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Sent: Thursday, August 19, 2010 5:11 PM
To: OTCDefinitions <OTCDefinitions@CFTC.gov>; secretary <secretary@CFTC.gov>
Cc: Sweeney, R. Michael <rsweeney@hunton.com>; McIndoe, David <dmcindoe@hunton.com>; Menezes, Mark W. <mmenezes@hunton.com>
Subject: Working Group of Commercial Energy Firms Comments on Acknowledgment Letters for Customer Funds and Secured Amount Funds-75 FR 47738
Attach: Working Group of Commercial Energy Firms Letter on FCM Acknowledgement Letters_(32180794)_ (4).pdf

Dear Secretary Stawick:

On behalf of the Working Group of Commercial Energy Firms, Hunton & Williams LLP submits for your consideration this letter concerning the notice of proposed rulemaking for futures commission merchants relating to acknowledgement letters for customer funds and secured amount funds and the many rulemakings that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Reform Act") requires the Commodity Futures Trading Commission finish within one year of the Reform Act's enactment. If you have any questions, please contact Michael Sweeney at (202) 955-1944, David McIndoe at (202) 955-1947, or Mark Menezes at (202) 419-2122. Thank you for your consideration.

Respectfully,

Alex Holtan



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August 19, 2010

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

VIA ELECTRONIC MAIL

Re: *Notice of proposed rulemaking for futures commission merchants, RIN 3038-AC72*

Dear Secretary Stawick:

On behalf of the Working Group of Commercial Energy Firms (the “Working Group”), Hunton & Williams LLP submits this letter concerning the notice of proposed rulemaking for futures commission merchants (“FCMs”) relating to acknowledgement letters for customer funds and secured amount funds¹ and the many rulemakings that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Reform Act”) requires the Commodity Futures Trading Commission (“CFTC” or “Commission”) finish within one year of the Reform Act’s enactment.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers. Members of the Working Group are energy producers, marketers and utilities. The Working Group considers and responds to requests for public comment regarding legislative and regulatory developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

The Commission has proposed three amendments to its regulations directly affecting FCMs.² Additionally, Section 721(a)(13) of the Reform Act redefines FCMs, including authorizing the Commission to further define who is, and who is not, an FCM. Furthermore, the Commission is expected to, in the near future, detail what activities give rise to being deemed an FCM. Thus, it appears that new rules could be issued affecting FCMs while the Commission considers further defining FCMs.

¹ 75 FR 47738 (August 9, 2010).

² 17 CFR 1.20, 17 CFR 1.26, and 17 CFR 30.7.

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In light of the Commission's concurrent parallel tracks on rulemakings in regards to FCMs and deciding who is an FCM, the Working Group respectfully suggests that the Commission consider delaying any rulemaking affecting FCMs until it has determined the scope of the FCM definition and the breadth of activities that would give rise to being an FCM under the Reform Act. The Working Group's request is similar to the action taken by the Commission on August 18 wherein the Commission withdrew its Proposed Rule on Federal Speculative Position Limits for Referenced Energy Contracts as it recognized its new obligations under the Reform Act would affect the proposed rule.³

The Working Group looks forward to working the CFTC and staff in the rulemaking process. Well implemented regulation can strengthen the derivatives markets, which benefits regulators, market participants, and U.S. consumers.

Respectfully submitted,

R. Michael Sweeney, Jr.
David T. McIndoe
Mark W. Menezes

*Counsel for the Working Group of
Commercial Energy Firms*

cc: Honorable Gary Gensler, Chairman
Honorable Scott D. O'Malia, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Michael Dunn, Commissioner
Honorable Bart Chilton, Commissioner
Daniel Berkovitz, General Counsel
Stephen Sherrod, Acting Deputy Director, Market Surveillance Section

³ 75 FR 50950 (August 18, 2010).