June 17, 2013

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

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Re: Canadian Securities Administrators Consultation Paper 91-407
Derivatives: Registration

The undersigned public sector Canadian pension funds and/or institutional investors, Alberta Investment Management Corporation, British Columbia Investment Management Corporation, Caisse de dépôt et placement du Québec, CPP Investment Board, Public Sector Pension Investment Board, Ontario Municipal Employees Retirement System and Ontario Teachers' Pension Plan Board[1] (referred to below collectively as "**Canadian Pension Fund Managers**", "us" or "we"), are grateful to have the opportunity to provide collectively their comments on the Consultation Paper 91-407 Derivatives: Registration (the "Registration Paper").

While some of the Canadian Pension Fund Managers are members of other groups such as the Canadian Market Infrastructure Committee or the International Swaps and Derivatives Association that will provide separate comment letters, we found it important

[1] Please refer to Annex 1 for a detailed description of each of these Canadian Pension Fund Managers.

to communicate to you our concerns, as sophisticated and high-credit buy-side entities. This letter will focus on two elements identified as our main concerns:

i) the creation of the Large Derivative Participant ("LDP") category and its broad definition that may trigger a registration requirement for us; and

ii) the notion of "qualified party" that should expressly include sophisticated market participants, such as pension fund managers and minimally pension fund managers with strong resources like us.

About The Canadian Pension Fund Managers

Our group represents many of the largest Canadian pension fund managers. While we operate under different governance regimes[2], we do have common features and objectives including that of maximizing the returns for beneficiaries while satisfying our fiduciary duties. On an aggregate basis, the assets managed by the Canadian Pension Fund Managers represent over $770 billion in assets.

The use of derivatives products, both futures and over-the-counter, is a critical element of our risk management strategies. These products are used to manage interest rate risk as well as market risk and currency exposure. Historically they have achieved their objective of reducing risk.

Supportive of constructive derivatives regulation

We are very supportive of any measures that would cause derivatives markets to become safer for their users, including sophisticated buy-side players like us and we thank the Canadian Securities Administrators ("CSA") for their involvement and contribution to this global regulatory process. We are generally supportive of regulatory initiatives in line with the G-20 commitments that have the effect of decreasing systemic risk.

SUMMARY OF COMMENTS

1. Registration

a) Deferral of registration

Unlike the central clearing and trade repository reporting requirements, the Registration Paper creates material requirements that go beyond the scope of the G-20 commitments. We do not believe that registration is necessary to reduce the likelihood that a party's OTC derivatives exposure could pose a serious risk to the financial stability of Canada or its provinces. This risk can be sufficiently mitigated through the implementation of appropriate: (i) reporting requirements and (ii) clearing requirements; For these reasons, we strongly believe the CSA should defer the implementation of a registration regime until it has had time to analyze the relevant data it receives from the

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

trade repositories and to discuss with global regulators the risks that have been identified domestically or globally.

b) Large Derivative Participant

Because of the particularities of the Canadian markets (small market, biggest participants are sophisticated participants), we submit that the LDP Category is neither necessary nor appropriate for the Canadian market.

c) Registration Requirements

In addition, meeting some of the registration requirements, including filing of quarterly financial statements and capital requirements would not be feasible for us. We are not structured like financial institutions which provide services to clients or otherwise acts as a broker/dealer on the market.

2. Notion of qualified party

We strongly believe that the definition of qualified party should expressly include sophisticated institutional investors, such as pension fund managers like us. The requirement to register should only be applicable to derivatives dealers or advisers facing non-qualified parties. The execution of a trade between qualified parties should not trigger the registration requirement. In addition, certain foreign dealers should be exempt from registration requirements. If sophisticated foreign dealers are required to register, they may decide not to register and cease providing services to Canadian clients, as the costs of such services could outweigh the benefits. As a result, the liquidity of the Canadian financial market could be impaired.

