April 16, 2012

VIA ELECTRONIC SUBMISSION

Office of the Comptroller
of the Currency
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Docket ID OCC-2011-14

Board of Governors
of the Federal Reserve System
Attn.: Jennifer J. Johnson, Secretary
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Docket No. R-1432 and RIN 7100 AD 82

Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
Attn.: Comments
550 17th Street, N.W.
Washington, DC 20429
Message subject line: RIN 3064-AD85

Securities Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Message subject line: File Number S7-41-11

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Message subject line: RIN 3038-AD05

Re: Restrictions on Proprietary Trading and Certain Interests in and Relationships with Hedge Funds and Private Equity Fund -- Proposed Rules to Implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFTC RIN 3038-AD05; OCC Docket No. OCC-2011-0014 and RIN 1557-AD44; Board Docket No. R-1432 and RIN 7100 AD 82; FDIC RIN 3064-AD85; SEC Release No.. 34-65545, File No. S7-41-11 and RIN 3235-AL07)

Ladies and Gentlemen:

The Edison Electric Institute ("EEI"), the National Rural Electric Cooperative Association ("NRECA"), the Large Public Power Council ("LPPC") and the Electric Power Supply Association ("EPSA" and collectively with EEI, NRECA and LPPC hereafter "Joint Associations")[1]

[1] The comments contained in this filing represent the position of the Joint Associations, but not necessarily the views of any particular member of the Joint Associations with respect to any issue.

respectfully submit these comments on the proposed rules ("Proposed Rules") issued by the Commodity Futures Trading Commission, (the "CFTC"), the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation and the Securities Exchange Commission (the "SEC," and collectively, the "Agencies") to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2]

Section 619 of the Dodd-Frank Act adds a new section 13 to the Bank Holding Company Act of 1956 (the "BHC Act") (to be codified at 12 U.S.C. 1851) (the "Volcker Rule") that generally prohibits any "banking entity"[3] from engaging in "proprietary trading," subject to certain exemptions. Section 13(c) of the BHC, as amended by the Dodd-Frank Act establishes a two-year statutory transition period that begins in July 2012, after which a banking entity must be and remain in compliance with these restrictions, absent an extension of the transition period provided by the Board.

As further explained below, the Joint Associations are concerned that the Proposed Rules will have unintended consequences on our members' ability to obtain long-term financing and to find counterparties for the transactions they use to hedge or mitigate the commercial risks that arise from their operations. The Joint Associations' members need liquid, efficient and competitive commodity and commodity derivatives markets to hedge exposure to the commercial risks that arise from their operations, and to secure long-term financing for power plant and related infrastructure investment and operations.

The Joint Associations have been active participants in the many aspects of the Dodd-Frank Act rulemaking and implementation process, and we welcome the opportunity to continue to discuss with the Agencies the concerns of nonfinancial or "commercial" end users[4] about both the substance of the Proposed Rules and the implementation process.

The Joint Associations respectfully request the Agencies to consider the potential unintended impact of the Proposed Rules on nonfinancial end-user entities, including the members of the Joint Associations. Our members, and the commodity and commodity derivative transactions to which they are parties, do not represent interconnected risks to the global financial system. The Joint Associations are concerned that the Agencies not implement regulatory reforms for financial institutions with such a broad scope and in such manner that the reforms disrupt the energy

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

[3] The term "banking entity" is defined in section 13(h)(1) of the BHC Act, as amended by the Dodd-Frank Act, to include any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any such entity.

[4] To avoid confusion, the Agencies should unambiguously distinguish between "commercial" or "nonfinancial" end users (*i.e.*, nonfinancial entities that are eligible to elect not to clear swaps that hedge or mitigate commercial risks under new Section 2(h)(7) of the CEA) and financial entities that are not required to register as swap dealers or MSPs, but that are nevertheless not eligible to rely on the end-user exception. The Joint Associations believe that referring to both categories of entities as "end users" is confusing, particularly because so-called financial end users include hedge funds and other financial entities that are not, in fact, "end users" of swaps to hedge or mitigate *commercial* risk.

infrastructure financing markets and the ongoing commodity and over-the-counter commodity derivatives markets, which are critical to the ongoing operations of the United States energy industry.

I. Description of the Joint Associations and their Interest in the Proposed Rules

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members.

NRECA is the national service organization for more than nine hundred rural electric cooperatives that provide electric energy to approximately forty-two million consumers in forty-seven states or twelve percent of the nation's electric customers. Kilowatt-hour sales by rural electric cooperatives account for approximately eleven percent of all electric energy sold in the United States. Because an electric cooperative's electric service customers are also members of the cooperative, the cooperative operates on a not-for-profit basis and all the costs of the cooperative are directly borne by its consumer-members.

