From: Fatula, George <george.fatula@bgllp.com>
Sent: Monday, September 20, 2010 4:34 PM
To: dfadefinitions <dfadefinitions@CFTC.gov>; secretary <secretary@CFTC.gov>; rule-comments@sec.gov
Cc: Perlman, David <David.Perlman@bgllp.com>
Subject: Definitions Contained in Title VII of Dodd-Frank Act - Comments of Coalition of Physical Energy Companies
Attach: ANOPR Comments of COPE.pdf

Attached please find the comments of the Coalition of Physical Energy Companies (COPE) to the **CFTC/SEC ANOPR regarding Definitions Contained in Title VII of the Dodd-Frank Act**. Thank you.

George D. Fatula | Attorney | Bracewell & Giuliani LLP
2000 K Street NW Suite 500 | Washington, D.C. | 20006-1872
T: 202.828.5819 | F: 202.857.4854
george.fatula@bgllp.com | www.bgllp.com/fatula | www.bgllp.com

BRACEWELL
&GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
Kazakhstan
London

David M. Perlman
Partner

202.828.5804 Office
202.857.4842 Fax

david.perlman@bgllp.com

Bracewell & Giuliani LLP
2000 K Street NW
Suite 500
Washington, DC
20006-1872

September 20, 2010

Via E-Mail

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

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: COMMENTS OF COALITION OF PHYSICAL ENERGY COMPANIES
Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act (RIN 3235-AK65; 3038-AD06)

Dear Mr. Stawick and Ms. Murphy:

On August 20, 2010, the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (collectively, the "Commissions") issued a joint Advance Notice of Proposed Rulemaking ("ANOPR")[1] seeking public input on certain terms the Commissions must further define under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[2] In the ANOPR, the Commissions refer to the terms addressed by the ANOPR as "Key Definitions." As the primary aim of Subtitle A of Title VII of Dodd-Frank (Regulation of Over-the-Counter ("OTC") Swaps Markets) is to provide for a regulatory structure for the trading of "swaps" and to regulate the significant counterparties in swaps markets, the definitions of the terms "swap dealer," "swap" and "major swap participant" are indeed key to the resulting regulations.

[1] Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 Fed. Reg. 51429 (Aug. 20, 2010).

[2] Public Law No. 111-203, 124 Stat. 1376 (2010). Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010," according to Section 701 of Dodd-Frank.

The Coalition of Physical Energy Companies ("COPE") is a diverse group of companies that are engaged in physical energy businesses.[3] The group is made up of producers of oil, natural gas and electricity, as well as natural gas and electricity retail providers and midstream natural gas, oil and petroleum products companies. All COPE members utilize swaps for risk management purposes and may trade swaps to optimize the economics associated with their physical businesses. Accordingly, it is critical to COPE that the Commissions implement Dodd-Frank in a manner that permits them to continue to economically conduct their businesses in the normal course and does not inadvertently subject them to regulation meant for financially-oriented businesses.

In establishing the definitions discussed in the ANOPR, it is imperative that the Commissions take steps to ensure that they implement the legislation in a manner that provides for clear and meaningful regulatory oversight of entities that are material participants in the "swaps business." It is equally imperative that the Commissions not impose inappropriate and overbroad regulation on entities that are not in the swaps business but are merely swaps customers.

As is evident in those provisions of Dodd-Frank dealing with "swap dealers" and "major swap participants," Congress views these entities as dealing with customers that require swap transactions to manage risk in some facet of their businesses. Thus, the statute addresses the need for "swap dealers" and "major swap participants" to avoid conflicts of interest,[4] meet certain business conduct standards[5] (including risk disclosure to counterparties),[6] and fulfill additional obligations for governmental and other "special entities."[7] The statute also subjects swap dealers and major swap participants to pervasive prudential regulation.[8]

---

[3] The members of the Coalition of Physical Energy Companies are: Apache Corporation; Competitive Power Ventures, Inc.; El Paso Corporation; Iberdrola Renewables, Inc.; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; Shell Energy North America (US), L.P.; and SouthStar Energy Services, LLC.

[4] Dodd-Frank § 732 (to be codified at 7 U.S.C. § 1 et seq, § 4d(c)).

