July 22, 2011

Mr. David Stawick
Secretary, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.
Washington, DC 20581
Submitted electronically via http://comments.cftc.gov

RE: COMMENTS OF THE CENTER FOR RESOURCE SOLUTIONS ("CRS") TO THE COMMODITY FUTURES TRADING COMMISSION ("CFTC") AND SECURITIES AND EXCHANGE COMMISSION ("SEC") ON NOTICE OF PROPOSED RULEMAKING; REQUEST FOR COMMENTS ON FURTHER DEFINITION OF "SWAP," "SECURITY-BASED SWAP,"ETC., (17 CFR PART 23, RIN 3038 AC96 PURSUANT TO SECTION 750 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT ("DODD-FRANK ACT")

File No. S7-16-11

Dear Commissioners:

The intent of these comments is to introduce CRS as an interested party, to describe the services that we provide for the voluntary over-the-counter ("OTC") market for environmental commodities through our Green-e® Energy and Green-e Climate certification and consumer-protection programs, and to provide comments on the Joint Notice of Proposed Rulemaking Request ("JNOPR") for comments on further definition of "SWAP" pursuant to Section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, in response to question 32 on page 29832 of Federal Register/Volume 76 No. 99, we believe that environmental commodities such as renewable energy certificates ("RECs") and carbon offsets ("offsets") are nonfinancial commodities that qualify under the forward contract exclusion from the swap definition.

I. ENVIRONMENTAL COMMODITIES ARE CERTIFIED BY THE CENTER FOR RESOURCE SOLUTIONS AND THE GREEN-E PROGRAMS

CRS is a 501(c)(3) nonprofit corporation that creates policy and market solutions to advance sustainable energy, mitigate climate change and protect consumers. Our leadership through collaboration and environmental innovation builds policies and consumer-protection mechanisms in renewable energy, greenhouse gas ("GHG") reductions (a.k.a. "carbon offsets"), and energy efficiency that foster healthy and sustained growth in national and international markets. CRS administers the three Green-e programs, two of which (Green-e Energy and Green-e Climate) certify sales of high-quality environmental commodities and are relevant to the JNOPR and the Dodd-Frank Act. The Green-e programs provide protection to participants in its programs, and end-users of the commodities. Green-e Energy is the nation's leading independent consumer protection program providing certification and verification for renewable electricity and RECs. Green-e Climate is a certification program that sets consumer protection and environmental-integrity standards for retail carbon offsets. Both programs operate in voluntary markets, in which RECs and offsets are purchased by businesses and individuals beyond any obligation.

Those companies that participate in the programs must sign a legally binding contract with CRS to abide by certain standards and a code of conduct. Certification of a product within the Green-e programs requires participants to supply information and documentation to CRS involving physical pieces of paper containing attestations and representations about the product supplied. In addition, they provide access to other documents such as contracts, electronic tracking system reports, etc. to auditors. These documents are reviewed by certified public accountants or certified internal auditors, and then both the attestations and the auditors' reports are reviewed by Green-e. As such, Green-e does not clear transactions; rather our logo is a certification mark that demonstrates a quality product.

The Green-e standards have been developed through open stakeholder processes to ensure the legal and scientific legitimacy of the environmental commodity products to which they pertain. Purchasers receive information about the product and the programs in accordance with Green-e disclosure requirements, and may easily obtain information about product quality criteria and eligibility. Furthermore, the Green-e programs are transparent and stakeholder-

driven, and collaborate closely with various regulatory agencies, other voluntary standards, and industry thought-leaders for standard development and program governance.

A. Green-e Energy Certifies a Significant Portion of the Voluntary Market for Renewable Energy and RECs

In 2009, Green-e Energy certified over 18 million MWh of retail renewable energy sales, and unaudited figures for 2010 show an expected increase of over 20 percent compared to the previous year. Nationally, over two thirds of voluntary renewable energy retail transactions were Green-e Energy certified in 2010, with nearly 600,000 residential and commercial customers voluntarily purchasing renewable energy. In total, Green-e Energy certified 27 million MWh of voluntary renewable energy sales in 2009, which includes both retail and wholesale-level transactions, and unaudited figures for 2010 show an expected increase of close to 20% over 2009 certified sales.

