers would like to emphasize the importance of working towards the finalization of such a model.

[3] See ODRG Report at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/odrgreport.pdf.

Currently buy side OTC-derivative market participants, including Canadian Pension Fund Managers, are not in the practice of posting or calculating initial margin requirements. As such, it is imperative that we are able to replicate and monitor the model used by our sell side counterparties when building our own infrastructure so that we are able to make margin calls and verify those of our counterparties. It would be operationally impossible for us to replicate and be capable of monitoring multiple margin models. Additionally, a standardized initial margin calculation will reduce the number of disputes arising from dealers using their own differing internal margin models.

Moreover, a standardized formula that could be used by both buy and sell side market participants would avoid the punitive features of standardized look-up tables, the costs of which we expect will be passed on to the buy-side. For example, the look-up table in the Proposed Rule requires initial margin to be set at 15 per cent for non-cleared OTC equity derivatives and 6 per cent for non-deliverable currency forwards. We expect that a reasonably designed standardized formula would not be as punitive, especially considering that these products are not subject to mandatory clearing.

5. Negotiation Timelines for Netting Arrangements

Under the Proposed Rule, if market participants choose to separate pre-compliance date swaps from post-compliance date swaps, we will need to enter into new agreements (including master-master netting agreements) for those transactions by December 1, 2015. It would be challenging to renegotiate all of our existing counterparty agreements in such a short period of time, imposing a significant strain on resources. Moreover, U.S. SDs and MSPs will be focused on negotiating ISDA and CSA agreements with those counterparties for which they do not currently have such documentation in place prior to December 1, 2015. Thus, it is likely that negotiating agreements with counterparties to accommodate the separation of pre-and post-compliance date swaps prior to December 1, 2015 will be a lesser priority for U.S. SDs and MSPs.

6. Rehypothecation of Initial Margin

The Commission requests comment on all aspects of the proposed requirements regarding custodial arrangements, including the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

Canadian Pension Fund Managers are of the view that counterparties should have the ability to mutually agree upon the acceptability of the rehypothecation of initial margin in applicable counterparty agreements. In this case, market participants who are not willing to face the risks associated with their counterparties rehypothecating initial margin can mutually agree upon the prohibition of rehypothecation.

If rehypothecation is mutually agreed upon, we do not believe that it should be restricted to one occasion. If parties have agreed upon rehypothecation, it would be operationally difficult to limit rehypothecation to one occasion, considering the fungibility of certain types of securities and the difficulty in supporting the rationale for a one time limit.

7. The Threshold for Defining Material Swap Exposures

The Commission requests comment on all aspects of the material swaps exposure provision. In particular, the Commission requests comment on the proposal to establish a level that is lower than the level set forth in the 2013 international framework.

Canadian Pension Fund Managers, amongst other buy side market participants, enter into derivative transactions with counterparties in various global jurisdictions. As highly creditworthy and liquid counterparties with long-term investment horizons, we do not believe that we should be subject to initial margin requirements. In the event that we are subject to initial margin requirements, we recommend that the Commission raise the proposed threshold for defining material swap exposures from USD 3 billion to around USD 10 billion, for the purposes of global consistency. In their International Framework, BCBS and IOSCO set the threshold at EUR 8 billion (approximately USD 10 billion).

Additionally, Canadian Pension Fund Managers are of the view that physically settled foreign exchange ("FX") transactions should be excluded from the scope of the margin requirements. Our proposal is consistent with the definition of swaps under the Dodd-Frank Act, as well as the ESA's Consultation Paper, which excludes physically settled FX swaps and forwards from the scope of margin requirements.

CONCLUSION

We feel that the modifications suggested above would limit the operational burden to both buy and sell side market participants in complying with these rules while still minimizing credit, currency and liquidity risks.

Permitting high-quality sovereign debt securities to be posted as collateral for variation margin, together with the other asset classes proposed by BCBS and IOSCO, poses virtually no liquidity risk and would be consistent with proposed international non-cleared OTC derivative regulations. In addition, allowing counterparties the discretion to determine a base currency in their non-cleared swap counterparty agreements decreases the operational burden of netting requirements for buy side participants and reduces our currency exposures while posing no additional credit or liquidity risk to our sell side counterparties. We advocate for an agreed-upon standardized model for calculating initial margin requirements that can be replicated and monitored by both buy and sell side participants.

Moreover, we believe that the acceptability of rehypothecation should be mutually agreed upon by counterparties subject to mutual contractual agreement of the parties. In addition, we believe that the Commission should harmonize the material swap exposure level that triggers initial margin requirements for the purposes of global regulatory consistency, and consider whether the current implementation timelines are feasible considering the quantity of documentation that will need to be negotiated.

We thank you for your consideration of our views.

