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Mr. David Stawick
Secretary
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Subject: Comments in relation to the Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

Dear Mr. Stawick:

APG Algemene Pensioen Groep N.V. (“APG”) welcomes the opportunity to comment on the proposed interpretive guidance and policy statement of the U.S. Commodity Futures Trading Commission (“CFTC”) on Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (RIN 3038-AD57). APG is a Netherlands based asset manager for Dutch pension funds with assets under management of approximately EUR 302 billion as at May 2012. APG is itself an indirect subsidiary of Stichting Pensioenfonds ABP (“ABP”), the Dutch pension fund for the government and education sector and the third largest pension fund globally. APG works for more than 20,000 employers and provides for the income of more than 4.5 million Dutch citizens managing over 30% of all collective pensions in the Netherlands.

We welcome the opportunity to brief the CFTC on the issues European pension funds are facing in relation to the global initiatives to regulate OTC derivatives markets. To put our response in context, we hereby would like to provide some background information on APG and how Dutch pension funds generally operate, before responding to the consultation document.

About APG and its pension funds clients

APG provides administrative and asset management services to a number of collective investment arrangements (“APG Pools”)[1] in which ABP and other Dutch pension funds (the “Participating Plans”) invest. Only pension funds may participate in this multi-plan investment structure. As stated, APG currently manages assets in excess of EUR 302 billion.

[1] The APG Pools represent contractual investment arrangements for the investment of commingled pension plan assets between the investment manager (APG), a law foundation specifically incorporated to serve as a specific Pool’s depositary, and each pension plan that participates in the Pool. The APG Pools are not legal entities. The APG Pools take the form of so-called *fondsen voor gemene rekening* (funds for the joint account of the participants), which provide for the pro rata allocation of investment returns.

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Assets of the APG Pools are invested in accordance with a strategic investment plan, utilizing various hedging policies for currency and interest rate risk to achieve a suitable match between pension funds' assets and the retirement commitments of the Participating Plans. These conservative policies are implemented through the use of OTC derivatives. In order to reduce costs and counterparty credit exposures related to the use of OTC derivatives, APG established APG Treasury Centre ("APG TC") to enter into derivative transactions (including swaps) with (i) the various APG Pools and Participating Plans in accordance with their respective investment objectives and (ii) with U.S. and non-U.S. swap dealers to offset the net market risks arising from its derivative transactions with the APG Pools and Participating Plans. All transactions with external counterparties are conducted for the risk and account of the relevant Participating Plans. Any resulting timing or other mismatches are subject to strict risk limits and monitoring. APG TC is a not-for-profit entity owned by the APG Pools. To assure the creditworthiness of APG TC to external counterparties, the depositaries of the two largest APG Pools[2] guarantee APG TC's derivative contracts obligations. APG TC reduces risk exposure by pooling and netting down the positions of the APG Pools and Participating Plans and achieves significant cost savings through economies of scale and the introduction of greater flexibility with respect to the timing of transactions.

Dutch pension funds are solvent, conservative, stable and long-term investors on the financial markets. They operate as foundations which are independent and not-for-profit organisations that are controlled by employee and employer organisations. They are not part of any company and do not have shareholders. Therefore, they do not have to comply with investors' demand for a specific return on equity (i.e. pay dividend).

Dutch pension funds are supervised by the Dutch Authority for the Financial Markets (Stichting Autoriteit Financiële Markten) and the Dutch Central Bank (De Nederlandsche Bank N.V.). Dutch pension plans are subject to extensive regulatory oversight, including the IORP Directive and the Dutch Pension Act and its associated regulations. Article 18 of the IORP Directive imposes broad investment regulations on pension plans that are intended to assure the security and affordability of occupational pensions. These regulations are designed to enable pension plans to meet their obligations to beneficiaries and creditors. They are also subject to an extensive set of rules regarding their solvency and liability coverage ratio. The Dutch regulatory framework ensures that pension funds' coverage ratios do not fall below certain minimum levels. Dutch pension plans are therefore conservatively managed and very creditworthy. Dutch pension funds are constrained by regulation to use swaps solely for risk management purposes. Article 18(d) of the European IORP Directive[3] restricts Dutch pension funds from using OTC derivatives for any purpose other than to manage risks associated with their long-term liabilities.