COMMENTS OF THE CANADIAN PENSION FUNDS MANAGERS

I. REGISTRATION REGIME

a) Deferral of registration

We strongly believe the CSA should defer any implementation of a registration regime until it reaches a conclusion after interpreting data received from the trade repositories and discusses same with global regulators. The receipt of trade data by the regulatory authorities from all market participants is innovative and will provide such regulatory authorities with unprecedented views on the domestic and global markets. We find that a period of at least two years is required for the regulatory authorities to interpret such data.

b) Importance of harmonization

As mentioned in several previous comment letters, the Canadian OTC derivatives market is small and materially less liquid than the US market, with a large portion of the market being occupied by non-Canadian participants. Imposing registration requirements that are not imposed by other non-U.S. jurisdictions may have the effect of discouraging the foreign participants from providing their services to

Canadian clients as they may estimate that the costs of compliance will exceed the benefits of serving Canadian clients. If such a situation occurs, the Canadian market would lose substantial liquidity and be concentrated with the six largest Canadian banks. A less liquid Canadian market would impact pricing and impair our capacity to diversify our derivatives exposure by counterparty.

c) LDP Category

Secondly, if the CSA imposes a registration requirement, we strongly believe that the LDP category should not be retained as a category of participants required to register.

We understand that the purpose of the LDP category is to reduce the likelihood that a party's OTC derivatives exposure could pose a serious risk to the financial stability of markets in Canada. We understand also that, by creating this category, the CSA is trying to achieve the same goal as the US regulatory authorities with the Major Swap Participant Category created under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank") ("MSP"). We think there are differences between the objectives and scope of the MSP definition and the proposed LDP category. Firstly, we understand that the MSP category was created to address large market participants that did not meet the definition of broker/dealer but had substantial derivatives positions that could pose systemic risks to the financial market. There has not been a similar situation in the Canadian market that would need to be addressed in the same manner through regulation. The Canadian market is a small market and its large participants are mostly highly-regulated investment funds, pension funds, governmental entities or crown corporations.

Secondly, in reading the definition of MSP, we understand that the US regulatory authorities have identified the following key elements as being elements of systemic risk: 1) substantial position; 2) uncollaterized exposure; 3) meeting of certain triggers per products and 4) using derivatives for other purposes than hedging positions.

The LDP category does not consider the same elements as the US regulatory authorities to determine what would be systemic but considers only the positions taken by a participant. Such a broad definition could, presumably, include large buy-side participants like us.

While we support measures to reduce systemic risk, highly-liquid institutional investors with superior credit, like us, present minimal counterparty credit risk and provide a crucial source of stability and liquidity to the market.[3] Firstly, we do have strong resources to support our operations and transactions and do not believe that such category should be created or designed to include us.

[3] See the Global Pension Coalition's comment paper: "Comments on Second Consultative Document: Margin Requirements for non-centrally cleared derivatives, issued by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions," dated March 15, 2013. This paper outlines the reasons why pension plans should be exempt from margin requirements of non-cleared derivatives.

Secondly, we are either i) already subject to extensive pension legislation and are registered with various regulatory bodies, including the Financial Services Commission of Ontario ("FSCO") and the Office of the Superintendent of Financial Institutions Canada (OSFI) or ii) are agents of a province or crown corporations with comprehensive statutory frameworks. As a result of these regulations and other governance practices, we have developed sophisticated investment processes and have extensive risk management systems in place (as outlined in Schedule B in respect of those of us that are subject to the Pension Benefits Act), and are of the view that we should benefit from any exemption from registration as a LDP if such LDP is created.

d) Registration requirements

In addition to our previous comments, we address specific concerns with some of the proposed registration requirements. We think that such requirements are not necessary or appropriate. We cannot comply with some requirements as they are not aligned with the structure of pension funds or governmental entities. They are likely to increase costs and expenses without commensurate benefits towards achieving a reduction in systemic risk in financial markets in Canada.

e) Proficiency requirements and the financial and solvency requirements

We are already required by law to prepare audited annual financial statements. In addition, it is market practice for OTC derivatives counterparties to request financial information from the opposing party in order to assess the other party's creditworthiness and financial stability. These financial documents, including financial statements, are contractually provided for in the ISDA Master Agreement between counterparties. Thus, requiring us to produce quarterly financial statements would impose material additional costs and operational burden upon certain of us without commensurate benefits towards achieving a reduction in systemic risk to the financial markets in Canada.

Secondly, we do not believe that minimum proficiency requirements are necessary for Canadian Pension Fund Managers given that we are sophisticated, experienced investors with an in-depth knowledge of the OTC derivatives market. We do not enter into OTC derivatives transactions with non-qualified counterparties and have exhaustive risk policies to manage our counterparty risk. It is our view that proficiency requirements might be more appropriate for dealers or advisors facing non-qualified parties, similar to the requirements employed in the securities market with respect to individuals within securities firms dealing with unsophisticated and retail investors. Proficiency requirements would impose additional costs on qualified counterparties like us without commensurate benefits towards achieving a reduction in systemic risk.