Alberta Investment Management Corporation
British Columbia Investment Management Corporation

Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Healthcare of Ontario Pension Plan Trust Fund
OMERS Administration Corporation
Public Sector Pension Investment Board

cc: Alberta Securities Commission
Autorité des marches financiers
Bank of Canada
British Columbia Securities Commission
Canadian Securities Administrators
Office of the Superintendent of Financial Institutions
Ontario Securities Commission

APPENDIX

DESCRIPTION OF CANADIAN PENSION FUND MANAGERS

ALBERTA INVESTMENT MANAGEMENT CORPORATION

Alberta Investment Management Corporation, ("AIMCo"), is one of Canada's largest and most diversified institutional investment managers with an investment portfolio of approximately CAD 74.7 billion as at December 31, 2013. AIMCo was established on January 1, 2008 with a mandate to provide superior long-term investment results for its clients. AIMCo operates independently from the Government of Alberta and invests globally on behalf of 27 pension, endowment and government funds in the Province of Alberta, including the Alberta Heritage Savings Trust Fund. For more information about AIMCo, visit www.aimco.alberta.ca.

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

With a global portfolio of more than CAD 114.0 billion, British Columbia Investment Management Corporation ("bcIMC") is one of Canada's largest institutional investors within the capital markets. bcIMC invests on behalf of public sector clients in British Columbia. bcIMC's activities help finance the retirement benefits of more than 522,000 plan members, as well as the insurance and benefit funds that cover over 2.2 million workers in British Columbia.

Based in Victoria, British Columbia and supported by industry-leading expertise, bcIMC offers its public sector clients responsible investment options across a range of asset classes: fixed income; mortgages; public and private equity; real estate; infrastructure; renewable resources; long-term strategic themes. bcIMC's investments provide the returns that secure its clients' future payments and obligations.

CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

The Caisse de dépôt et placement du Québec ("CDPQ") is a mandatory of the Province of Québec. It manages institutional funds, primarily from public and private pension and insurance funds in Québec. CDPQ's mission is to achieve an optimal return on the deposits of its clients, or depositors, while contributing to the Québec's economic development. It invests in financial markets in Québec, elsewhere in Canada, and around the world, in various types of assets, and in all economic sectors. Through its size and activities, the Caisse is a global investor and one of the largest institutional fund managers in Canada and North America as a whole. It is one of the largest institutional investors in Canada and, as at December 31st, 2013, it had over CAD 200 billion in net assets.

CANADA PENSION PLAN INVESTMENT BOARD

The Canada Pension Plan ("CPP") Investment Board is a professional investment management organization based in Toronto that was established by an Act of Parliament in December 1997. Our purpose is to invest the assets of the Canada Pension Plan in a way that maximizes returns without undue risk of loss. The CPP Fund is valued at CAD 226.8 billion as at June 30, 2014. Canada's Chief Actuary estimates that CPP contributions will exceed annual benefits paid through until 2022. Thereafter a portion of the CPP Fund's investment income would be needed to help pay CPP benefits.

HEALTHCARE OF ONTARIO PENSION PLAN

Healthcare of Ontario Pension Plan ("HOOPP") is the leading pension plan provider in the Ontario healthcare community. As at December 31, 2013, the HOOPP Trust Fund was valued at over CAD 51 billion.

HOOPP administers all aspects of pension provision for over 286,000 active members and pensioners and 470 participating employers. HOOPP is governed by a Board of Trustees with representation from both employers and unions across the healthcare sector in Ontario, in support of the long-term interests of the plan.

OMERS ADMINISTRATION CORPORATION

Ontario Municipal Employees Retirement System ("OMERS") pension plan is one of Canada's largest multi-employer defined benefit pension plan and, as of December 31, 2013, served 982 participating employers and over 440,000 employees and former employees of municipalities, school boards, libraries, police, and fire departments, children's aid societies, and other local agencies across Ontario.

Pursuant to the OMERS Act, OMERS Administration Corporation ("OAC") is the administrator and trustee of the pension plan. OMERS has more than CAD 65 billion in net assets and OAC manages a diversified global portfolio of stocks, bonds, real estate, infrastructure and private equity investments.

PUBLIC SECTOR PENSION INVESTMENT BOARD

The Public Sector Pension Investment Board ("PSP Investments") is one of Canada's largest pension investment managers, with CAD 93.7 billion of net assets under management as at March 31, 2014. Its highly-skilled and dedicated team of professionals manages a diversified global portfolio including stocks, bonds and other fixed-income securities, and investments in private equity, real estate, infrastructure and renewable resources. PSP Investments is a Crown corporation established to manage employer and employee net contributions since April 1, 2000, to the pension funds of the Public Service of Canada, the Canadian Forces and the Royal Canadian Mounted Police, and since March 1, 2007, of the Reserve Force. PSP Investments' head office is located in Ottawa, Ontario, and its principal business office is in Montréal, Québec.