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- David A. Berg
Vice President, General Counsel and Secretary

February 22, 2011

Filed Electronically

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

**Re: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,”
“Major Swap Participant,” “Major Security-Based Swap Participant,”
and “Eligible Contract Participant,” 75 Fed. Reg. 80174 (Dec. 21, 2010),
RIN 3038-AD06.**

Dear Mr. Stawick:

The Air Transport Association of America, Inc. (“ATA”) appreciates this opportunity to comment on the rules proposed (the “Proposed Rules”) by the Commodity Futures Trading Commission (“CFTC” or the “Commission”) further defining certain terms used in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).¹ ATA supports the Commission’s efforts to provide greater clarity as to the meaning of these important terms and agree that the proposed definitions will cover market participants that, appropriately, should be subject to additional regulation under Dodd-Frank.

¹ *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 75 Fed. Reg. 80174 (Dec. 21, 2010) (the “Proposing Release”).*

ATA

ATA is the principal trade and service organization of the U.S. scheduled airline industry.² It is the nation's oldest and largest airline trade association and its members account for more than 90 percent of the passenger and cargo traffic carried by U.S. airlines. Since its founding in 1936, ATA has encouraged governmental policy decisions that foster a financially stable U.S. airline industry capable of meeting the nation's travel and shipping needs while withstanding the inherently cyclical nature of the airline industry.

ATA Comments on the Proposed Rules

Definition of "Swap Dealer"

We support the Commission's proposed definition of "swap dealer" and appreciate that it does not appear likely to capture end users, like ATA's members, that use swaps to hedge their commercial risk. In particular, we applaud the guidance provided by the Commission related to the exception from the definition for "a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business."³ The Commission noted in the Proposing Release that a person enters into swaps as part of a "regular business" if the person's function is to provide liquidity to counterparties expressing interest in entering into swaps.⁴ If a person, such as an end user of swaps, enters into swaps for its own account on a regular basis for purposes of hedging commercial risk, rather than in response to requests from counterparties seeking to enter into swaps, that person would not be a swap dealer.

Definition of "Major Swap Participant"

We also support the Commission's proposed definitions of "substantial position" and "substantial counterparty exposure," as those terms are used in the definition of "major swap participant." We agree that it is appropriate to allow for netting and to take into account the value of collateral posted in determining whether a swap position is a substantial position. We also think that the Commission's proposed thresholds for current uncollateralized exposure and potential future exposure would appropriately make it unlikely that many commercial entities that use swaps for hedging, rather than speculation, will be deemed major swap participants. Given that the exclusion for positions used for hedging or mitigating

² 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; 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 and Air Jamaica.

³ CEA § 1a(49)(C).

⁴ Proposing Release at 80177.

commercial risk is not available under the second prong of the definition, we think it is appropriate to use a higher threshold to measure “substantial counterparty exposure,” under that prong, than the threshold for “substantial position,” under the first prong.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D.A. Berg". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David A. Berg
Vice President & General Counsel
AIR TRANSPORT ASSOCIATION OF AMERICA