Finally, we do not have a capital structure similar to regulated financial institutions which provide services to clients or otherwise act as a broker/dealer on the market.

II. QUALIFIED PARTY

We believe that the CSA should adopt a "qualified party" definition that expressly includes pension plan managers like us. We believe that we clearly meet the qualified party criteria as we have sufficient financial resources to ensure that: (i) losses resulting from a derivatives trade would not cause undue hardship; and (ii) all of our obligations pursuant to a derivatives trade are met. In addition, as sophisticated institutional investors, we have experience and knowledge in trading derivatives to properly manage the risks and obligations related to trading in derivatives.

We strongly believe that a distinction should be made between derivatives dealers or advisers facing qualified vs. non-qualified parties and that the registration requirements should be limited to transactions made with non-qualified parties. Transactions between qualified parties should not be subject to any registration requirements. Having additional requirements imposed on a party who provides services to a non-qualified party is a common practice both in securities and derivatives markets as it allows a higher level of protection for less sophisticated parties. We see no reason why the CSA should not follow such market practice.

Moreover, we suggest that the definition of a qualified party be similar to the "accredited counterparties"[4] definition in the Quebec Derivatives Act. Alternatively, we support a definition that is at least as broad as the "Eligible Contract Participant"[5] in the U.S. Commodity Exchange Act. In all cases, the definition that is adopted should account for the diversity of business models in the Canadian OTC derivatives and recognize any entity that is sophisticated and has a strong financial capacity like us.

CONCLUSION

We hope that the comments formulated in this letter are useful in the development of Canadian regulatory framework and we welcome any opportunity to discuss our views with representatives from the CSA.

Alberta Investment Management Corporation (AIMCo)
British Columbia Investment Management Corporation (bcIMC)
Caisse de dépôt et placement du Québec
CPP Investment Board
Public Sector Pension Investment Board
Ontario Municipal Employees Retirement System (OMERS)
Ontario Teachers' Pension Plan Board

[4] Such definition is detailed in Schedule C.
[5] Such definition is detailed in Schedule C.

SCHEDULE A

DESCRIPTION OF CANADIAN PENSION FUND MANAGERS

AIMCo – ALBERTA INVESTMENT MANAGEMENT CORPORATION

Alberta Investment Management Corporation (AIMCo) is one of Canada's largest and most diversified institutional investment fund managers, with an investment portfolio of approximately $70 billion. It invests globally on behalf of its clients, 26 pension, endowment and government funds in the Province of Alberta.

It became a Crown corporation on January 1, 2008, and its sole shareholder is the Province of Alberta. Its goal is to inspire the confidence of Albertans by achieving superior risk-adjusted investment returns. To help reach this goal, it has extraordinary teams of top professionals and is governed by an experienced and highly talented board of directors.

AIMCo manages funds for a diverse group of Alberta public sector clients. The majority of AIMCo's assets under management come from Alberta public sector pension plans and provincial endowment funds. The pension funds meet the retirement income needs of nearly 310,000 active and retired public sector employees.

bcIMC – BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

The British Columbia Investment Management Corporation (bcIMC) is one of Canada's largest institutional investors within the global capital markets. It invests on behalf of public sector clients in British Columbia including the pension plans of more than 500,000 people.

bcIMC manages a globally diversified investment portfolio of C$92.1 billion as at March 31, 2012. Based in Victoria, British Columbia, and supported by industry-leading expertise, bcIMC invests in all major asset classes: fixed income, mortgages, public equities, private equity, real estate and infrastructure. »

CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

The Caisse de dépôt et placement du Québec is a mandatory of the State of Province of Quebec. It manages institutional funds, primarily from public and private pension and insurance funds in Québec. With a growth perspective in mind, it invests the money of these depositors in financial markets in Québec, elsewhere in Canada, and around the world. 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, 2012, it had over C$175 billion in net assets of depositors.

CPP INVESTMENT BOARD

The 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 $183.3 billion. Canada's Chief Actuary estimates that CPP contributions will exceed annual benefits paid through until 2021. Thereafter a portion of the CPP Fund's investment income would be needed to help pay CPP benefits.

OMERS ADMINISTRATION CORPORATION

The Ontario Municipal Employees Retirement System (OMERS) was established pursuant to The Ontario Municipal Employees Retirement System Act, 1961-62, and continued under the Ontario Municipal Employees Retirement System Act, 2006 (the "OMERS Act"). The OMERS pension plan is one of Canada's largest multi-employer defined benefit pension plan and, as of December 31, 2012, served 968 participating employers and over 428,000 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 C$60 billion in net assets and OAC manages a diversified global portfolio of stocks, bonds, real estate, infrastructure and private equity investments.

