We wanted to summarize the best statutory reasons for CFTC to issue final rules to clarify that the transactions by the nonprofit National Rural Utilities Cooperative Finance Corporation (CFC) should be exempted in final regulations from clearing and margin requirements. CFC comments filed with the CFTC and other agencies make clear that our transactions – on average CFC executes 15 a year -- should be transparent and reported. We would welcome CFTC rules that require the CFC to provide detailed financial reports and information about our transactions on behalf of our member-owners, the rural electric cooperatives.

CFC is wholly owned and controlled by their nonprofit rural cooperative owners. Congress highlighted the CFC's nonprofit owners for special treatment in section 722(f) of the Dodd-Frank Act because, in part, those rural cooperatives act in the public interest under federal law and the CFC has no existence or purpose outside of serving the rural electric cooperatives and has no leeway or authority to speculate, ever.

It is not just the absolutely clear, and directly on point, legislative history of DFA that supports the above statement[1], the text of the DFA highlights that special treatment should be considered for the nonprofit, public purpose, rural electric cooperatives by both the CFTC and the SEC.

Section 4(c) of the Commodity Exchange Act includes a specific statutory reference that the transactions between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) – which entities include the nonprofit CFC and their owners the nonprofit rural electric cooperatives – shall be exempted by the CFTC and the SEC from the clearing requirements set forth in section 4(a) "[i]f the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act . . ." The text of the Federal Power Act subsection 201(f) makes clear that entities wholly owned by the public purpose rural electric cooperatives should be treated in the same manner as those cooperatives.[2]

The CFTC in its own rulemakings discussed this "public interest" issue when it provided additional guidance on the scope of this statutory exemption in its "Further Definitions" proposal.

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[1] A letter signed by the Chairs of the two Senate Committees that authored for the Senate the Dodd-Frank Act -- Chairmen Dodd and Lincoln -- states that the "consistent Congressional directive throughout all drafts of this legislation, and in Congressional debate, has been to **protect end users from burdensome costs associated with margin requirements and mandatory clearing**." Indeed, a more recent letter from Senate Chairmen Stabenow and Johnson and House Chairmen Lucas and Bachus restated their "continued support for the comments expressed" in that June 30 Dodd-Lincoln letter which further noted that:

> Congress . . . created a robust end user clearing exemption for those entities that are using the swaps market to hedge or mitigate commercial risk. Those entities could [include] . . . energy companies who produce and distribute power. . . . **They also include captive finance affiliates, finance arms that are hedging** . . . . That is why Congress provided regulators the authority to exempt these institutions."

[2] That Federal Power Act reference covers, in part, "an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) . . . or any agency, authority, or instrumentality of any one or more of the foregoing, **or any corporation which is wholly owned**, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty. . . ." (Emphasis added.)

The CFTC recognized that "some electricity services are provided as a public good rather than for profit" and referred to the Federal Power Act and to the "non-profit, public power systems such as rural electric cooperatives."[3] That preamble invited comments on "whether there are special considerations, *including without limitation special considerations* arising from section 201(f) of the Federal Power Act, related to *non-profit, public power systems such as rural electric cooperatives* . . . ." [4] (emphasis added.)

Since the CFC is "directly," and "wholly owned" by the cooperatives, it should be accorded, at a minimum, the status of a legally, totally controlled, affiliate. The text of the Federal Power Act reference, discussed above, specifically covers "**any corporation which is wholly owned"** by the rural cooperatives. Our June 3 filing (RIN 3038-AD10, End User Reopened) and RIN 30388-AD06, 3235-AK65, "Definitions Reopened") fully explains our arguments.

The DFA also provides that an "affiliate of a person that qualifies for [the end user exception] may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity."

As noted in the proposed rule, the CFTC has leeway in how it chooses to define "affiliate." We encourage the CFTC to choose to define this term, and to write the regulation implementing this provision of DFA, in a manner so as to allow activities such as CFC's to come under the affiliate exception. CFC's members qualify for the end-user exception. CFC's use of derivatives is done "on behalf of" its members because (1) those members own CFC and CFC exists only to serve its members; and (2) CFC's goal in using derivatives is to manage risks for all CFC members while allowing each individual member to obtain financing on terms it prefers.

Since our members are in the business of producing and distributing electricity, and not managing a derivative portfolio, CFC enters into derivatives contracts itself, since it has the professional expertise, credit rating, accounting functions, and banking relationships necessary to do so.

That is why CFC should not be considered a "financial entity" which we explain in much greater detail in our filings.[5] In short, the DFA definition of "financial entity" includes entities "predominantly engaged in activities that are in the business of banking, or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act." While such activities include lending, CFC does not engage in the business of lending in a manner akin to the way depository institutions engage in the business of lending, or in other activities in the business of banking. For instance, while banks engage in lending to the public in order to make a profit, CFC is a nonprofit cooperative that lends only to its nonprofit members -- in a sense it lends to itself -- and exists to serve its members rather than the general public.

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[3] 75 FR 80184 (Dec. 21, 2010)

[4] *See* 75 FR 80184 (referencing the "exemptive authority in section 722(f) of the Dodd-Frank Act. . . .").

[5] "Further Definitions . . . ." RIN 3038-AD-06, due Feb. 22, 2011; "End-User Exception," RIN 3038-AD10, due Feb 22. AD-10; and in the June 3, 2011, filing -- "Reopened Comment Periods."

In addition, we have filed detailed comments[6] explaining how the "parent company" exception applies to the CFC since more that 90% of its business consists of providing financing to its rural electric system member-owners and their related organizations so they can deliver a product – electricity. CFC has many parents (our rural cooperative owners) and CFC's use of derivatives arises from the financing of facilities needed to create and deliver a product -- electricity -- for rural America.

CFC is required to, and does, operate solely in the public interest on behalf of its cooperative owners to reduce their costs and mitigate risks. CFC was created by those cooperatives to provide them with internal access to non-governmental market capital.

This model of one centralized, internal (captive) entity worked especially well during the financial crisis in 2008. Indeed, the electric distribution cooperatives announced on July 31, 2009, "strong financial results during the economic downturn" of 2008. Surely, there are more pressing entities and problems on which the CFTC and the SEC should focus its resources and time.

The extent of financial problems faced by the nation as the Congress crafted the DFA are described in its legislative history, hundreds of press reports, books, and articles, and in the Financial Crisis Inquiry Report (including the dissenting views).[7] The focus during the financial crisis was certainly never on nonprofit cooperatives such as CFC, which is owned by, and created to serve, nonprofit rural electric cooperatives and their "public interest" goals as that phase is used in the DFA.

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[6] Cited in note 5.

[7] "The Financial Crisis Inquiry Report," issued by Financial Crisis Inquiry Commission, Jan. 2011.