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February 1, 2011

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

Re: Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy; RIN Number 3038-AD28

Dear Mr. Stawick:

Fidelity Investments[1] ("Fidelity") appreciates the opportunity to comment on the Proposed Rulemaking regarding Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy (the "Proposed Rule"), issued by the Commodity Futures Trading Commission (the "Commission") on November 19, 2010. Fidelity supports the Commission's general approach to the treatment of margin for uncleared swaps. As discussed in greater detail in the remainder of this letter, we believe the Commission's final rule should incorporate the following suggestions:

- The definition of "initial margin" should be broadened to encompass any "upfront" delivery of collateral.

- The notice that swap dealers and major swap participants will be required to send to a counterparty at least annually should remind the counterparty of its right to elect segregation of collateral and disclose the costs, including fees and increased transaction costs, of such segregation. We also believe that the counterparty should be able to designate the appropriate recipient of the notice.

[1] Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of more than $3.3 trillion, including managed assets of $1.5 trillion. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

- A counterparty's right to elect that a swap dealer or major swap participant segregate initial margin should be extended to any other collateral posted by the parties in connection with uncleared swaps.

- A counterparty's right to elect that a swap dealer or major swap participant segregate collateral posted by the counterparty to the swap dealer or major swap participant should be extended to any collateral posted by the swap dealer or major swap participant to the counterparty.

- A counterparty should have the right to elect that a custodian holding segregated collateral be independent from the swap dealer or major swap participant.

Definition of Initial Margin

Fidelity believes that the proposed definition of "initial margin" may be too narrow and could exclude "upfront" deliveries of collateral that should properly be treated as initial margin. The proposed definition, which defines initial margin as "money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position,"[2] might not encompass collateral delivered as an "independent amount" at the commencement of a swap transaction.

Collateral constituting an independent amount may not always be determined based upon a calculation of potential future exposures arising from changes in the market value of a position. Some swap dealers require the delivery of an independent amount to create a "cushion" of additional collateral to protect against residual credit risks that may exist, even under a collateralized swap transaction, due to, among other things, intra-day mark-to-market fluctuations, increases in credit exposure after a counterparty default or the methodology typically used to calculate margin for over-the-counter ("OTC") derivatives. The proposed definition of "initial margin" should be broadened to encompass all such independent amounts, whether or not calculated based on anticipated exposure to future changes in the value of a swap. We believe that broadening the definition in this way would more accurately reflect the intent of the provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act") allowing counterparties to require segregation of initial margin for uncleared swaps.

In addition, we believe that the definition should explicitly include any fixed amount of collateral that must be delivered as a result of any change to the economic terms of a swap transaction, whether as a result of an amendment, modification or roll-over of a transaction. We believe that these amounts should be treated as initial

[2] CFTC Proposed Rule: Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 Fed. Reg. 75432 (proposed Nov. 19, 2010) (17 C.F.R. pts. 23 and 90, at 23.600).

margin under the rule even though they are not "upfront" amounts incurred at the beginning of the transaction.

Notification Requirements

Fidelity supports the requirement that swap dealers and major swap participants notify a counterparty at least annually of the counterparty's right to require that initial margin to be segregated. A periodic reminder is appropriate because a number of changes can occur during the life of a swap transaction that could impact the decision to elect to segregate initial margin (e.g., changes in the credit quality of the swap dealer or major swap participant and changes to collateral). The yearly notice could prompt a counterparty to reconsider its elections in light of potential changes.

The Proposed Rule requires that notice of the right to segregate collateral be delivered to the Chief Executive Officer, Chief Risk Officer or the highest-level decision maker for the counterparty. Fidelity believes that the final rule should allow the counterparty to select the notice recipient. It is likely that a counterparty will choose someone who is knowledgeable with respect to the internal collateral posting and maintenance process during the life of the trade and who has the ability to make decisions regarding collateral segregation or who has the power to escalate the matter to the correct decision maker. Because that person may vary from counterparty to counterparty and within a counterparty based on the type of swap transaction involved, each counterparty should be able to designate the person, or persons, within its institution with the requisite knowledge, expertise and decision making authority. This approach would be consistent with the current notification practices for swaps, in which parties designate a contact for notices in their swap documents.

The Proposed Rule does not mandate that the required notice include any particular disclosure with respect to the costs of segregation. In order to assess the impact and benefits of collateral segregation, a counterparty should receive information that allows it to evaluate how the economic terms of the swap transaction would be affected by its election. We believe that the costs of segregation should be included in the required notice, whether those costs entail fees paid directly to the custodian or differences in the terms of the transaction that the swap dealer or major swap participant is willing to offer the counterparty.

Segregation of Variation Margin

The Proposed Rule directly addresses only one component of typical collateral arrangements in the existing OTC derivatives market--initial margin. This narrow focus creates uncertainty about whether other existing collateral arrangements would be affected by the Proposed Rule. We believe the final rule at a minimum should state that no change will be necessary to collateral agreements not in conflict with the rule. This

approach would allow parties to enter into and maintain arrangements that involve segregation of all margin, initial and variation, and to negotiate other commercial points.

