The State of Wisconsin Investment Board (SWIB) is a governmental employee pension plan and uses both exchange traded and over-the-counter (OTC) swaps in investing approximately $80 billion in assets. SWIB uses swaps to hedge or mitigate the risks that are inherent in investments. In addition, SWIB uses derivatives as cost-effective synthetic substitutes for physical securities. Swaps play a critical role in SWIB's investment strategy. If SWIB is considered a "major swap participant" or "major security-based swap participant" or is not considered an "eligible contract participant," SWIB's ability to effectively manage the trust funds, which provide benefits to thousands of Wisconsin current and former public employees, will be adversely affected. For that reason, SWIB registers the following comments on the definitions of "major swap participant," "major security-based swap participant" and "eligible contract participant."

Regulatory Authority

The Commodity Futures Trading Commission (CFTC) and the Securities Exchange Commission (SEC) are given the following regulatory authority relating to over-the-counter swaps markets by Section 712(a)(1) of the Wall Street Transparency and Accountability Act of 2010 ("Act") :

> Notwithstanding any other provision of this title and subsections (b) and (c) , the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms "swap", "security-based swap", "swap dealer", "security-based swap dealer", "major swap participant", "major security-based swap participant", "eligible contract participant", and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).

"Eligible Contract Participant"

SWIB requests that no amendment be made to the definition of "eligible contract participant" that would limit SWIB's access to the OTC swaps market. Sections 723(e) and 763(e) of the Act amend the Commodity Exchange Act and the Securities Exchange Act, respectively, such that only "eligible contract participants" may enter into a swap or security-based swap that is not traded on an exchange.

The current definition of "eligible contract participant," in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)), includes "a governmental employee benefit plan…that has total assets exceeding $5,000,000." Under the current definition, SWIB is an "eligible contract participant" with access to the OTC market. SWIB believes that the current definition provides certainty by providing a minimum threshold of assets for eligibility. We urge that this provision be retained in the definition of "eligible contract participant." Governmental employee benefit plans should not be excluded from the OTC market simply because they are benefit plans.

"Major Swap Participant"/"Major Security-Based Swap Participant"

Section 721(a) of Act defines "major swap participant" under the Commodity Exchange Act, and Section 761 defines "major security-based swap participant" under the Securities Exchange Act (collectively, "Major Participants"). Section 731 requires the registration and regulation of swap dealers and major swap participants under the Commodity Exchange Act, and Section 764 provides similar provisions for security-based swap dealers and major security-based swap participants under the Securities Exchange Act. SWIB urges the CFTC and the SEC to clarify that a governmental employee benefit plan is <u>not</u> a "major swap participant" or a "major security-based swap participant."

The express language of the Act clearly indicates that the basis for regulating a Major Participant is the ability of that person to provide a significant or systemic risk to the United States financial system. Governmental employee benefit plans do not pose such a risk; however, without clarification, the definitions of a "major swap participant" or a "major security-based swap participant" in the Act could have the unintended consequence of subjecting governmental employee benefit plans to such regulation. The definitions of a Major Participant are a person who maintains a "substantial position" in swaps (or security-based swaps) for any of the major swap (or security-based swap) categories. The Act excludes from the calculation of "substantial position" "positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) (ERISA plan) and (32) ("governmental plan") of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operations of the plan." As stated in the introduction above, SWIB does use derivatives to hedge positions or to mitigate risk; however, SWIB also uses derivatives to replicate positions that it could otherwise take with physical instruments. Trading derivatives can be a more cost-effective way to rebalance between asset classes than purchasing and selling the actual securities.

The Act requires the CFTC and the SEC to adopt a definition of "substantial position" that would be "prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States." Governmental employee benefit would not, as a rule, have positions of sufficient size or risk to raise concerns regarding the financial stability of the United States. Accordingly, we would encourage the adoption of a definition that incorporates a broad interpretation of the phrase "for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan" so that definitions of "major swap participant" and "major security-based swap participant" do not apply to public pension plans. Alternatively, because their size and the nature of their positions do not present a systemic risk, a definition of "substantial position" that clearly excludes <u>all</u> positions held by ERISA plans and governmental employee benefit plans would avoid this issue. Either change would eliminate governmental employee benefit plans from being subject to classification as major swap participants or major security-based swap participants and thereby reduce the burden of complying with the regulations simply to prove that our investments in derivatives do not pose a systemic risk.