LPPC is an organization representing twenty-four of the largest government owned and operated public power systems in the nation. LPPC members own and operate over 75,000 megawatts of generation capacity and nearly 34,000 circuit miles of high voltage transmission lines. Collectively, LPPC members own nearly ninety percent of the transmission investment owned by non-Federal government-owned electric utilities in the United States. LPPC member utilities supply power on a not-for-profit basis to some of the fastest growing urban and rural residential markets in the country. Members are located in eleven states and Puerto Rico, and provide power to some of the largest cities in the country, including Los Angeles, Seattle, Omaha, Phoenix, Sacramento, Jacksonville, San Antonio, Orlando, and Austin.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

The Joint Associations' members are physical commodity companies that rely on banking entities and their affiliates to provide financing and investment capital for long term energy infrastructure projects. Banking entities and their affiliates are active lenders, investors and counterparties in these infrastructure projects. Our members also rely on banking entities and their affiliates as counterparties to our energy commodity forward transactions and energy-related "swaps,[5] which our members use primarily to hedge and mitigate commercial risks that arise in the course of their electric operations. The commercial risks in the electric and natural gas industries

[5] See footnote 11 below.

are long-term, due to the sizeable costs and the development, regulatory approval and construction time required for our large infrastructure assets.

The Joint Associations' principal concern is that the Proposed Rules will cause "banking entities" and their affiliates to stop providing long-term financing and investment to energy infrastructure projects, and to stop acting as counterparties to our members' commercial hedging transactions, either in the short term during the transition to a post-Dodd-Frank "swap" environment, or over the longer term. Our members need these financial institutions, large and small, to continue to participate actively and without interruption in the long-term transactions on which the electric industry relies to finance infrastructure development and hedge commercial risk.[6] Accordingly, the Joint Associations and our members have a direct and significant interest in both the substance of the Proposed Rules, and the coordinated implementation plans of the Agencies.[7]

II. Joint Associations' Comments

The Joint Associations' concern is the Proposed Rules will make long-term capital formation, project financing transactions and infrastructure investments in the energy industry, and effective commercial risk management options for our members, more difficult and more expensive by prohibiting or disincentivizing banking entities from engaging in long-term energy industry transactions. Banking entities participate in bilateral power and natural gas commodity markets, RTO and ISO electricity markets, bilateral OTC energy swaps markets, listed energy derivatives (futures) markets, and environmental and renewable energy credits markets. Electricity and natural gas transactions are regulated at the wholesale level by the Federal Energy Regulatory Commission ("FERC") or, in Texas, by the Public Utility Commission of Texas, and at the retail level (sales to end use customers) by state public service commissions and, in some cases, by municipal governing boards. The Proposed Rules will reduce the number of available counterparties and transactions and increase volatility in already volatile markets. This may impede the ability of our members to obtain capital and build energy infrastructure and create American jobs, which will lead to higher energy prices and more volatile energy prices for consumers.

A. The Proposed Rules Should be Revised to Eliminate the Prohibition on Banking Entities Engaging in Nonfinancial Commodity Transactions.

Section 13 of the BHC as amended by the Dodd-Frank Act, provides that a banking entity cannot engage in "proprietary trading," *i.e.*, it may not engage as a principal in, but can only engage as a "market maker" of, "any security, ***any derivative,*** any contract of sale of a commodity for

[6] Even Paul Volcker, for whom the rule is colloquially named, has expressed concern about the Proposed Rules' complexity. See http://www.reuters.com/article/2011/11/09/us-regulation-volcker-idUSTRE7A83KN20111109. If, during the Volcker Rule transition period, financial institutions were able to focus solely on the internal corporate restructuring, divestitures, reorganization and systems changes necessary to comply with the Proposed Rules, it would be a challenge. However, the United States regulators are issuing myriad other Dodd-Frank Act regulations affecting how financial institutions and other market participants do business at a blistering pace, with effective and compliance dates, and transition and implementation periods, that overlap with the Proposed Rules.

[7] We respectfully request that the Agencies consider all comments filed in response to both of the Agencies' proposed rulemakings and issue a single set of revised proposed rules that take into account comments made in response to both rulemakings. See all comments submitted in respect of proposed rulemaking at 76 Fed.Reg. 68846 (Nov. 7, 2011).

future delivery, ***any option on any such*** security, ***derivative,*** or contract, or any other security or financial instrument" that the Agencies may, by rule determine.[8] New Section 13 of the BHC Act also provides that if nonbank financial companies supervised by the Board engage in such activities, such companies will be subject to additional capital requirements, quantitative limits and other restrictions.