Green-e Energy certified wholesale transactions exceeded 8.9 million MWh in 2009. Of these certified wholesale transactions, 5.7 million MWh were resold in Green-e Energy certified retail transactions. The remaining 3.2 million MWh were sold in non-Green-e Energy certified transactions to utilities and electric service providers, power marketers, retail customers and other buyers.

B. Green-e Climate Certifies Carbon Offsets

Green-e Climate was launched in February 2008 by CRS as a consumer-protection program for carbon offsets sold to individuals and businesses in the United States and internationally. It ensures that certified offsets meet certain standards for environmental quality and are as advertised. It compliments and incorporates offset project certification by certifying the unique offset products offered by offset sellers/retailers in the market to ensure that they include real, high-quality, and certified emissions reductions and that they are exclusively owned, and that sellers deliver correct volumes and types of reductions on behalf of their customers. Despite a 12 percent dip in the OTC market for voluntary emissions reductions in 2009, sales of Green-e Climate certified offsets increased by nearly 30 percent in the program's second year to total 176,113 unique metric tons carbon dioxide-equivalent. Unaudited figures for 2010 show an expected increase of over 15 percent over 2009 certified sales.

C. Standard Setting and Governance in the Green-e Programs

Stakeholder-driven standards supported by rigorous verification audits are a cornerstone of Green-e programs and enable CRS to provide independent third-party certification of environmental commodity transactions. The Green-e environmental and consumer standards are overseen by an independent governance board of industry experts, including representatives from the Natural Resources Defense Council, Union of Concerned Scientists, National Renewable Energy Laboratory, Renewable Northwest Project, Southern Alliance for Clean Energy, and other environmental nonprofits, consumer advocates, market experts and purchasers. Our standards have been developed and are periodically revised through an open stakeholder process. Our comment periods typically last 60 days and multiple rounds of comments are typical depending on the nature of the issue. Green-e program documents, including the standards, contract templates, and the annual verification report, are available at www.green-e.org.

Apart from the oversight and consumer protection provided by voluntary standards and certifiers, unlawful activities associated with environmental commodities sold in voluntary markets are subject to actions by the Federal Trade Commission ("FTC") and criminal/civil law enforcement agencies such as the Department of Justice and state authority.[1] The FTC has oversight authority over environmental marketing claims, including those surrounding carbon offsets. The FTC has proposed new guidance on the sale of renewable energy and carbon offsets for inclusion in the next revision of its Guides for the Use of Environmental Marketing Claims ("Green Guides"). CRS played an important role in the FTC Green Guide development process, participating in workshops and submitting comments. The FTC referenced CRS comments 23 times in the proposed version.[2]

II. ENVIRONMENTAL COMMODITY TRANSACTIONS ARE TYPICALLY FORWARD CONTRACTS THAT ARE PHYSICALLY SETTLED VIA TITLE CHANGE AND CONSUMED THROUGH RETIREMENT

A. Definition of Environmental Commodities

[1]Letter from Orice Williams Brown, Governmental Accountability Office (GAO), to Congressman Darrell Issa of the House of Representatives regarding Carbon Trading: Current Situation and Oversight Considerations for Policymakers (Aug. 19, 2010), GAO-10-851R, *available at* http://www.gao.gov/new.items/d10851r.pdf.
[2] Guides for the Use of Environmental Marketing Claims, 75 Fed. Reg. 63552-01 (proposed Oct. 15, 2010) (to be codified at 16 C.F.R. pt. 260).

Environmental commodities include RECs, carbon offsets, emission reduction credits, and allowances for regulated emissions such as sulfur oxide ("SOx") and nitrogen oxide ("NOx"). These commodities are typically sold pursuant to forward contracts for three reasons: to provide incentives for actions that benefit the environment, to hedge business risk, and to offer flexible means for compliance with environmental regulations.

To serve these purposes, environmental commodities such as RECs and offsets are used for compliance with regulatory obligations or voluntary program rules within specific verification years (also referred to as reporting year, reporting period, or compliance period). Verification years may be determined by a state's Renewables Portfolio Standard ("RPS") legislation, affiliated regulations, or they may be determined by a third-party verifier such as Green-e Energy or Green-e Climate. These schedules determine the range of generation dates (or "vintages") of environmental commodities that will be eligible for each verification year. For example, commodities eligible for verification year 2010 have different demand and market characteristics than commodities eligible for verification year 2011 as RPS obligations and consumer demand change. In addition, because there are many regulatory bodies determining eligibility and verification schedules, there is a complex patchwork of overlapping eligibility.

