PENSIONS EUROPE

**Mr. Christopher Kirkpatrick**
**Secretary**
**Commodity Futures Trading Commission**
**3 Lafayette Centre**
**1155 21st Street NW**
**Washington, DC 20581**
**United States of America**

14 September 2015

Subject: Comment Letter on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Proposed Rule on the Cross-Border Application of the Margin Requirements (RIN 3038-AC97).

Dear Mr. Kirkpatrick,

PensionsEurope[1], the European association of occupational pension funds, welcomes the opportunity to provide comments regarding the rules proposed by the Commodity Futures Trading Commission (CFTC) to address the cross-border application of margin requirements for uncleared swaps for swap dealers and major swap participants not subject to regulation by US Banking Regulators.

PensionsEurope supports regulation which aims at reinforcing the stability of the financial system. However PensionsEurope note that regulation should first and foremost avoid creating more costs and risks than benefits. Hence we call on the CFTC to assess the impact of the proposed rules.

In fact the complexities of the existing regulatory frameworks as well as the operational and ICT adjustments that need to be undertaken by market participants in order to abide by new rules in this field are burdensome and would create high costs. Consequently, a large number of European pension funds have decided to enter exclusively into swaps with European financial institutions.

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[1] PensionsEurope represents national associations of pension funds and similar institutions for workplace pensions.
PensionsEurope's members cover the workplace pensions of about 62 million citizens and represent approximately 3.5 trillion euros of assets managed for future pension payments.

Those pension funds that despite this do trade with European subsidiaries with a US parent or other financial institutions with a US nexus have to abide by the rules on both sides of the ocean in order to ensure access to a sufficient amount of broker-dealers.

It is our view that rules facilitating a well-functioning derivatives market should be created at the global level and that **regulators should coordinate at the international level the rules regarding margin requirements for uncleared swaps**. Global harmonisation of rules and an adequate system of mutual recognition are both needed.

PensionsEurope's members consider that the CFTC should allow market participants to comply with a single jurisdiction's margin requirements for all uncleared swaps between them, as long as those rules are consistent with the core principles for uncleared swap margin requirements set forth by the BCBS/IOSCO working group in which the Commission participates.

While we recognise that there are a number of differences between the proposed rules for the margining of OTC derivatives between the EU and US frameworks, we feel that very little of these differences make a significant difference when it comes to tackling systemic risk. The differences of the rules rather add implementation complexity and costs.

Despite some benefits of the proposed element-by-element approach to substituted compliance, PensionsEurope's members would like to note that dealing with a system of partial substituted compliance for margin requirements of uncleared margins only adds a significant amount of complexity to the existing rules and consequently the element-by-element approach is likely to create more problems than it solves.

**Conclusion and request**

If transacting with European subsidiaries with a US parent or other financial institutions with an US nexus means that parties have to comply with two sets of regulations, a significant burden on pension funds transacting with these subsidiaries will be created.

PensionsEurope calls on the Commodity Futures Trading Commission to:

- allow for full substituted compliance including the collection of initial margin and variation margin regarding transactions between non-US Covered Swap Entities (including Foreign Consolidated Subsidiaries) guaranteed by a US Person and financial institutions without a US nexus;

- perform the substituted compliance procedure on a principle-based way and avoid a system of partial substituted compliance regime;
- make a clear analysis of the negative impact on end users versus the potential positive impact with respect to systemic risk.
- Provide market participants with sufficient time to implement these rules, this is with at least a period of 12-18 months

**Why and how pension funds use derivatives**

Pension funds use OTC derivative contracts for risk management purposes. Pension funds use OTC derivatives to manage their risks in their balance sheet and liabilities by hedging – among others – their interest rate, inflation or currency risks. In the EU the Directive 2003/41/EC explicitly allows pension funds to use derivatives for mitigating investment risks and for efficient portfolio management.

Pension funds are long-term investors who engage in long dated derivative instruments to hedge their long-term liabilities in order to limit their investment risk. It is furthermore important to note that pension funds are not leveraged or only to a very limited extent and exclusively for liquidity purposes on a temporary basis in line with the legislative framework in the EU. In Europe, regulations impose the management of pension funds in a prudential basis and set out an extensive set of rules regarding their solvency and liability coverage ratios. Among others for these reasons pension funds are highly creditworthy, and the probability of a pension funds bankruptcy is very low. The pension funds would however be able to further mitigate such risk by, for instance, the funding and/or backing from its sponsor company and other available tools such as pension protection funds and benefit reduction mechanisms.

We appreciate your consideration of our views. If you have any questions, do not hesitate to contact us.

Yours sincerely,

Matti LEPPÄLÄ
Secretary General/CEO - PensionsEurope