

**From:** Daniel Dolan <DDolan@epsa.org>  
**Sent:** Monday, August 23, 2010 1:41 PM  
**To:** CapMargin <CapMargin@CFTC.gov>  
**Subject:** EPSA Pre-Comments  
**Attach:** Pre-Comments Capital-Margin Requirements.pdf

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Attached please find pre-comments submitted by the Electric Power Supply Association.

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August 23, 2010

Via Email: [CapMargin@CFTC.gov](mailto:CapMargin@CFTC.gov)

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

**Re: Advanced Comments on Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act – Capital & Margin for Non-banks**

Dear Mr. Stawick:

The Electric Power Supply Association (“EPSA”) submits this letter in response to the opportunity for advanced comments issued by the Commodity Futures Trading Commission (the “CFTC”) on its implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).<sup>1</sup>

EPSA is the national trade association representing competitive power suppliers, including generators and power marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity to market participants throughout the country. EPSA seeks to bring the benefits of competition to all power customers.

EPSA was an active participant in discussions with legislators on the formation of Title VII of the Act and appreciates the recognition within the legislative text that commercial end-users, such as competitive power suppliers, should be protected from “burdensome costs associated with margin requirements and mandatory

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<sup>1</sup> The comments contained in this filing represent the initial position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA expects to submit more substantive comments in response to the Commission’s proposed rules on Capital and Margin requirements.

clearing.”<sup>2</sup> As such, no margin or capital requirements should be imposed on any OTC transaction in which a commercial end-user (i.e. not a financial entity) is a party.

The creation of an exception to clearing for end-users was specifically drafted to ensure that the commercial entities that do not pose a systemic risk to the economy and were not a cause of the recent financial crisis will continue to have cost-effective access to the over-the-counter (“OTC”) risk management tools they use today. One of the key questions now left to the CFTC is to delineate margin requirements for Major Swap Participants (“MSP”) and Swap Dealers in OTC transactions.

What is quite clear from the legislative text is that no margin or capital requirements may be imposed on commercial end-users for their OTC transactions. While it is appropriate to set reasonable margin requirements on OTC transactions between financial entities (*i.e.*, MSPs and Swap Dealers), no such margin should be placed on transactions in which a commercial end-user is a counterparty. If the Commission imposes a margin requirement on financial entities when they are counterparties to end user swap transactions, it would simply be a back-door way of imposing this cost on the end-user. Costs for the transaction would increase, which would lead to higher costs for consumers and lead some end-users to question the value or benefit of these important risk management tools going forward.

As was stated in a letter recently written by the principle Senate authors of the Act’s Title VII, Chairman Christopher Dodd and Chairman Blanche Lincoln, “Regulators must carefully consider the potential burdens that Swap Dealers and Major Swap Participants may impose on end user counterparties – especially if those requirements will discourage the use of swaps by end users or harm economic growth.”<sup>3</sup> Indeed, imposing margin on our counterparties in OTC transactions would create the very negative impacts that Congress sought to avoid. In essence, it would negate the end-user exception to mandatory clearing, which was specifically designed to continue allowing *cost-effective* risk management practices by end-users.

The Senators’ letter also addressed changes made during the late hours of deliberation by the Conference Committee, “Accordingly, changes made in Conference to the section of the bill regulating capital and margin requirements for Swap Dealers and Major Swap Participants should not be construed as changing this important Congressional interest in protecting end users. In fact, the House offer amending the capital and margin provisions of Sections 731 and 764 expressly stated that the strike to the base text was made to ‘eliminate redundancy.’ Capital

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<sup>2</sup> Letter from Christopher Dodd and Blanche Lincoln to the Honorable Barney Frank and the Honorable Colin Peterson, at 2 (June 30, 2010) (Dodd-Lincoln Letter).

<sup>3</sup> Letter from Christopher Dodd and Blanche Lincoln to the Honorable Barney Frank and the Honorable Colin Peterson, at 3 (June 30, 2010) (Dodd-Lincoln Letter).

and margin standards should be set to mitigate risk in our financial system, not punish those who are trying to hedge their own commercial risk.”<sup>4</sup>

We therefore ask that in promulgating rules on capital and margin requirements for Major Swap Participants and Swap Dealers that the Commission maintain Congressional intent and not impose additional burdensome costs on any swap where an end user is a counterparty. Preserving the ability to access the OTC markets is fundamental to ensuring the availability of valuable risk management tools for commercial purposes so that competitive power suppliers can continue to have the capital on hand to invest in clean energy infrastructure, provide affordable energy and maintain the overall long-term reliability of the electricity system.

Respectfully Submitted,



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<sup>4</sup> Dodd-Lincoln Letter at 2.