

**From:** Daniel Dolan <DDolan@epsa.org>  
**Sent:** Monday, August 23, 2010 1:40 PM  
**To:** EndUser <EndUser@CFTC.gov>  
**Subject:** EPSA Pre-Comments  
**Attach:** Pre-Comments End User Exemption.pdf

---

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

Dan Dolan  
Vice President, Policy Research & Communications  
Electric Power Supply Association  
1401 New York Ave., NW 11th Floor  
Washington, DC 20005

direct: (202) 349-0153  
cell: (202) 374-6525  
fax: (202) 628-8260  
ddolan@epsa.org

EMAIL CONFIDENTIALITY NOTICE: This e-mail message is intended solely for the addressee (s) and may contain confidential and/or legally privileged information. If you are not the intended recipient, or this email was addressed to you in error, you should delete this message and any attachments, and you are notified that disclosing, copying, distribution, or taking action in reliance on the content of this information is strictly prohibited. This prohibition does not apply to press releases, PowerFacts, and other widely disseminated public documents.



August 23, 2010

**Via Email: EndUser@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 – End-user Exception**

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 clearing.”<sup>2</sup> In particular, 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

---

<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 the end user exemption.

<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)

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 determine how an end-user shall notify the Commission how it “generally meets its financial obligations associated with entering into non-cleared swaps.”<sup>3</sup> This notification process could create an immense administrative burden on both end-users and the Commission if not structured appropriately. It is both not feasible and not beneficial for such a notification process to occur on a transaction-by-transaction basis, but rather the Commission should take a holistic approach to the financial wherewithal of an end-user. As such, an annual self-certification process through which an end-user’s board or governing body certifies that the end-user has the resources to “generally meet its financial obligations” should be considered.

The Act already creates a similar process for a publicly-traded end-user to have access to the exception to clearing;<sup>4</sup> the expansion of this provision to include a financial resource notification process for private and publicly-traded end-users would provide a clear assessment and certification for the CFTC. This self-certification process can include organizations that are not registered with the Securities Exchange Commission as they too have governing bodies that could certify the end-user’s financial resources. Our hope in proposing this concept is to constructively offer a time- and resource-efficient tool that credibly comports with the spirit of the Act.

Respectfully Submitted,



---

Daniel S.M. Dolan  
VP, Policy Research & Communications  
Electric Power Supply Association  
1401 New York Avenue, NW, 11th Floor  
Washington, DC 20005  
(202) 628-8200

---

<sup>3</sup> 7 U.S.C. § 2(h)(7)(A)(iii)

<sup>4</sup> 7 U.S.C. § 2 (j)