We believe that the Commission has the authority to impose a requirement on swap dealers and major swap participants to segregate variation margin posted by a counterparty at the counterparty's request.[3] Fidelity recommends that the Commission include such a requirement for variation margin in the final rule. Providing counterparties the right to require segregation of variation margin posted to a swap dealer or major swap participant would reduce systemic risk for the same reasons that segregation of initial margin reduces systemic risk. Moreover, for many counterparties, we believe that there would be only minor changes to documentation and operational mechanics necessary to segregate variation margin as a result of the requirements contemplated by the Proposed Rule.

Segregation of Swap Dealer and Major Swap Participant Collateral

Although the Dodd-Frank Act and the Proposed Rule address only segregation of collateral posted by counterparties to swap dealers and major swap participants, many swap transactions require that both parties to the transaction post collateral. For many swap transactions, parties use custodial arrangements, such as tri-party account control agreements, to hold all collateral posted by either the swap dealer or major swap participant on the one hand, or the counterparty on the other, in separate segregated accounts, at an independent third-party custodian. These arrangements are a very effective means of reducing or even eliminating the credit exposure that swap counterparties have to one another and therefore should be preserved.

The final rule should expressly provide that an election by a counterparty to require that its margin be segregated should also apply, if so requested by the counterparty, to any collateral received by it from the relevant swap dealer or major swap participant. We believe that the Commission should include in the final rule the right of a counterparty to require that a swap dealer or major swap participant also segregate any collateral posted by it to a counterparty in a segregated tri-party custodial account.

Requirements of Custody Agreements

The Proposed Rule would also require that a party requesting the turnover of control of initial margin pursuant to a tri-party custodial agreement sign such request "under penalty of perjury." Fidelity does not believe that such requests should be required to be made under penalty of perjury. Under current market practices, custodians

[3] Notwithstanding the fact that Section 4s(I)(2)(B)(i) of the Commodity Exchange Act only addresses initial margin, under the authority given to the Commission pursuant to the Dodd-Frank Act to establish business conduct standards and other rules for swap dealers and major swap participants, we believe that the Commission has the authority to require segregation of other types of margin as well. [3] *E.g.*, Section 731 of the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010).

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typically use safeguards to assure that any instructions provided to turnover or release collateral have been appropriately authorized and delivered. We believe that these market practices have worked efficiently and the proposed requirement is unnecessary.

Independent Custodian

Fidelity believes that a counterparty should have the right to require that a third-party custodian be independent from the swap dealer or major swap participant. However, we believe that the counterparty should also have the option to choose a third-party custodian affiliated with the swap dealer or major swap participant. We note that an unintended and undesirable consequence of banning affiliates from acting as third-party custodians could be to prevent counterparties from entering into swaps with swap dealers or major swap participants, where an affiliate of the swap dealer or major swap participant already serves as a depository or custodian of the counterparty. In the case of a registered mutual fund, Section 17(f) of the Investment Company Act of 1940 and the corresponding rules require that, with limited exceptions, assets of a fund be maintained at the fund's custodian. A requirement that collateral be segregated with a custodian independent from both swap counterparties would eliminate any affiliate of the fund's custodian from serving as the swap collateral custodian, thereby limiting the fund's choice of swap counterparties and potentially limiting the fund's ability to obtain better pricing.

Limitations of Investments

Proposed §22.603(a) provides that initial margin segregated pursuant to an election of a counterparty may only be invested in a manner that is consistent with the standards for investment of customer funds that the Commission applies to exchange-traded futures under Regulation 1.25. Fidelity believes that investment of such collateral should remain a commercial decision negotiated between the parties, unrestricted by additional regulation. The investment choices of a counterparty, including the types of collateral delivered as margin, are critical to the economics of swap transactions. Parties to a swap transaction already have a strong incentive not to engage in excessive risks through the added cost typically imposed by swap dealers or major swap participants that agree to accept less liquid collateral and investments, or collateral and investments that are below the highest investment grade categories. In the current OTC derivatives market, swap dealers and counterparties agree on limits on the types and nature of collateral that a pledgor may deliver or invest in to satisfy margin requirements. Additionally, swap dealers and major swap participants normally impose greater haircuts (i.e., require additional collateral) when margin includes collateral or investments that are less liquid or below the highest investment grade categories.

While the Proposed Rule does not address limitations on the types of collateral that parties can agree to post and hold pursuant to a swap transaction, we are concerned

that if restrictions are placed on the types of investments that can be made with posted collateral, custodians under tri-party custody arrangements may limit the types of collateral that it will permit under such arrangements to those investments permitted pursuant to Regulation 1.25. Such an outcome would unnecessarily limit the options between swap parties regarding the types of collateral they are willing to accept as security under swap transactions.

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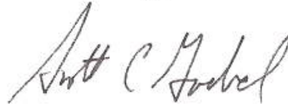
We appreciate the opportunity to comment on the Proposed Rule. Fidelity would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,



cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight
Martin White, Assistant General Counsel
Nancy Liao Schnabel, Special Counsel, Division of Clearing and Intermediary Oversight