In the Proposed Rules, the Agencies interpret the statutory language highlighted above by defining two new terms: "covered financial position" and "derivative."[9] The definition of a "covered financial position," in the Proposed Rules, restates the statute by including a security, a ***derivative***, a contract of sale of a commodity for future delivery (a futures contract) **or any option** on any of the foregoing. The definition expressly provides that a "covered financial position" (subject to the Volcker Rule prohibitions) does ***not*** include a commodity.[10] However, elsewhere the Proposed Rules define the term "derivative" to include both a "swap,"[11] and a nonfinancial commodity forward contract, agreement or transaction (that is excluded from the definition of "swap" by new CEA Section 1a(47)(B)(ii), as amended by the Dodd-Frank Act).

The expansion of the statutory term "derivative" in the Proposed Rules, and the uncertain nature of the scope of such expansion, may significantly broaden the prohibition on "proprietary trading" in the Volcker Rule, to the detriment of the energy industry and other nonfinancial entities that utilize nonfinancial commodity forward contracts to hedge or mitigate commercial risk. The Proposed Rules imply that banking entities will not be allowed to either engage in energy commodity forward contracts or to engage in energy commodity "swaps," except in a narrow market maker capacity.

The Agencies should eliminate this expansion of the Volcker Rule prohibition from the definition of "derivative" in the Proposed Rules. The Proposed Rules go beyond the statutory language, and may result in a significantly broader prohibition than was intended by Congress. In addition, the Agencies should also carefully monitor the ongoing rulemaking at the CFTC and the SEC with respect to the cross-referenced terms and provisions in the Proposed Rules. The Volcker Rule is a fundamentally important aspect of the Dodd-Frank Act. However, it should not be

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[8] See Section 13(h)(4) of the BHC Act, as amended by Section 619 of the Dodd-Frank Act.

[9] See Proposed Rules §§ ___.3(b)(3); ___.2(l).

[10] See Proposed Rule ___.3.(b)(3)(ii)(B).

[11] We have footnoted this term, and direct the Agencies to the comment letters submitted by the Joint Associations in the joint SEC-CFTC rulemaking proceedings under the Dodd-Frank Act, wherein the SEC and the CFTC are jointly further defining the term "swap." Weblinks to such comments are available at: Comment for Proposed Rule 76 FR 29818 - CFTC; Comment for Proposed Rule 76 FR 29818 - CFTC; Comment for Proposed Rule 76 FR 6095 - CFTC; Comment for Proposed Rule 76 FR 6095 - CFTC; Comment for Proposed Rule 75 FR 51429 - CFTC; Comment for Proposed Rule 75 FR 51429 - CFTC. Because the Proposed Rules interpret the statutory term "derivative" by cross-referencing in the Proposed Rules the term "swap," a term that is still being further defined by the SEC and the CFTC in upcoming rulemakings (including the regulatory interpretation of the "nonfinancial commodity forward" exclusion in CEA 1a(47)(B)(ii), and the rules affecting nonfinancial commodity options), we reserve the right to change or expand our comments to the Agencies once the final SEC/CFTC rules in respect of these matters are issued. We cannot effectively comment on, or fully assess the implications of the Proposed Rules for our members until we can understand the scope of proprietary trading prohibitions on banking entities in the rules implementing the Volcker Rule.

implemented in such a way as to make the prohibitions and restrictions on banking entities broader than Congress intended, to the detriment of nonfinancial (or commercial) end-users' ability to hedge commercial risks.

B. The Agencies Should Consider the Potentially Negative Consequences for the United States Energy Industry from an Overbroad Implementation of the Volcker Rule.

In addition to reducing the number of counterparties available to hedge our members' commodity transactions, the Proposed Rules will have negative implications for the Joint Association members' ability to secure competitively-priced infrastructure financing. In 2008, an economic study by the Brattle Group projected the electric industry's planned infrastructure investments through 2030 at $1.8 trillion for electric generation, transmission and distribution.[12] These long-term investments are necessary to maintain the reliability of the electric system and to meet the growing energy needs of American electric consumers and businesses.

Many of the Joint Associations' members borrow from banks or issue corporate bonds to finance these significant projects and to hedge the commercial risks associated with these investments. Historically, the lenders, investors in bonds and counterparties to these commercial hedging transactions have been banking entities. An overly restrictive implementation of the Volcker Rule would limit the ability of these entities to facilitate trading in corporate bonds, hold bond inventories at levels sufficient to meet investor demand, and to actively participate in markets to price assets efficiently. This will reduce liquidity in such markets, and increase our members' costs.