B. Transfer of Environmental Commodities for the Purpose of Consumption via Retirement

When an environmental commodity is purchased, it is physically delivered through transfer of title in a contract frequently represented in an electronic registry. This transfer constitutes settlement and physical delivery. These commodities are transferred among counterparties for the purpose of "consuming" the credit, allowance, or certificate to meet an environmental obligation or goal. These obligations or goals are met through the "retirement" of the credit, allowance, or certificate. Retirement constitutes consumption of the commodity. Retirement is demonstrated in a registry or electronic tracking system via transfer into a retirement account or alternatively, via exchange of paperwork. Once the environmental commodity is retired it cannot be resold. All environmental commodities are created with the end goal of retirement.

Most market participants are looking to achieve a non-cash purpose with their purchase of RECs, offsets, or forward contracts for RECs or offsets–be it compliance or environmental

stewardship. Environmental commodities such as RECs and offsets can be used by utilities to meet state RPS requirements or by businesses to meet sustainability goals. RECs and offsets can be purchased to meet the requirements of other voluntary standards and certifications, such as the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") building certification program, or to substantiate specific marketing claims. As a result, there is significant demand for contracts to be individually negotiated, flexible, and highly-specialized to the needs of the purchaser. According to the Pew Center on Global Climate Change, currently 28 states have RPSs, four states have alternative energy portfolio standards, and eight states have renewable or alternative energy goals.[3]

C. Case Law Suggests that Environmental Commodities Fit within the Forward Contract Exclusion from the Definition of "Swap" Because Their Underlying Purpose is Delivery and Consumption

Environmental commodities are typically not traded as swaps. As the CFTC aptly notes in the JNOPR published on May 23, 2011 in the Federal Register, "Forward contracts with respect to nonfinancial commodities are commercial merchandising transactions. The primary purpose of the contract is to transfer ownership of the commodity and not to transfer solely its price risk." Environmental commodities best fit within this framework because the primary purpose of REC or carbon offset transactions is to transfer ownership of the environmental commodity, which will later be retired or "consumed" within the voluntary or compliance markets. This purpose cannot be accomplished with mere cash since it requires the physical settlement and actual transfer of the commodity.

The CFTC's precedent, cited in the JNOPR, appears to support this interpretation. In particular, the *Brent Interpretation* states that the forward contract exclusion should apply to "enforceable obligations to deliver but in which delivery is deferred for reasons of commercial convenience or necessity."[4] The delivery of RECs and offsets is frequently "deferred for reasons of commercial convenience or necessity" because not all of the purchased RECs and offsets are generated at the time of the transaction. For example, a buyer may purchase all or a portion of the REC with or separately from generation for a period of time (i.e. two years) from a

[3] PEW CENTER ON GLOBAL CLIMATE CHANGE, RENEWABLE AND ALTERNATIVE ENERGY PORTFOLIO STANDARDS, July 7, 2011, *available at* http://www.pewclimate.org/what_s_being_done/in_the_states/rps.cfm.
[4] Statutory Interpretation Concerning Forward Transactions, 55 Fed. Reg. 39188, 39190 (Sept. 25, 1990).

renewable energy project developer through a power purchase agreement. These types of long-term contracts with deferred delivery are important for renewable energy and offset project developers, as they ensure a consistent stream of revenue from the sales of RECs and offsets over a long period of time. The project developer then *delivers* the RECs or offsets to the buyer in accordance with a specified delivery schedule (e.g., with energy deliveries, or separately from the energy, such as by a delivery once every year). Periodic (e.g. quarterly or yearly) deliveries of RECs are "deferred" by necessity because—as with any other power plant—not all of the electricity is created at one time; instead, the RECs corresponding with actual electricity generation are delivered over the life of the contract. Renewable energy and carbon offset projects require these types of forward-looking contracts to ensure that they can sell their environmental commodity after they have invested and built the project. Nevertheless, the REC or carbon offset can be produced, transferred and consumed, in what we assert is a commercial merchandizing transaction between a producer, such as a renewable energy generator, and a consumer, an entity with an environmental obligation.

