



January 27, 2012

Gene B. Sperling, Director
National Economic Council and Assistant to the President for Economic Policy
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Nancy Sutley, Chair
Council on Environmental Quality
722 Jackson Place, Northwest
Washington, DC 20506-0003

Dear Mr. Sperling and Ms. Sutley:

The Business Council for Sustainable Energy (BCSE) is concerned that an overly broad interpretation by the Commodity Futures Trading Commission (CFTC) in implementing provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2011 (P.L. 111- 203) could have a serious and negative impact on the U.S. economy, while working against environmental and clean energy objectives. We ask you to contact members of the CFTC to urge them to implement this important piece of legislation in a sound and viable way that will not drain the U.S. economy of billions of dollars of working capital that could otherwise be invested in clean energy infrastructure.

The Business Council for Sustainable Energy (BCSE) is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power, commercial end-users and project developers and service providers for environmental markets. BCSE has a 20-year history developing policies to deploy clean energy technologies at the state, federal, and international levels.

BCSE believes the CFTC should implement the definition of a “Swap Dealer” to ensure that both the law’s general exception and the de minimis exception are properly applied. The general exception applies to entities entering into swaps for their own account (e.g. traders). The de minimis exception allows for the exclusion from a Swap Dealer designation of entities that engage in a de minimis quantity of swap transactions “with or on behalf of” their customers.

These two exceptions are essential because they allow entities that use swaps to hedge or mitigate commercial risks, such as those risks that stem from the production of energy and agricultural commodities, to avoid being designated as Swap Dealers, a designation that would preclude eligibility for the end-user clearing exception. Entities designated as Swap Dealers would be required to transact their swaps on an exchange or to clear such transactions, subjecting them to costly margin and clearing expenses and draining the economy of billions of working capital dollars.

An overly broad definition of a Swap Dealer could unnecessarily drain the U.S. economy of an estimated \$600 billion of productive capital that businesses could otherwise use for job creating investments like clean energy infrastructure¹ and could have unintended consequences on energy policy goals, including energy security and energy independence.

¹Letter dated February 9, 2011 from the Natural Gas Supply Association (NGSA) and National Corn Growers Association to the House Agriculture Committee, http://www.ngsa.org/Assets/ncga%20-%20ngsa%20swap%20dealer%20solution%20letter%20house%20ag%2002082011_final.pdf

We request the opportunity to meet with you to discuss some of the viable solutions that are part of the CFTC's public record. We also request that you contact the CFTC to encourage an appropriate definition of Swap Dealer that would avoid unnecessary consequences for clean energy and the economy. Documents with information about the Council and our position statement on the Swap Dealer definition are attached for your reference.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Jacobson". The signature is written in dark ink and is positioned to the left of the typed name.

Lisa Jacobson, President
Attachments (2)

Please note that the BCSE is a diverse coalition of business interests and not all BCSE members endorse or take positions on issues covered in this document. The comments contained in this paper represent the position of BCSE as an organization, but not necessarily the view of any particular member with respect these issues.