ONTARIO TEACHERS' PENSION PLAN BOARD

Ontario Teachers' Pension Plan Board (OTPP) is the largest single-profession pension plan in Canada, with $129.5 billion in net assets. It was created by its two sponsors, the Ontario government and the Ontario Teachers' Federation, and is an independent organization. In carrying out its mandate, OTPP administers the pension benefits of 179,000 current elementary and secondary school teachers in addition to 124,000 pensioners. OTPP operates in a highly regulated environment and is governed by the Teachers' Pension Act and complies with the Pension Benefits Act (PBA) and the Income Tax Act.

PUBLIC SECTOR PENSION INVESTMENT BOARD

The Public Sector Pension Investment Board is one of Canada's largest pension investment managers, with $64.5 billion of net assets under management at March 31, 2012. It invests funds for the pension plans (Plans) of the Public Service of Canada, the Canadian Forces, the Royal Canadian Mounted Police and the Reserve Force. Its skilled and dedicated team of more than 400 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 was incorporated as a Crown Corporation under the Public Sector Pension Investment Board Act in 1999. Its investments will fund retirement benefits under the Plans for service after April 1, 2000 for the Public Service, Canadian Forces, Royal Canadian Mounted Police, and after March 1, 2007 for the Reserve Force.

SCHEDULE B

The following is the complete text of Exhibit B to the Global Pension Coalition Margin Paper[6] and applies to Canadian Pension Fund Managers that are subject to Pension Benefits Act:

"Below is a summary of some of the key reasons Canadian plans present virtually no counterparty risk. Note that Canadian pension funds may be regulated by provincial or federal laws and regulations, so certain of the factors below may not apply to all pension plans.

- Pension plans are subject to a prudent portfolio investment standard. For example, the administrators of pension plans subject to the laws of Ontario are required to "exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person."[7] In doing so, the administrator must use all relevant knowledge and skill that it possesses, or ought to possess, in the administration and investment of the pension fund.[8]

- Pension plans are subject to investment restrictions, concentration limits and other restrictions mandated by law.

- Pension plans must establish and file with the appropriate regulators a detailed statement of investment policies and procedures, including with respect to the use of derivatives, options and futures.[9] Such document outlines the plans expectations with respect to diversification, asset mix, expected returns and other factors.

- Administrators of pension funds are subject to strict prohibitions concerning conflicts of interest. Similar prohibitions are also imposed on employees and agents of the administrator. [10]

- Pension plans are generally prohibited from borrowing. [11]

- The assets of pension plans are held in trust by licensed trust companies or other financial institutions and are separate from the assets of their sponsors.

- Funding shortfalls may be funded by the pension plan's corporate or government sponsor, by increasing contributions of pensioners or by lowering benefit payments, depending on the nature of the plan.

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[6] Supra, note 1.

[7] E.g., Pension Benefits Act, RSO 1990, c P.8 ("PBA"), s 22(1).

[8] E.g., PBA s 22(2).

[9] Pension Benefits Standards Regulations, 1985, SOR/87-19, s 7.1.

[10] E.G., PBA ss22(4) and 22(8).

[11] Income Tax Regulations, CRC c 945, s 8502(i).

- Pension plans must regularly file an actuarial valuation with the appropriate regulators.

- Pension plans are transparent to members and regulators. Provincial legislation requires that pension plans file a detailed annual financial statement accompanied by an auditor's report.[12]

- Pension plans are not operating entities subject to business-line risks and competitive challenges.

- The governance of Canadian pension plans is subject to statutory requirements and guided by best practices.

- There is no provision under any Canadian law for pension plans to file for bankruptcy or reorganization to avoid their financial obligations to counterparties or other creditors. Additionally, the voluntary termination of a plan does not relieve the plan of its financial obligations."

[12] E.g., Pension Benefits Act, RRO 1990, Reg 909, s 76. In addition, an auditor's report is required for pension plans with $3 million or more in assets.

