

United States Senate

WASHINGTON, DC 20510

January 13, 2012

VIA Electronic Delivery

Hon. Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Renewable Energy Certificates

Dear Chairman Gensler:

As the Commodity Future Trading Commission continues to draft the definitions and rules necessary to regulate the swaps and derivative markets, we hope you will recognize that transactions for the purchase or sale Renewable Energy Certificates ("REC") meet all of the requirements to satisfy the forward contract exclusion as defined under the Dodd-Frank Act.

As you are aware, the Dodd-Frank Act provides a regulatory framework for swaps. However, recognizing that spot and forward contracts that are physically settled are different from swaps, Congress made it clear that such transactions shall remain subject to the regulatory framework already in place, and not treated as swaps. Based on our investigation to date, we believe that transactions for the purchase or sale of RECs are best treated as spot and forward contracts and not swaps.

As you may know, a REC represents the right to the environmental benefits associated with one megawatt-hour of electricity generated by an eligible renewable energy source. The purchase or sale of a REC is settled through the transfer of title to the REC, either electronically over a tracking system or via a paper attestation. Only the party which owns the REC has the right to claim the environmental benefits of the renewable generation and the right to permanently retire the REC for regulatory compliance.

REC's provide electricity purchasers a tangible means to support clean power generation in the United States without requiring a direct connection to the renewable power source. RECs are part of a growing U.S. market for renewable energy and often provide clean energy producers, including many farmers and ranchers, an additional and important revenue stream. The ongoing availability, growth, and liquidity of the REC markets are playing a critical role in promoting the continued growth of the U.S. clean energy economy.

We believe that the nature of the REC markets, as currently organized, make the purchase and sale of RECs more analogous to the purchase or sale of a commodity such as oil or corn on the spot market or for forward delivery than to a swap. As such, the regulatory regime appropriate to swaps would likely not be relevant or appropriate to REC transactions that are spot or physically settled.

Accordingly, we urge you to consider this issue carefully and, if our understandings of the markets are aligned, to clarify that the purchase or sale of RECs shall remain subject to the spot and physically-settled forward contract exclusion. We believe this would ensure the continued smooth and efficient growth of these important markets.

We look forward to seeing the final swap rules and definitions when you have concluded your work on this important issue. In the interim, if you have any additional questions about this issue, please do not hesitate to contact us or our staff.

Sincerely,