[5] *Id.* at § 731 (to be codified at 7 U.S.C. § 1 et seq, § 4s(h)).

[6] *Id.* at § 731 (to be codified at 7 U.S.C. § 1 et seq, § 4s(h)(3)(B)(i)).

[7] *Id.* at § 731 (to be codified at 7 U.S.C. § 1 et seq, § 4s(h)(2)).

[8] *Id.* at § 731 (to be codified at 7 U.S.C. § 1 et seq, § 4s(d)(2)(A)).

In contrast to entities that are in the "swaps business," the members of COPE are engaged in physical energy businesses in which, in conjunction with the many other aspects of such businesses, they must manage price risk of very volatile energy commodities such as oil, refined petroleum products, natural gas, natural gas liquids and power. COPE members may be fundamentally long in a given commodity (*i.e.*, natural gas producers), fundamentally short (*i.e.*, retail natural gas marketers), or somewhere in between (*i.e.*, gas-fired electricity generators). Nevertheless, they all require swaps to manage commodity price risk and are "end users" of swaps. Depending on factors such as the size of the entity, the magnitude of changes in supply/production and sales arrangements, the volatility of commodity prices, weather trends, and short-term and macroeconomic conditions (particularly as related to oil), these physical energy companies enter into varying quantities of swaps of varying tenors to manage their physical energy businesses.

In fashioning the definitions covered by the ANOPR, the Commissions should remain mindful of the distinction between the "swaps business" and the "physical energy business." In essence, physical energy companies are customers of "swap dealers" and counterparties to "major swap participants." The OTC "swaps" these entities enter into are financially settling agreements typically documented by an ISDA Master Agreement. While they also enter into physical purchase and sale agreements of the underlying commodities with counterparties that can make and take physical delivery, those agreements are not "swaps" as that term is contemplated by Title VII of Dodd-Frank and should not be considered as such in the Commissions' regulations.

As Senators Dodd and Lincoln stated in their June 30, 2010 letter to Representatives Frank and Peterson, of the House Financial Services Committee and the House Committee on Agriculture, respectively:[9]

> [Congress] narrowed the scope of the Swap Dealer and Major Swap Participant definitions. We should not inadvertently pull in entities that are appropriately managing their risk. In implementing the Swap Dealer and Major Swap Participant provisions, Congress expects the regulators to maintain through rulemaking that the definition of Major Swap Participant does not capture companies simply because they use swaps to hedge risk in their ordinary course of business. Congress does not intend to regulate end-users as Major Swap Participants or Swap Dealers just because they use swaps

[9] Letter from Senators Christopher Dodd and Blanche Lincoln to Representatives Barney Frank and Collin Peterson, June 30, 2010 ("This letter seeks to provide some additional background on legislative intent on . . . various sections of Title VII of . . . the Dodd-Frank Act.") (the "Dodd-Lincoln Letter").

> to hedge or manage the commercial risks associated with their business. For example, the Major Swap Participant and Swap Dealer definitions are not intended to include an electric or gas utility that purchases commodities that are used either as a source of fuel to produce electricity or to supply gas to retail customers and that uses swaps to hedge or manage the commercial risks associated with its business. Congress incorporated a de minimis exception to the Swap Dealer definition to ensure that smaller institutions that are responsibly managing their commercial risk are not inadvertently pulled into additional regulation.[10]

Given the foregoing, and in furtherance of the legislative intent made clear in the Dodd-Lincoln Letter, COPE offers the following observations and proposals for the Key Definitions upon which the Commissions seek comment.

I. SWAP DEALER

Section 721(a)(21) of Dodd-Frank provides the following definition for "swap dealer":

> (A) IN GENERAL.—The term 'swap dealer' means any person who—
>
> (i) holds itself out as a dealer in swaps;
>
> (ii) makes a market in swaps;
>
> (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or
>
> (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps, provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer. . . .
>
> (D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its

[10] Dodd-Lincoln Letter at 3.

> customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

While the Commissions have not specifically defined the term "swap dealer" previously, the CFTC Staff stated the following in its 2008 report concerning Swap Dealers and Index Traders:[11]

> The swap dealer, which is often affiliated with a bank or other large financial institution, has emerged to serve as a bridge between the OTC swap market and the futures markets. Swap dealers act as swap counterparties both to commercial firms seeking to hedge price risks and to speculators seeking to gain price exposure. In essence, swap dealers function as aggregators or market makers, offering contracts with tailored terms to their clients before utilizing the more standardized futures markets to manage the resulting risk. The bilateral contracts that swap dealers create vary widely - from contracts tailored to customer needs, to relatively standardized contracts (some virtually identical to an exchange-traded futures contract).[12]
>
> **********
>
> [W]hen a swap dealer takes a swap onto its books, it takes on any price risks associated with the swap and thus must manage the risk of the commodity exposure. In addition, the counterparty bears a credit risk that the swap dealer may not honor its commitment. This risk can be significant in the case of a swap dealer because it is potentially entering into numerous transactions involving many counterparties, each of which exposes the swap dealer to additional credit risks. As a result of these risks, there has been a natural tendency for financial intermediaries (e.g., commercial banks, investment banks, insurance companies) to become swap dealers. These firms typically have the capitalization to support their creditworthiness as well as the expertise to manage the market price risks that they take on.[13]
>
> **********

---

[11] *Staff Report on Commodity Swap Dealers & Index Traders with Commission Recommendations*, Commodity Futures Trading Commission (September 2008) ("2008 CFTC Staff Report").

[12] *Id.* at 1.

[13] *Id.* at 11.

> Since swap dealers are willing to enter into swap contracts on either side of a market, at times they will enter into swaps that create offsetting exposures, reducing the swap dealer's overall market price risk associated with the firm's individual positions opposite its counterparties.[14]

****

Consistent with the CFTC Staff's characterization of a swap dealer, the Commissions' regulatory definition of that term under Dodd-Frank should describe a financial intermediary that engages in a swaps business and effectuates swap transactions by dealing in and making markets in swaps. It is not an end user like the members of COPE, as referred to in the Dodd-Lincoln Letter; *e.g.*, a counterparty to a swap dealer that is hedging its commercial risk associated with its physical business.

As such, COPE recommends that the Commissions adopt the following definitions to clarify the regulatory meaning of the statutory text with respect to the definition of "swap dealer":

A "Dealer" means "a person that acts as a market maker in swaps."[15]

"Makes a market" means "standing ready to offer to buy or sell a swap at all times."

"Ordinary course of business for its own account" means "engaging in a business that is principally comprised of buying and selling swaps."

De Minimis Exception - An entity that otherwise meets the requirements of Section [of regulations defining Swap Dealer] shall be exempt from designation as a Swap Dealer for a swap or type of swap if it enters into uncleared swaps, excluding swaps held for hedging or mitigating commercial risk, at a level that is no more than twenty five percent (25%) of its total swap position as measured on a monthly basis.

EXCEPTION.—The term 'swap dealer' does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, to

---

[14] *Id.* at 12.

[15] CFTC Glossary, http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/index.htm.

hedge or mitigate commercial risk, provided such person is not engaging in a business that is principally comprised of buying and selling swaps.[16]

II. SWAP

Section 721(a)(21) of Dodd-Frank provides the following definition for "swap" (revised to omit all non-energy related provisions):

> (A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—
>
> (i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;
>
> (ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;
>
> (iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future

[16] A nearly identical exception was included in the Senate bill that was sent to conference with the House. As noted in the Dodd-Lincoln Letter, "[i]n harmonizing the different approaches taken by the House and Senate . . . a number of provisions were deleted . . . to avoid redundancy . . . . [;] [h]owever, a consistent Congressional directive throughout all drafts of this legislation . . . has been to protect end users from burdensome costs associated with margin requirements and mandatory clearing . . . [and] [a]ccordingly, changes made in Conference to the section of the bill regulating capital and margin requirements for Swap Dealers and Major Swap Participants should not be construed as changing this important Congressional interest in protecting end users." Dodd-Lincoln Letter at 2.

> direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as — . . .
>
> (XVII) a weather swap;
>
> (XVIII) an energy swap; . . .
>
> (iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;
>
> (v) including any security-based swap agreement which meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or
>
> (vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).
>
> (B) EXCLUSIONS.—The term 'swap' does not include—
>
> (i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
>
> (ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled[.]

