



**National Rural Electric  
Cooperative Association**

A Touchstone Energy<sup>®</sup> Cooperative 

November 15, 2010

Commissioner Scott O'Malia  
The Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Subject: Segregation of Client Funds for Cleared Swaps under Section 724  
of the Wall Street Reform and Consumer Protection Act (the  
"Act")**

Dear Commissioner O'Malia:

The National Rural Electric Cooperative Association is pleased to respond to your request for comments regarding the November 19<sup>th</sup> meeting of the CFTC and the consideration at that meeting of section 724 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We generally support the comments of the Natural Gas Supply Association sent to you today, and offer the following additional observations.

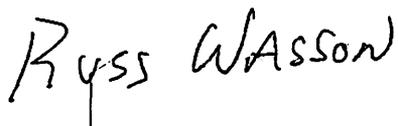
While we have no research or analysis in addition to that provided by NGSA which would be responsive to your request, we believe that it is important for you to know that a vast majority of our members, and load serving end users in the markets for energy and energy-related commodities and "swaps" in general, participate in the "swaps markets" principally on a non-cleared basis. In the non-cleared over-the-counter swaps markets, security or collateral (which is called "margin" in the CFTC regulated markets) for transactions is often posted not in cash that would be commingled or segregated in accounts, but rather the security/collateral/margin is posted directly to the counterparty in a broad variety of non-cash forms, including guaranties, letters of credit and pledges of assets. Moreover such security/margin is not posted daily on a transaction-by-transaction basis, but posted periodically as agreed by the counterparties to secure the net exposure of one counterparty to the other, often for both physical and financial energy and energy-related transactions or swaps. Indeed this is the market structure under which load-serving entities serving consumers with energy and energy-related products have been doing business for many years. We note that the regulatory definition of the term "swap" may have a significant impact upon our industry and could change our views if more of our members' transactions are swept up in that broad definition and not excluded or exempted by rule-makings.

Some of our larger members do use CFTC-regulated exchanges to hedge commercial risk and thereby such members post cash margin to secure such transactions with futures commission merchants who are clearing members of such exchanges. The question of which account segregation/commingling rules are implemented with respect to margin payments is important to these members. Of the three options presented for consideration by the Commission, we believe that individual account option may lead to increased costs for our members and the consumers which they serve. So we would not support requiring such an approach. We could support an omnibus structure similar to the manner in which client funds are segregated in the futures markets in which all client funds are commingled and the risk of loss from any single counterparty is socialized by the FCM among its members. We could also, with some reservations, support the third market-based option considered by the Commission on November 19<sup>th</sup> which would allow the FCM to choose among several options to ensure the integrity of client funds held as security. We note that a counterparty/customer of an FCM is not shielded from all credit risk when dealing with an FCM, in that the credit risk of one or another of the FCM's customers could cause the FCM to be unable to meet its obligations. Thus credit risk is still shared by all customers of each FCM. Moreover, the use by an FCM of insurance to manage the credit risk of its customers is not without systemic risk, considering the recent plight of the bond insurers and insurers such as AIG. Additionally, allowing the FCM to choose among several options may result in inequity arising among classes of industries if the FCM should choose one option for one industry or category, class or type of swaps versus another option for another industry.

If an FCM were to choose setting up individual accounts with an unaffiliated third party custodian, there should be sufficient guidelines in place which would prohibit the owners of the exchange from benefitting from the placement of funds with their respective institutions.

We would be happy to meet with you, or the other Commissioners to discuss these matters further.

Sincerely,

A handwritten signature in black ink that reads "Russ Wasson". The signature is written in a cursive, slightly slanted style.

Russell Wasson  
Director of Tax, Finance and Accounting Policy