

MEMORANDUM

To: File No. S7-39-10
From: Jeffrey Dinwoodie
Re: Meeting with Representatives of the Working Group of Commercial Energy Firms
DATE: April 28, 2011

On April 28, 2011, representatives from the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) participated in a meeting with representatives from the Working Group of Commercial Energy Firms (“Working Group”). The SEC representatives, all of whom participated telephonically, were Joshua Kans, Andrew Blake, Richard Grant, and Jeffrey Dinwoodie. The CFTC representatives, all of whom were present at the meeting, were Dan Berkovitz, Terry Arbit, Mark Fajfar, Steve Kane, Gregory Kuserk, Somi Seong, Rose Troia, Ryne Miller, Aaron Miller, Lee Ann Duffy, Christopher Cummings, Dave Aron, Irina Leonova, Eric Juzenas, and Elizabeth Ritter. The Working Group representatives, all of whom were present at the meeting, were James C. Allison (Conoco Phillips), Ike Gibbs (Conoco Phillips), Chuck Cerria (Hess), Robert Reilley (Shell Trading), Carl Coscia (Constellation), Lael Campbell (Constellation), Ron Oppenheimer (Vitol Inc.), Tiffany Silvey (Luminant), Chris Russo (AGL Resources), Vincent Johnson (BP), Brent Hendry (NextEra Energy), Greg Station (DTE Energy), Michael Sweeney (Hunton & Williams LLP), and David McIndoe (Hunton & Williams LLP). At the meeting, the Working Group representatives provided their views and observations on the proposed rules to further define the terms “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” and “eligible contract participant” (File No. S7-39-10) and related issues.

PROPOSED AGENDA

MEETING WITH PROFESSIONAL STAFF OF THE COMMODITY FUTURES TRADING COMMISSION AND THE WORKING GROUP OF COMMERCIAL ENERGY FIRMS

THURSDAY, APRIL 28, 2011
2:00 PM

- ENTITY DEFINITIONS - FURTHER DEFINITION OF SWAP DEALER
 - Provide overview of Working Group Member's swap trading activity in different energy sectors
 - Focus on oil/refined products, natural gas, and coal
 - Discuss of scope and application of further definition of swap dealer
 - Address line between trading and dealing in energy markets
 - Address CFTC staff's priority and concerns regarding the further definition of swap dealer
 - Discuss market making, regular business, and de minimis exceptions
 - Discuss fairness/equity concerns in developing regulatory framework implementing the definition of swap dealer
 - Level playing field for market participants
- PRODUCT DEFINITIONS - FURTHER DEFINITION OF SWAP
 - Discuss use of commodity options in physical energy markets
 - Address concerns regarding whether commodity options embedded in forward contracts related to delivery should be swaps
- HEDGES OF COMMERCIAL RISK - FURTHER INTERPRETATION (TIME PERMITTING)
 - Discuss language in proposed End-User Exemption and Definition of Major Swap Participant rules that could be interpreted as treating bona fide hedges on a speculative physical position as outright speculative swap position¹

¹ See discussion in footnote 23 of the End-User Exception rule and footnote 128 of the proposed Definition of Major Swap Participant rule.