In addition, the JNOPR cites *In re Wright*, which states that "it is well-established that the intent to make or take delivery is the critical factor in determining whether a contract qualifies as a forward."[5] Unlike a stock or bond, which can be resold for its cash value, purchasers of environmental commodities intend to take delivery of RECs or carbon offsets for either compliance purposes or in order to make an environmental claim regarding their renewable energy use or carbon footprint. Similarly, the Sixth Circuit's *Anderson* decision states: "CFTC regulations . . . are intended to govern only speculative markets; they are not meant to cover contracts wherein the commodity in question has an 'inherent value' to the transacting parties."[6] As in *Anderson*, parties transacting in environmental commodities generally are not engaging in speculation; they are an insular group of actors that seek an inherent non-cash value in these commodities. In 1998, District Judge Sonia Sotomayor noted:

> [W]hen contracts for future delivery give neither party a right to cash out, but are still cash settled pursuant to independently negotiated agreements, ***absence of physical delivery*** alone should not be deemed to imply that the contracts served merely speculative

[5] *In re Wright,* CFTC Docket No. 97–02, 2010 WL 4388247 at *3 (CFTC Oct. 25, 2010) (citing *In re Stovall, et al.,* [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) 20,941 (CFTC Dec. 6, 1979).
[6] *Andersons, Inc. v. Horton Farms, Inc.*, 166 F.3d 308, 318 (6th Cir.1998).

> purposes. The ***underlying purpose*** of a transaction is, however, still the touchstone of the forward contract analysis [emphasis added].[7]

Even if the CFTC holds that environmental commodities cannot be "physically" delivered because they lack a physical existence in the narrow sense of the word, they are nevertheless delivered in the same way as a physical commodity such as coal or electricity. Moreover, as Judge Sotomayor suggests, the intangible nature of these commodities should not automatically mean that the contracts are for speculation purposes. Instead, the primary consideration in determining if the forward contract exclusion applies is whether the underlying purpose of the contract is for speculation or for taking delivery (either immediate or deferred) of the commodity. Accordingly, the forward contract exclusion should apply to environmental commodities because the transaction's purpose is for transfer of the REC or offset, and not for speculation.

The Section 750 Interagency Working Group (the "Working Group") comports with the precedent above, and suggests that environmental commodities would generally qualify for the forward contract exclusion. In particular, the Working Group states:

> As discussed above, the secondary market for allowances and offsets involves those transactions in which allowances and offsets are actually bought and sold following their initial entry into commerce in the primary market. This is in contrast to the derivative markets, which are primarily risk management and price discovery markets where the price of the contract is tied to the price of the allowance and actual transfer of an allowance may not occur. There are two types of secondary cash market transactions, spot transactions and forward contracts. In a spot transaction, one party sells an allowance to another party for immediate delivery of the allowance. In a forward transaction, the parties agree to a price or method to fix a price with delivery of the allowance taking place at a later date. [8]

Here, the Working Group implies environmental commodities such as carbon offsets and allowances are forward contracts and not swaps, even if physical delivery of the intangible commodities occurs at a later date. As noted above, physical delivery does often occur at a later date or set of dates due to the long-term nature of these contracts. CRS agrees with the analysis of the Working Group that environmental commodities generally are not swaps.

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[7] *MG Refining & Marketing, Inc. v. Knight Enterprises, Inc.,* 25 F.Supp.2d 175 (S.D.N.Y. 1998).

[8] INTERAGENCY WORKING GROUP FOR THE STUDY ON OVERSIGHT OF CARBON MARKETS, REPORT ON THE OVERSIGHT AND EXISTING AND PROSPECTIVE CARBON MARKETS 42, Jan. 18, 2011, *available at* http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/dfstudy_carbon_011811.pdf.

D. The Language of the Dodd-Frank Act Indicates that Environmental Commodities Are Not Swaps

In response to the CFTC's question on how an environmental commodity can be physically settled when it lacks a physical existence, the plain language of the Dodd-Frank Act's definition of a "swap" contemplates that non-physical items can be "physically settled." In particular, Section 721(a)(21) excludes from the definition of "swap" "[a]ny sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled . . ." This sentence implies that securities—which lack a strictly physical existence—may be physically settled. Although environmental commodities are not securities, they are similar to the extent that their only tangible existence may be on paper or in an electronic registry. Both may be physically settled despite their lack of a strictly physical existence.

Finally, in addition to the forward contract exclusion to the "swap" definition, environmental commodities may fall under another exclusion in Section 721(a)(21). Transactions in environmental commodities may constitute "[a]ny contract of sale of a commodity for future delivery." As noted in detail above, transactions in environmental commodities are similar to transactions in other commodities because transfer of title occurs, often on a series of future dates as the commodity is generated (or grown). Further, as argued above, environmental *commodities* are commodities because they have uses other than just their cash value, particularly their environmental or compliance benefits.

