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Sent: Monday, September 20, 2010 10:02 AM
To: dfadefinitions <dfadefinitions@CFTC.gov>
Subject: Defintions
Attach: DefinitionsCommentsFinal.pdf

Good morning,

Per David Berg's request please file the attached .pdf (DefinitionsComments) today, September 20, 2010. Please contact me should you have any questions or concerns.

Best regards,

L'Oréal Jackson

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AIR TRANSPORT ASSOCIATION

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September 20, 2010

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

Re: Definitions – 17 CFR Part 1
Advance Notice of Proposed Rulemaking; Request for Comments

The Air Transport Association of America, Inc. (“ATA”)¹ respectfully submits these comments in response to the Advance Notice of Proposed Rulemaking (the “ANPRM”), 75 Fed.Reg. 51429 (August 20, 2010) concerning the definitions of certain key terms in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

ATA’s member airlines consumed nearly 18 billion gallons of jet fuel in 2009 and had a fuel expense in excess of \$30 billion. As significant end-users of jet fuel, ATA’s members hedge in oil and petroleum products to mitigate and manage their fuel cost exposure. To the extent the definitions of these key terms will flow through substantive rulemakings implementing the Dodd-Frank Act, ATA and its members have a substantial interest in how these key terms are defined.

The ANPRM defines certain key terms by restating the definitions contained in the Dodd-Frank Act. The key terms defined are: “swap,” “security-based swap,” swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” “eligible contract participant,” and “security-based swap agreement.” At this juncture, ATA’s comments on the definitions are as follows:

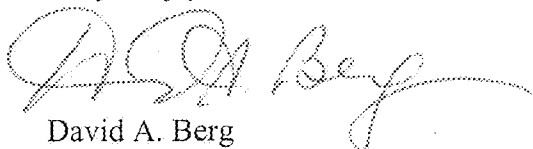
¹ ATA is the principal trade and service organization of the U.S. scheduled airline industry. The members of the association are: ABX Air, Inc.; AirTran Airways; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. Associate members are: Air Canada; Air Jamaica; and Mexicana.

1. Major swap participant. The ANPRM restates the definition in § 721(a)(16) of the Dodd-Frank Act. Although on its face it appears to exclude airlines based on their hedge positions, the second prong of the definition – entities “whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets” – could benefit from further clarification. Specifically, while it seems highly unlikely, there is some risk that an airline’s hedge position (“outstanding swaps”) could create “substantial counterparty exposure” and that this provision could be construed to include such hedge positions. For this reason, we recommend that the Commodity Futures Trading Commission (the “Commission”) clarify that entities that engage only in hedging should be understood as not falling within the intent of this clause. Because hedgers have an overall position that is balanced between the cash and derivatives market, their positions by definition should not have a serious adverse impact on the banking system or financial markets. Any potential adverse effect of a large position is mitigated by the fact that the derivatives position is balanced against a cash market position.
2. Swap. The ANPRM restates the definition in § 721(a)(21) of the Dodd-Frank Act. One aspect of this definition is to exclude forward delivery contracts intended to be physically settled (par. 47(B)(ii)). While ATA in principle supports this exclusion, there is some risk that it could be abused. Therefore, we recommend that the Commission expressly reserve its ability to take action if it believes that forward contract trading becomes a means of evading the intent of the Act.

Finally, while we recognize that the Commission will address the issue of end-user exemptions separately, we think it is appropriate to note here that swap exemptions should only be available to bona-fide end-users, producers, and counter-parties buying/selling a position to an end-user so long as that position is established to satisfy the demand of a bona fide end-user. Transactions by counter-parties that are not with bona-fide end-users should not fall within the end-user exemption.

ATA appreciates the opportunity to comment on the ANPRM.

Very truly yours,



David A. Berg