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**Sent:** Monday, August 23, 2010 1:39 PM  
**To:** Recordkeeping <Recordkeeping@CFTC.gov>  
**Subject:** EPSA Pre-Comments  
**Attach:** Pre-Comments Record Keeping and Reporting.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: Recordkeeping@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 – Data Recordkeeping & Reporting Requirements**

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 was an early, active supporter of provisions to increase transparency and reporting requirements for swaps, particularly those occurring in the over-the-counter (“OTC”) markets. As was laid out in the legislation, reporting requirements for all OTC swaps in which only one of the counterparties is either a Major Swap Participant (“MSP”) or Swap Dealer shall fall on the MSP or Swap

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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 record keeping and reports for end user futures and swaps.

Dealer.<sup>2</sup> The reporting burden for the vast majority of OTC transactions is therefore rightfully placed on the financial entity. Such compliance should hold true not only for future swaps, but also for those pre-existing swaps that will be subject to a transition rule. For swaps in effect at enactment, there is a fundamental challenge with the above approach that derives from the fact that no one yet knows who is an MSP or a swap dealer. Until the definitional issue is resolved, EPSA recommends that the Commission impose the reporting requirement on a financial institution for which there is a prudential regulator for those transactions they are a counterparty. For those transactions in which there is no financial institution counterparty or both parties are financial institutions, the reporting entity should be the counterparty that was the seller in the swap.

On a going-forward basis, with respect to the small number of OTC transactions that occur between end-users (i.e. no participation by a major swap participant or swap dealer), the Commission should recognize that there is a practical compliance burden for real-time swap reporting for non-financial organizations that generally are not designed to capture trades immediately as they occur. The Commission should consider an allowance for a more measured frequency of reporting for swap transactions between these entities. EPSA recommends that end users should be allowed to report swaps by the close of business every day. It should be noted that the number of transactions that would be subject to these separate timing requirements are a fraction of the total OTC transactions and do not create any overall systemic risk to the economy. In addition, end users would report their swaps by the close of every business day, which gives the Commission time to perform meaningful oversight notwithstanding the lack of a real-time data feed.

EPSA strongly supports the increased transparency and reporting measures contemplated in the Act and asks that the CFTC be mindful that Congress' intent was not only to provide these regulatory authorities, but also that those implementing these authorities should avoid unnecessary and burdensome costs to end-users.

Respectfully Submitted,



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<sup>2</sup> 7 U.S.C. 6r(a)(3)(A)