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VIA ELECTRONIC MAIL (rule-comments@sec.gov; dfdefinitions@cftc.gov)

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre, 1151 21st Street, N.W.
Washington, DC 20581

RE: File Number S7-16-10 – Definitions (Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act)

Dear Ms. Murphy and Mr. Stawick:

The American Insurance Association (“AIA”) appreciates the opportunity to submit comments in response to the joint advance notice of proposed rulemaking (“ANPR”) published in the Federal Register on August 20, 2010 entitled “Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act” (the “Dodd-Frank Act”).¹ The ANPR requests public comment in advance of rulemaking arising from sections 712(d), 721(c) and 761(b) of the Dodd-Frank Act, which require the Commodity Futures Trading Commission (“CFTC”) and/or the Securities and Exchange Commission (“SEC”) to further define certain terms that are used throughout Title VII of the Act. Title VII provides for broad regulation of swaps and securities-based swaps.

AIA represents approximately 300 major insurance companies that provide all lines of property-casualty insurance and write more than \$117 billion annually in premiums. The regulatory requirements that are the subject of the ANPR that include the ability to provide more specific definitions of the terms “major swap participant,” “major securities-based swap participant,” and “swap” are of considerable interest to AIA and its members.

With respect to the first two statutory terms of concern – “major swap participant” and major securities-based swap participant” (“MSP”) – we have read and concur generally with the submission prepared by the American Council of Life Insurers (“ACLI”) on these terms, and believe that a parallel analysis applies to property-casualty insurers. Indeed, the property-casualty insurance business model and accompanying financial regulatory standards that align with that model make a particularly compelling case for not applying the MSP label to property-casualty insurers. We would be happy to elaborate more as the rulemaking progresses.

¹ 75 Fed. Reg. 51429 (August 20, 2010).

As a result, AIA's comments are focused on the "swap" definition. Section 721(a)(21) of the Dodd-Frank Act defines the term swap very broadly. AIA believes that this creates the potential for blurring the distinction between federally-regulated swaps and regulated property-casualty insurance contracts.

AIA believes that the legislative history of Title VII of the Dodd-Frank Act indicates a clear intent by Congress to exclude such insurance contracts from the scope of the Title. For example, during the discussion of an amendment (subsequently adopted) to study whether or not "stable value funds" and "wrap contracts" should be regulated as "swaps" under Title VII, Senator Lincoln, a key sponsor of the amendment as well as the principal legislative architect of Title VII, stated the following:

"When the stable value fund issue was brought to my attention, I knew it was something we had to address. That is why I worked with Chairman Harkin and Senators Leahy and Casey to craft a provision that would give the CFTC and the SEC time to study the issue of whether the stable value fund options and/or the contract wrappers for these stable value funds are 'swaps' or some other type of financial instrument such as an insurance contract." (156 Cong. Rec. S5906 (July 15, 2010) (emphasis added))

Accordingly, when further defining the term "swap" through regulation, we request that the SEC and the CFTC clearly state that a property-casualty insurance contract is not a swap and is not subject to Title VII. Such a provision will not undermine the authority of the SEC or CFTC because the agencies will retain authority to determine that contracts structured to evade the requirements of Title VII are swaps (see section 721(a)(21) amending section 1a of the Commodity Exchange Act and Securities Exchange Act of 1934 by adding paragraph (47)(A)(iv)), while preserving existing regulatory jurisdiction over property-casualty insurance contracts. (See also section 722(b)).

We appreciate your consideration of our comments on the definition of the term "swap" and look forward to working with you in the coming weeks and months as the rulemaking process on the Title VII definitions progresses.

Respectfully submitted,



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