

**Congress of the United States**  
**Washington, DC 20515**

February 29, 2012

The Honorable Gary Gensler  
Chairman  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> St. NW  
Washington, DC 20581

Dear Chairman Gensler:

We appreciate your work and that of the Commodity Futures Trading Commission (CFTC) to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act. We were proud to support Dodd-Frank because of the increased regulatory oversight it provides for our financial system and the protections from unscrupulous practices it provides for consumers. Fundamentally, the legislation was about protecting consumers and that is why it was so urgently needed.

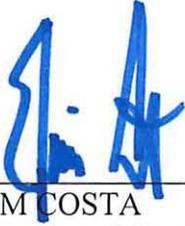
That is also why we are concerned with the lack of clarity in the CFTC's proposed swap dealer definition. Because of California's unique regulatory environment, we are concerned the state's energy providers could inadvertently be swept up by the swap dealer definition. It is our hope that the CFTC can provide the clarity needed to ensure these companies – and ultimately California rate payers – are not penalized by federal regulators for simply complying with state law.

Actions undertaken to comply with state or local laws or regulations should be specifically excluded in determining whether an entity is a swap dealer. Specifically, with regard to the needs of California's energy providers, we are concerned about: resource adequacy contracts entered into to satisfy California's Public Utilities Commission procurement requirements; renewable energy credits used to satisfy the California Renewable Portfolio Standard; and emission allowances to satisfy California's greenhouse gas regulations.

These contracts required by state law do not result in utilities taking physical delivery but do result in financial settling, which would make the contracts swaps and the utilities swap dealers. In all of these examples, the transactions are heavily regulated by California's Public Utility Commission or the California Air Resources Board and pose no systemic risk to our financial system. While our state is ahead of many others with our Renewable Portfolio Standard and plans to regulate greenhouse gas emissions, it is very likely these concerns could soon be shared by energy providers in other states.

Before the CFTC finalizes the swap dealer rule, we urge you to provide the clarity needed to ensure California energy providers – and their ratepayers – are not unjustly penalized.

Sincerely,



JIM COSTA  
Member of Congress



JOE BACA  
Member of Congress

DENNIS CARDOZA  
Member of Congress

cc: The Honorable Jill Sommers, Commissioner  
The Honorable Bart Chilton, Commissioner  
The Honorable Scott O'Malia, Commissioner  
The Honorable Mark Wetjen, Commissioner