CalPERS

**Investment Office**
P.O. Box 2749
Sacramento, CA 95812-2749
Telecommunications Device for the Deaf - (916) 795-3240
Phone: (916) 795-3400

September 20, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

**Via E-Mail: rule-comments@sec.gov; dfadefinitions@cftc.gov**

Dear Ms. Murphy and Mr. Stawick:

**Re: File Number S7-16-10 – Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act (Act)**

Thank you for the opportunity to provide our comments to assist the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) in further defining terms regarding the comprehensive regulation of swaps and security-based swaps. CalPERS is the largest state public pension system in the United States with approximately $200 billion in global assets under management invested on behalf of 1.6 million beneficiaries. As end users of both over-the-counter (OTC) and exchange-traded derivatives, we have a full appreciation of the value of these instruments. Both are used for a variety of purposes, including to rebalance portfolios, to hedge currency risk and other tailored risks, to under or overweight certain portfolio exposures and to implement certain investment strategies.

## CalPERS Position on OTC Derivatives Regulation

In general, CalPERS believes all investors should embrace higher requirements and standards with regard to derivatives markets to minimize counterparty risk and increase transparency. Regulation and transparency would serve to allow market participants to better understand liquidity, demand and pricing structures. Transparency leads to better price discovery and hence narrower spreads for end users. It also enables end users and regulators to effectively monitor and readily understand and manage counterparty risks. These reforms are in the best interests of investors in general and the public at large.

Specifically, CalPERS believes:

- All standardized derivative contracts should trade on regulated exchanges and clear centrally through regulated clearinghouses. Remaining OTC derivatives should be strictly limited to enable end users to hedge legitimate business risks but to reign in rampant and dangerous leverage and speculation.

- Regulation is needed to ensure adequate margin and collateral requirements for derivative buyers and sellers and adequate capital requirements for dealers.

- Transparency must be enhanced through the implementation of appropriate accounting controls which require firms with OTC positions to regularly report on the size and risk associated with these positions, as well as their effect on the firm's financial position if marked to market.

- The objective of OTC derivatives regulation should be to make all participants subject to standards, disclosure and transparency. Carving out any specific group can undermine all the very great benefits of reduced costs and visible risk.

**CalPERS Comments to S7-16-10: SWAPS Key Terms**

The proposed comprehensive regulation of swaps and security-based swaps revisions are positive for investors and CalPERS commends the SEC and CFTC for seeking comment on key terms relating to such regulation. At this time, CalPERS offers the following comments:

- It would be useful to understand what a "substantial position" is, and how its concentration across counterparties will be evaluated. It may be helpful to clarify that the term "substantial position" is based on net exposures based on market value (rather than notional amount.) We believe that it would be appropriate for netting to offset the market value of unsecured exposures (i.e. after taking into account margin), as this would focus on the exposures that are relevant to creating systemic risk.

- It would be useful to understand what metrics will be used to define the 'threshold' of when it becomes 'prudent for the effective monitoring' of an entity and/or its positions.

- The swap definition has an exclusion for forward contracts in non-financial commodities, but that requires that the transaction is "intended to be physically settled." It is recommended that clarification be provided that "bookout" settlements, or physical settlements that are cancelled for unexpected commercial conditions, would not convert a forward into a swap.

- The Act now temporarily excludes Stable Value contracts from the definition of a swap; however, the Act also directs the SEC and CFTC to study whether stable value contracts will continue to be excluded from that definition and if that decision continues to be appropriate. It would be very useful to have interpretive guidance on the ambiguity in the scope of the exclusion and to have a concrete definition to exclude wrap providers of Stable Value products in that definition.

We would be glad to provide any further details required or to provide any assistance that you might require. Thank you for considering our comments. If you would like to discuss any of these points, please do not hesitate to contact either me directly at (916) 795-9672 or Eric Baggesen, Senior Investment Officer Global Equity, at (916) 795-3423.

Sincerely,

ANNE SIMPSON
Senior Portfolio Manager
Global Equity

cc: Eric Baggesen, Senior Investment Officer - CalPERS