

January 18, 2011

**Mr. David Stawick**  
**Secretary**  
**Commodity Futures Trading Commission**  
**1155 21st Street, NW**  
**Washington, DC 20581**

**Re: RIN Number 3038–AD19**  
**Notice of Proposed Rulemaking**  
**Registration of Foreign Boards of Trade**

Dear Mr. Stawick:

BG Americas & Global LNG (“BGA”) is a business unit of BG Group plc (“BG Group”), a global natural gas company based in the United Kingdom and a major producer and supplier of natural gas to the United States. BGA is responsible for all of BG Group’s operations in North and South America, the Caribbean, BG Group’s global marine operations and its global liquefied natural gas (“LNG”) operations. BG Group’s subsidiary, BG Energy Merchants, LLC, (“BGEM”) is a major marketer of natural gas and electricity in the United States.

BGA is submitting comments in response to the Commodity Futures Trading Commission (“CFTC” or “Commission”) request for comments in the Notice of Proposed Rulemaking (“NOPR”) on Registration of Foreign Boards of Trade.<sup>1</sup>

### **1. Executive summary**

In enacting the Dodd-Frank Act,<sup>2</sup> Congress was attempting to establish a legislative and regulatory framework designed to specifically prevent another financial collapse and ensuing crisis like the one that took place in 2008. One of the contributors to the financial collapse was the extensive use of derivatives without any regulatory oversight. Title VII of the Dodd-Frank Act, in particular, was designed to take derivatives out of the financial “closet” and bring them into the open. Congress wanted to increase transparency and thus, reduce systemic risk. Largely, Congress has done this by requiring that derivatives be traded and cleared on exchanges.

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<sup>1</sup> 75 Fed. Reg. 223 (November 19, 2010).

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

To this end, the Commission's NOPR on Registration of Foreign Boards of Trade establishes a mandatory clearing requirement for "all futures, option and swaps contracts." BGA supports the Commission's goal of greater transparency and reduced market risk from clearing of swaps, but the mandatory clearing requirement for foreign exchanges should be consistent with the mandatory clearing requirements outlined by Congress and the Commission for U.S. exchanges, which include certain specific exemptions from clearing.

## **2. BGA's Comments**

The Commission's NOPR on Registration of Foreign Boards of Trade provides without qualification that "all futures, option and swaps contracts must be cleared." Unlike the requirements of the Dodd-Frank Act and the Commission's NOPR on Mandatory Clearing, which include numerous exceptions from clearing swaps in the U.S. market, the clearing requirement in the NOPR applicable to foreign exchanges does not appear to provide any exceptions from the clearing requirement. For example, there are no exceptions for swaps that are unavailable for clearing, for futures and options on those futures, or for counterparties entering into swaps for hedging purposes or to reduce commercial risk. This standard for mandatory clearing on foreign exchanges is a higher standard than for U.S. exchanges, where the legislation contemplates several exemptions from clearing, and should be modified in the final rule to be consistent with the requirements for U.S. exchanges.

Section 723(a)(3) of the Dodd-Frank Act provides for mandatory clearing stating, "it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared." Section 723, however, outlines several specific exemptions from the mandatory clearing requirement. Section 723 includes a process for the Commission to review and approve a swap for clearing under which the Commission makes a determination whether the clearing requirement will apply based on industry comments and review of several factors. The legislation allows for an exemption from clearing if the swap is not available to be cleared, although greater margin and capital requirements may apply. In addition, Section 723's mandatory clearing requirement specifically excludes "contracts of sale of a commodity for future delivery or options on such contracts." Finally, Section 723(a)(7) provides an exception from

clearing for swaps involving counterparties that meet a three-part test to determine if the swap is being used to hedge or to mitigate commercial risk. Therefore, the Dodd-Frank Act specifically allows for several exemptions from the clearing requirement.

The Commission's NOPR on the Process for Review of Swaps for Mandatory Clearing<sup>3</sup> describes a DCO-initiated process for clearing under which a DCO that plans to accept a swap for clearing will submit the swap to the Commission for review and approval. The Commission is also directed to review on an ongoing basis the swaps that have not been accepted for clearing by a DCO, but it cannot force a DCO to propose a swap for clearing. Rather, the Commission can establish margin or capital requirements for parties to those swaps. Therefore, under the process outlined by the Commission, mandatory clearing will only apply to the extent a DCO has proposed the swap for clearing and the Commission has approved such proposal. Mandatory clearing will not apply to swaps that are not available for clearing on U.S. exchanges.

The Commission should clarify the clearing requirement for foreign exchanges in the final rule to specify that the mandatory clearing requirements on foreign exchanges will be no different from the clearing requirements on U.S. exchanges. Both Congress and the Commission have deemed it appropriate to exempt certain transactions from clearing on U.S. exchanges and, based on the same reasoning, it is appropriate to create identical clearing exemptions for foreign boards of trade. Specifically, there should be exemptions from clearing for futures, options on physical futures, swaps that are not available for clearing on an exchange and for counterparties entering swaps for hedging purposes or to reduce commercial risk. The Commission has not justified applying different clearing rules to foreign boards of trade and, if the clearing requirement is enacted as proposed, it will create a disparity between markets and cause participants to favor one market over another.

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<sup>3</sup> 75 Fed. Reg. 211 (November 2, 2010).

### **3. Conclusion**

BGA supports the goals of the Dodd-Frank Act in promoting greater transparency and reducing market risk and offers these comments on the NOPR in order to encourage the Commission to adopt uniform rules for U.S. and foreign exchanges.

Respectfully submitted,

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Matt Schatzman  
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BG Americas & Global LNG