The CFTC Glossary defines a "Commodity Swap" as "A swap in which the payout to at least one counterparty is based on the price of a commodity or the level of a commodity index."[17] COPE has a similar understanding of a swap. In COPE's experience, a swap is a financially-settling agreement, typically with a fixed price payer and a floating price payer documented under an ISDA Master Agreement (*e.g.*, a "fixed for floating swap"). As the CFTC correctly points out in the above definition, for a commodity swap, the floating price is often a commodity index. While Dodd-Frank uses many words to define a "swap," COPE

[17] CFTC Glossary, http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/index.htm.

believes that the statute does not intend anything materially different from the CFTC's Commodity Swap definition or the "fixed for floating swap" described above.

Consistent with all these concepts, a "swap" must be an agreement designed to settle financially. It is not an agreement for the sale of goods or services, nor is it an agreement with an enforceable physical delivery obligation (as distinguished from a payment obligation). Further, as recognized in Section 721(a)(21) of Dodd-Frank, a "swap" is not "[a]ny sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled." The intention to physically settle is made clear by the inclusion of a legally enforceable delivery obligation in a sales agreement. As made clear by Senators Dodd and Lincoln:

> In implementing the derivatives title, Congress encourages the CFTC to clarify through rulemaking that the exclusion from the definition of swap for "any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled" is intended to be consistent with the forward contract exclusion that is currently in the Commodity Exchange Act and the CFTC's established policy and orders on this subject, including situations where commercial parties agree to "book-out" their physical delivery obligations under a forward contract.[18]

Further, an agreement with a physical delivery obligation which includes optionality with respect to terms such as the volumes, price or delivery point is not rendered a swap due to the potential variability in quantity, price, location, or other commercial terms. In addition, transactions concerning interests in environmental attributes associated with renewable energy production (commonly known as renewable energy credits ("RECs")) or associated with emissions reductions such as emissions reduction credits ("ERCs") are also not "swaps," since they are purchases and sales of environmental attribute certificates which require delivery or its equivalent, *i.e.*, entry into a particular registry. REC and ERC transactions are not financially settling instruments.

As such, COPE recommends that the Commissions adopt the following definitions to clarify the regulatory meaning of the statutory text with respect to the definition of "swap":

---

[18] Dodd-Lincoln Letter at 3.

A "swap" means "an agreement, contract or transaction intended to settle financially."

A sale that is "intended to be physically settled" means a sale "made pursuant to an agreement or contract containing a legally enforceable delivery obligation."

III. MAJOR SWAP PARTICIPANT

Section 721(a)(16) of Dodd-Frank provides the following definition for "major swap participant":

> (A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—
>
> (i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—
>
> (I) positions held for hedging or mitigating commercial risk; and
>
> (II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
>
> (ii) 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; or
>
> (iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and
>
> (II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.
>
> (B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term 'substantial position' at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph,

> the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

Consistent with the intent of Congress as expressed by Senators Dodd and Lincoln, physical energy firms such as COPE's members should not be captured in the definition of "major swap participant." As far as the group knows, none of the members of COPE hold "outstanding swaps" that "create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets." Further, given the nature of their swap activity, none of the group's members should be found to be holding a substantial position in swaps net of those held for "hedging or mitigating commercial risk." The term "substantial position" is clearly linked to the oversight of financial entities that are "systemically important or can significantly impact the financial system of the United States." Regardless of the size of their physical businesses, the members of COPE are not the types of entities that merit oversight or monitoring of their swaps positions to assure the integrity of the financial system of the United States. The Commissions should acknowledge this fact and ensure, through the adoption of the exception proposed below, that whatever monitoring and oversight system is put in place for systemically important entities does not inadvertently capture entities that are not subject to such oversight.

Therefore, the definition of "substantial position" should focus on "financial entities" as defined in Section 723(a)(3) of Dodd-Frank and should not inadvertently sweep in physical energy companies.

Further, since the measure of a substantial position is net of swaps held for "hedging or mitigating commercial risk," the Commissions should define the term "commercial risk" to include those risks that swaps can mitigate. Since swaps are financially settling instruments, commercial risk in this context must include all financial or price risk. In addition, swaps among affiliated members of a corporate family should not be included in the calculation of a substantial position, as affiliate transactions pose no systemic risk.