III. DUE TO THE SIZE OF ENVIRONMENTAL COMMODITIES MARKETS, CURRENT OTC PRACTICES ARE UNLIKELY TO PRESENT A RISK TO SYSTEMIC STABILITY OF THE ECONOMY

The main purpose of the Dodd-Frank Act is to "promote the financial stability of the United States by improving accountability and transparency in the financial system" and "to end 'too big to fail.'"[9] The market for environmental commodities is too small and insular to affect the Dodd-Frank Act's stated goals, and similarly does not threaten the stability of the U.S. financial system. Credit default swaps alone were valued at up to $62 trillion in 2007, based on a gross

[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

national amount from $632 billion in 2001.[10] Further, the world derivatives market is worth an estimated $600 *trillion* dollars,[11] which is over ten times the gross domestic product of the world economy. By contrast, in 2010, the global voluntary carbon market was valued at approximately $414 to $424 million, while the global regulated carbon market (including the European Union's Emissions Trading Scheme) was valued at $123 billion.[12] The fact that the environmental commodities market is orders of magnitude smaller than the derivatives markets suggests that it could have little impact on the financial stability of the United States. The collapse of these markets and the businesses and organizations that rely upon them would impact environmental goals, but would have a negligible effect on the overall financial system.

Moreover, environmental commodities markets do not pose a risk to systemic stability because they are insular; they are about environmental compliance and not interdependent upon the financial system. The generators of environmental commodities, as well as the buyers and sellers are a small and distinctive group of actors. There are three primary types of environmental commodities: allowances, RECs and carbon offsets. Allowances are licenses issued by the government to engage in an activity. They are ultimately used ("consumed") for compliance. Within the REC market, a compliance and voluntary market exists. The compliance market is comprised of utilities that use RECs to help satisfy mandatory state RPS requirements. Voluntary market buyers include businesses and individuals who wish to use renewable energy beyond what they are required to buy. The vast majority of large REC sellers within the voluntary market participate in the CRS's Green-e Energy certification program (http://www.green-e.org). Listings of REC and electricity sellers can be found at http://www.green-e.org/base/re_products#res, and http://www.epa.gov/greenpower/pubs/gplocator.htm. A list of offsets sellers offering Green-e Climate certified offsets is available in at http://www.green-e.org/getcert_ghg_products.shtml. A more comprehensive list of offset providers is here: http://www.cleanair-coolplanet.org/ConsumersGuidetoCarbonOffsets.pdf. These organizations are unlike financial institutions because the RECs and offsets they sell are retired by or on behalf

[10] Shannon D. Harrington and Christine Harper, *Wall Street Shrinks From Credit Default Swaps Before Rules Hit*, BLOOMBERG, Nov. 28, 2010, *available at* http://www.bloomberg.com/news/2010-11-29/wall-street-shrinks-from-default-swaps-as-dodd-frank-rules-hit-speculators.html.
[11] Louise Story and James Katner, *Europe Investigating Banks Over Derivatives*, N.Y. TIMES, April 29, 2011, *available at* http://dealbook.nytimes.com/2011/04/29/european-regulators-investigating-banks-over-cds/.
[12] ECOSYSTEM MARKETPLACE AND BLOOMBERG NEW ENERGY FINANCE, BACK TO THE FUTURE: STATE OF THE VOLUNTARY CARBON MARKETS 2011 (2011), *available at* http://www.forest-trends.org/documents/files/doc_2828.pdf.

of the end user. In general, participants in the retail market buy and sell environmental commodities as the primary *business* function of these organizations; they either generate or consume environmental commodities within the compliance or voluntary markets. They do not use environmental commodities for speculation. Many sellers in the US voluntary environmental commodity markets also submit themselves for oversight by NGOs, such as CRS.

Despite their small size and lack of systemic risk, these environmental trading markets play an important role in eliminating acid rain, controlling smog, addressing climate change, protecting human health, and creating green jobs. Therefore, CRS suggests the CFTC not risk classifying all environmental commodities as swaps, thereby restricting their liquidity, under the auspices of protecting the U.S. from systemic risk.