Moreover, unlike for-profit financial institutions, pension funds do not pose bankruptcy or systemic risks because, in the event of financial difficulties, they can (i) increase participant premiums (ii) stop indexation

[2] Stichting Depositary APG Fixed Income Credits Pool and Stichting Depositary APG Developed Markets Equity Pool.

[3] Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement (IORP Directive).

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or (iii) as a last resort, decrease payments to pensioners. Pension funds have certain specific means to deal with difficult market circumstances. They can rebalance 'bad times' by sharing the risks between retired and active workers, by setting up buffers or by increasing the contributions from employees and employers. Given the fact that pension funds' conservative strategies typically aim at long term, low risk and low turnover, their use of the derivative markets in the spectrum of investors can be characterised as opposite to high risk trading funds. The theoretical risk of bankruptcy of a pension fund is therefore extremely limited.

APG TC, being an affiliate of Dutch pension plans, is subject to Directive 2004/39/EC of the European Parliament and of the Council of the European Union of 21 April 2004 on markets in financial instruments (the "MiFID Directive"), which has been implemented in Dutch law. In particular, APG TC is (i) an authorized investment firm governed by the Dutch Authority for the Financial Markets (Stichting Autoriteit Financiële Markten) and (ii) subject to prudential supervision by the Dutch Central Bank (De Nederlandsche Bank N.V.). In accordance with such regulation, APG TC has adopted and maintains policies and procedures for business conduct, conflicts of interest, voice recording, whistle blowing, insider trading, employment screening and incident management. APG TC maintains appropriate internal standards and is subject to regulatory oversight with respect to risk management, financial controls, corporate standards and administrative organization.

Key remarks

As major institutional investors and as institutions responsible for the provision of pensions to millions of pensioners, pension funds generally support efforts to improve the safety and integrity of financial markets. However, it is essential that any measure to regulate the OTC derivatives markets does not undermine pension provision.

The Dodd-Frank Act, which mandates comprehensive regulation of derivatives markets, is similar in scope to the European Union's proposals to regulate the derivatives markets ("EMIR"). The Dodd-Frank Act and EMIR include many of the same critical components for the regulation of derivatives dealers (capital and margin requirements, risk mitigation techniques, and reporting requirements). We are concerned about the potential adverse consequences of the lack of convergence and reciprocity between the US and EU regulatory frameworks, especially since the EU regulates the activities of EU based participants in the OTC derivative market participants, whether such activities take place domestically or abroad.

Although we appreciate the CFTC's consultation to provide clarity on the cross border application of certain swap provision of the CEA and share the CFTC's concerns on potential cross border evasion, we believe it to be imperative for the CFTC to set its policy objective against the disadvantages of multiple regulatory regimes for cross border active swap entities. Without a unified approach among the EU and the US, compliance with in particular the MSP, margin and capital regulations and the clearing requirements in the different jurisdictions cannot be satisfied simultaneously.

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In particular, we would like to share our concerns on the expansion of the US swaps regime to EU based subsidiaries of US entities with whom EU based pension plans and their dedicated affiliates often enter into large swap transactions. Those subsidiaries of US entities and the EU based pension plans and their dedicated affiliates are already regulated in the EU. The application of the US swaps regime to those entities will not only lead to overbroad and duplicative regulation and unnecessary costs for European pension plans, but it would also be against US public interest as it may very well prompt EU participants in the OTC derivatives markets to only deal with non-US counterparties.

Therefore, it is critical to develop a framework of regulatory reciprocity and recognition that can support global business models. We would therefore like to suggest that regulations under the Dodd-Frank Act will be adopted and implemented in a manner that would allow European pension plans and their affiliates to remain active OTC derivatives market participants in the US or to transact with EU based subsidiaries of US persons without being obliged to comply with both EU and US regulations.

Conclusion

We deem it to be imperative for US regulators to consider the possibility that the burden of duplicative (and costly) regulations may force foreign firms to discontinue trading with US counterparties, which would have an adverse effect on the liquidity and competitiveness of U.S. financial markets.

In case the CFTC would like to uphold its current proposed policy objective, we would like to note the importance of providing market participants sufficient time after publication of the final Interpretive Guidance for market participants to consider the effect of that Guidance on their swap businesses before additional registration or regulatory requirements become effective.

We hope our response is of assistance. If you have any questions, please contact Guus Warringa at +31 20 604 8161.

Yours sincerely,

Guus Warringa
Chief Legal Counsel
Legal, Tax, Regulations & Compliance
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