As such, COPE recommends that the Commissions adopt the following definitions to clarify the regulatory meaning of the statutory text discussed above:

"Commercial Risk" means "economic risk arising from financial or physical or any other attribute of a commercial enterprise including commodity price volatility risk, commodity price basis risk, commodity supply volatility risk, commodity demand volatility risk, risk of failure of production, risk of loss of markets, balance sheet risk, credit risk and currency risk."

"Substantial Position" means "the net, unhedged minimum quantity of uncleared swaps, excluding swaps held for hedging or mitigating commercial risk held by a financial entity[19] that is systemically important to the stability of the financial system of the United States or can significantly impact the financial system of the United States, above which a default by such entity would cause adverse systemic financial impacts to the financial system of the United States."

EXCEPTION.—The term 'major swap participant' does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, to hedge or mitigate commercial risk, provided such person is not engaging in a business that is principally comprised of buying and selling swaps.

IV. CLEARING AND MARGIN ISSUES

In addition to the Key Definitions identified in the ANOPR, COPE is materially concerned about the regulatory implementation of the exception from mandatory clearing and the margin-related regulations that the Commissions may require of "swap dealers" and "major swap participants." Group members have worked hard to achieve strong balance sheets and creditworthiness. While the ANOPR does not seek comment on the clearing and margin issues, and COPE will wait until the Commissions come forward with a proposal on these topics before providing complete comments, COPE wishes to highlight comments made by Senators Dodd and Lincoln regarding this subject. These Senators made clear that entities such as the COPE members were not the cause of the problem that brought about the need for Dodd-Frank and should not be exposed to increased costs of hedging commercial risk by its implementation. The Senators made Congress's intention and expectation of regulators clear:

> The legislation does not authorize the regulators to impose margin on end users, those exempt entities that use swaps to hedge or mitigate commercial risk. If regulators raise the costs of end user transactions, they may create more risk. It is imperative that the regulators do not unnecessarily divert working capital from our economy into margin accounts, in a way that would discourage hedging by end users or impair economic growth.[20]

****

[19] *See* Dodd-Frank at § 723(a)(3).

[20] Dodd-Lincoln Letter at 1.

> Again, Congress clearly stated in this bill that the margin and capital requirements are not to be imposed on end users, nor can the regulators require clearing for end user trades. Regulators are charged with establishing rules for the capital requirements, as well as the margin requirements for all uncleared trades, but rules may not be set in a way that requires the imposition of margin requirements on the end user side of a lawful transaction. In cases where a Swap Dealer enters into an uncleared swap with an end user, margin on the dealer side of the transaction should reflect the counterparty risk of the transaction. Congress strongly encourages regulators to establish margin requirements for such swaps or security-based swaps in a manner that is consistent with the Congressional intent to protect end users from burdensome costs.[21]

****

> Congress … created a robust end user clearing exemption for those entities that are using the swaps market to hedge or mitigate commercial risk. These entities could be anything ranging from car companies to airlines or energy companies who produce and distribute power to farm machinery manufacturers. They also include captive finance affiliates, finance arms that are hedging in support of manufacturing or other commercial companies. The end user exemption also may apply to our smaller financial entities - credit unions, community banks, and farm credit institutions. These entities did not get us into this crisis and should not be punished for Wall Street's excesses. They help to finance jobs and provide lending for communities all across this nation. That is why Congress provided regulators the authority to exempt these institutions.[22]

****

[21] *Id.* at 1-2.

[22] *Id.* at 2.

CONCLUSION

COPE appreciates the opportunity to provide comments on the ANOPR. COPE recommends that the Commissions adopt the proposed regulatory text included in these comments in any Notice of Proposed Rulemaking that they subsequently issue concerning these Key Definitions. COPE hopes the Commissions find these comments constructive and looks forward to the formal rulemakings that will be issued to implement Dodd-Frank.

Respectfully submitted,

/s/ David M. Perlman

David M. Perlman
Counsel to
Coalition of Physical Energy Companies

cc: COPE Members