The voluntary market for environmental commodities is also currently comprised of participants with specific and varied needs, and so it does not consist of, nor is it suited to, standardized transactions. Rather, it consists of mostly unique transactions; it is not a one-size-fits-all market. As a result, there is not a great deal of exchange infrastructure, and the majority of transactions occur over the counter. Additional regulation may increase the cost of transactions so to be prohibitively high for many small market participants.

IV. ENVIRONMENTAL COMMODITY GENERATORS, BUYERS, AND SELLERS MAY QUALIFY FOR END-USER EXCEPTION, AND ARE GENERALLY NOT SWAP DEALERS

Even if the CFTC defines environmental commodities as swaps, most participants in the environmental commodities markets may qualify for the end-user exception. While we understand that the comment period for the proposed rules on the definition of "swap dealer" (75 Fed. Reg. 80174) and on the "End-User Exception to Mandatory Clearing of Swaps" (75 Fed. Reg. 80747) ended on June 3, 2011, we respectfully request that the CFTC considers our comments on these matters.

The CFTC's NPOR on "End-User Exception to Mandatory Clearing of Swaps" states that the exemption applies only to non-financial entities using the swap to "hedge or mitigate commercial risk."[13] Most participants in the renewable energy and carbon offset markets are non-financial entities that transact using forward contracts to mitigate price risk. For example,

[13] End-User Exception to Mandatory Clearing of Swaps, 75 Fed. Reg. 80752 (Dec. 23, 2010).

renewable energy generators frequently enter into long-term contracts (such as power purchase agreements) so that the RECs generated by their facilities are purchased on a regular and predictable basis. This ensures a steady and reliable stream of revenue for the generator, which helps to mitigate the risks inherent in this emerging sector of the economy. These long-term contracts are the exact opposite of speculation, and promote the financial stability of the renewable energy industry.

Similarly, utilities and sellers of environmental commodities that purchase RECs or renewable electricity may qualify for the end-user exception, and thus would not be considered swap dealers. In a letter to the Senate Chairman, Senators Dodd and Lincoln indicated that "the Major Swap Participant and Swap Dealer definitions are not intended to include an electric or gas utility that purchases commodities that are used as either a source of fuel to produce electricity or to supply gas to retail customers and that uses swaps to hedge or manage the commercial risks associated with its business."[14] Though renewable electricity is not specifically mentioned in this letter, utilities that use swaps to hedge on RECs or renewable electricity in order to ensure price stability should not be considered "swap dealers."

Most environmental commodities transactions by REC or carbon offset marketers would qualify for the end-user exception because a large portion of purchasers are end-users. The CFTC's NOPR states that "a swap otherwise subject to mandatory clearing is subject to an elective exception from clearing if one party to the swap is not a financial entity . . . ."[15] These end-users are businesses, utilities, or individuals in the retail market who will retire the REC or offset, thus "consuming" it. Only wholesale transactions to other marketers might not be eligible for the end-user exemption. However, these businesses are mostly small businesses collaborating with generators, individuals, and other businesses to create environmental and social benefits through reduced pollution and increased green energy jobs. Many of these market participants are also striving to comply with or aid in the compliance of ambitious state RPSs. In the spirit of the Dodd-Frank Act as stated by Senators Dodd and Lincoln, "[t]hese entities did not get us into this crisis and should not be punished for Wall Street's excesses."[16]

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[14] 156 Cong. Rec. H5248 (daily ed. Jun. 30, 2010) (Dodd-Lincoln Letter), *available at* http://online.wsj.com/public/resources/documents/dodd-lincoln-letter070110.pdf.
[15] End-User Exception to Mandatory Clearing of Swaps, 75 Fed. Reg. 80752 (Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 39).
[16] 156 Cong. Rec. H5248 (daily ed. Jun. 30, 2010) (Dodd-Lincoln Letter), *available at* http://online.wsj.com/public/resources/documents/dodd-lincoln-letter070110.pdf.

V. CONCLUSION

CRS applauds the hard work and thought that the CFTC staff has invested into the Dodd-Frank Act implementation. CRS supports well-regulated markets for environmental commodities. At this stage in their development, and in light of the wide range of types and sizes of environmental markets, we would urge the Commissions to proceed with caution. We would also like to offer ourselves and our organization as a resource for the CFTC and SEC in matters relating to environmental commodity markets.

Thank you for this opportunity to contribute comments.

Sincerely,

Jennifer Martin
Executive Director
Center for Resource Solutions