Thus, if the Volcker Rule prohibitions on banking entities' engaging in "covered financial products" are implemented in an unnecessarily broad or ambiguous way, or if the exemptions for banking entities to engage in such products for "bona fide market making" purposes are implemented in an unnecessarily restrictive way, the negative consequences for energy industry infrastructure finance could be significant. In addition to considering the benefits intended by the Volcker Rule in terms of reducing risks for financial institutions, the Agencies must also consider the costs -- and, specifically, the costs to nonfinancial entities, who may find it increasingly difficult and more expensive to hedge the commercial risks arising from their ongoing operations.

C. The Agencies Should Take Sufficient Time and Coordinate Rulemakings to Assure that the Final Rules Implement the Volcker Rule in a Manner that Does Not Unnecessarily Disrupt the Energy Industry's Need for Long-Term Infrastructure Financing and Commodity Derivative Hedging Transactions.

The Joint Associations respectfully request the Agencies to take sufficient time to consider all the public comments, especially those from nonfinancial end-users and industries, and the public's responses to the complex and interrelated questions posed in the preamble(s) to the

[12] See Table 1, Prism RAP Scenario; excludes AMI and EE/DR investments at http://www.eei.org/ourissues/finance/Documents/Transforming_Americas_Power_Industry.pdf

Proposed Rules. [13] We recommend that the Agencies jointly re-propose rules implementing the Volcker Rule, taking into account all public comments in both rulemaking dockets, rather than issuing final rules (or issuing multiple sets of final rules) without considering the interaction between the rules and the collective impact of the rules on nonfinancial entities, and our members' access to ongoing financing, investment and hedging transactions. To do otherwise may have serious and negative consequences for the "real" economy and nonfinancial business' access to long-term financing and commercial risk management tools.

In re-proposing the rules and implementation timelines, the Agencies should consider the effect of the Proposed Rules on outstanding long-term project financing and investment transactions, on transactions being considered by the energy industry during the transition and implementation periods, and on transactions that will be entered into once the new Dodd-Frank Act regulatory regime is fully in place.[14] The Agencies should also provide ample and comprehensive safe harbors in the Proposed Rules from the Volcker Rule restrictions for banking entities that, in their ordinary course and permitted bank lending and investment activities (including secured lending and project finance) may find themselves as owners of long term energy infrastructure assets or commodity positions that require prudent commodity and risk management transactions.

Finally, the Joint Associations request that the Agencies consider **significantly** longer transition periods for implementation of the Volcker Rule mandates, given the concurrent implementation periods for other Dodd-Frank Act rulemakings both by banking entities, by other financial entities, and by nonfinancial entities like the Joint Associations' members. It is the cumulative, not the individual, pace of regulatory change and transition to the new regulatory environment, that will affect the ability of any entity – from the largest global financial institution to the smallest energy utility – to comply with the new rules while continuing to deliver goods and services in the ongoing economy without market disruption.

III. Conclusion

The Joint Associations encourage the Agencies to ensure that nonfinancial end users of commodity "swaps" and other nonfinancial commodity transactions are not negatively affected by either the Agencies' final regulations implementing the Volcker Rule, or by a rulemaking, transition and implementation timetable that is not carefully sequenced and coordinated with other concurrent Dodd-Frank Act rulemakings. Our members need continuing, uninterrupted access to the energy infrastructure financing and investment, and cost-effective risk management tools, in order to provide American businesses and consumers with reliable and affordable energy, while building infrastructure and creating American jobs.

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[13] The Agencies' Notices of Proposed Rulemakings ask hundreds of questions (many with multiple subparts). The public comments filed thus far in response to the prudential regulators/SEC NOPR have been substantive, detailed and recommend a variety of thoughtful alternative regulatory approaches. Both Federal Reserve Board Chairman Bernanke and SEC Chairman Shapiro have acknowledged that their agencies will not meet a July 2012 deadline for final rules, and many have suggested the need to re-propose some portions of the rules.

[14] See footnote 7. We call to the Agencies' attention to the comment letter filed by the National Rural Electric Cooperative Association, available at the following link: http://www.sec.gov/comments/s7-41-11/s74111.shtml

SIGNATURE PAGE
JOINT ASSOCIATIONS VOLCKER
RULE COMMENTS

Please contact us at the numbers listed below if you have any questions regarding our comments.

Respectfully submitted,

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