SCHEDULE C

Definition of "accredited counterparty", section 3 of Derivatives Act (R.S.Q., c. I-14.01)

"Accredited counterparty" means

(1) a government, government department or public body or a wholly owned enterprise or entity of a government;

(2) a municipality, public board or commission or other similar municipal administration, a metropolitan community, a school board, the Comité de gestion de la taxe scolaire de l'Île de Montréal or an intermunicipal management board in Québec;

(3) a financial institution, including the Business Development Bank of Canada established under the Business Development Bank of Canada Act (S.C. 1995, c. 28), or a subsidiary of such a financial institution to the extent that the financial institution holds all the subsidiary's voting shares, other than the voting shares held by directors of the subsidiary or its employees;

(4) a dealer or adviser registered under this Act, a dealer or adviser registered under the Securities Act (chapter V-1.1) or a person authorized to act as such or to exercise similar functions under equivalent legislation applicable outside Québec;

(5) a registered representative of a person described in paragraph 4 or a representative who has ceased to be so registered within the last three years;

(6) a pension fund regulated by the Office of the Superintendent of Financial Institutions established by the Office of the Superintendent of Financial Institutions Act (R.S.C. 1985, c. 18 (3rd Suppl.)), the Régie des rentes du Québec or a pension commission or similar regulatory authority in Canada whose investment policy provides for or authorizes the use of derivatives, or an entity that is analogous in form and function established under legislation applicable outside Québec;

(7) a person who establishes in a conclusive and verifiable manner

> *(a)* that the person has the requisite knowledge and experience to evaluate the information provided to the person about derivatives, the appropriateness to the person's needs of proposed derivatives strategies, and the characteristics of the derivatives to be traded on the person's behalf;
>
> *(b)* that the person has assets equal to or in excess of the minimum assets specified by regulation; and
>
> *(c)* that the person has at the person's disposal net assets in the amount specified by regulation and sufficient to fulfill the person's delivery or payment obligations under the terms of derivatives to which the person is party, in light of the positions held in the person's account and the orders the person is seeking to have executed;

(8) an investment fund whose investment policy includes or authorizes the use of derivatives, that distributes or has distributed its securities under a prospectus for which the Autorité des marchés financiers (“the Authority”) or another authority empowered to issue receipts under the securities legislation of another province or a territory of Canada has issued a receipt, or that distributes or has distributed its securities exclusively to

(a) a person who is or was an accredited investor within the meaning of the Securities Act at the time of the distribution;

(b) a person who acquires or has acquired securities of the fund in order to make a minimum amount investment or an additional investment under the conditions prescribed by the Securities Act; or

(c) a person described in subparagraph *a* or *b* who acquires or has acquired securities of the fund in order to reinvest in the fund, in the circumstances set out in the Securities Act;

(9) an investment fund that is advised by an adviser described in paragraph 4;

(10) a charity registered under the Income Tax Act (R.S.C. 1985, c. 1, (5th Suppl.)) or the Taxation Act (chapter I-3) that, in regard to the trade in question, has used the services of an adviser registered under this Act or of a person authorized to act as such or to exercise similar functions under the equivalent legislation of another province or a territory of Canada;

(11) a person all of whose interest holders, except the holders of voting securities required by law to be held by directors, are accredited counterparties within the meaning of this Act;

(12) a hedger, that is, a person who, because of the person's activities,

(a) is exposed to one or more risks attendant upon those activities, including supply, credit, exchange and environmental risks and the risk related to fluctuations in the price of an underlying interest; and

(b) seeks to hedge that risk by engaging in a derivatives transaction, or a series of derivatives transactions, where the underlying interest is the underlying interest directly associated with that risk or a related underlying interest; or

(13) a person specified by regulation or designated by the Authority as an accredited counterparty under section 87;

2. Definition of Eligible contract participant – Commodity Exchange act, USC, Title 7 › Chapter 1, section 1a:

Eligible contract participant

The term "eligible contract participant" means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding $5,000,000; and

(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2 (c)(2)(B)(vi) of this title and section 2 (c)(2)(C)(vii) of this title, the term "eligible contract participant" shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding $10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding $1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding $5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this chapter;
(bb) a foreign person performing a similar role or function subject as such to foreign regulation;
(cc) a financial institution; or
(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii)

(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;
(II) a multinational or supranational government entity; or
(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);
except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2 (c)(2)(B)(ii) of this title;

(viii)

(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);
(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5 (b), 78q (h));
(III) an investment bank holding company (as defined in section 17(i) [2] of the Securities Exchange Act of 1934 (15 U.S.C. 78q (i)); [3]

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);
(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) $10,000,000; or

(II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)

(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], a commodity trading advisor subject to regulation under this chapter, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.