

January 18, 2011

VIA ELECTRONIC SUBMISSION

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

**Re: Designation of a Chief Compliance Officer; Required Compliance Policies;
and Annual Report of a Futures Commission Merchant, Swap Dealer, or
Major Swap Participant (RIN Number 3038-AC96)**

Dear Mr. Stawick:

On behalf of Hess Corporation and its subsidiaries and affiliates (collectively, "Hess"), we submit comments in response to the Notice of Proposed Rulemaking ("Proposed Rule")¹ issued by the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"). The Proposed Rule focuses on the implementation of new compliance requirements for futures commission merchants, swap dealers, and major swap participants, including the designation of a chief compliance officer and related compliance responsibilities, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").²

Hess believes that the Proposed Rule concentrates too much of the compliance function on a single individual to the exclusion of other members of senior management and day-to-day business line supervisors. Hess also believes that the Proposed Rule establishes an unworkable and potentially unattainable standard for the required annual report in terms of scope and accuracy. Hess appreciates the opportunity to address these concerns by highlighting how, from its perspective, compliance has already been effectively integrated into many aspects of Hess's business functions, and by bringing to the Commission's attention the potential impact that the Proposed Rule could have on Hess's, and other similarly organized, compliance programs.

¹ 75 Fed. Reg. 70,881.

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

I. DESCRIPTION OF HESS AND ITS INTEREST IN THE PROPOSED RULE

Headquartered in New York, Hess is a fully integrated energy company engaged in the exploration for and the development, production, purchase, transportation and sale of crude oil and natural gas, and the manufacturing, purchase, transportation, and marketing of refined petroleum, natural gas, and electricity. It is listed on the New York Stock Exchange.

Hess's subsidiaries are involved in exploration and production operations located in the United States, United Kingdom, Norway, Denmark, Equatorial Guinea, Algeria, Malaysia, Thailand, Russia, Gabon, Azerbaijan, Indonesia, Libya and Egypt. Its international portfolio has also recently grown to include new licenses in Australia, Egypt, Ghana, Norway, Ireland, Russia, Brazil and Peru.

Hess's Energy Marketing division markets refined oil products, natural gas, and electricity to a vast array of utilities and other industrial and commercial customers located from the Ohio Valley to the East Coast. Hess enters into derivatives contracts to manage the fixed price risk associated with this activity. In addition, Hess operates a network of strategically located petroleum storage terminals that support its marketing operations. Through subsidiaries and joint venture agreements, it also operates a fluid catalytic cracking unit in Port Reading, New Jersey, and the Hovensa Refinery in the U.S. Virgin Islands.

Hess's Supply, Trading and Transportation division markets several hundred thousand barrels per day of crude oil and gas liquids, and trades (purchases and sells) hundreds of thousands of physical barrels per day of refinery feedstocks, intermediates and finished petroleum products. Hess also enters into derivatives contracts to manage the price risk associated with this activity.

Hess Energy Trading Company, LLC ("HETCO") is a Delaware limited liability company established in 1997. HETCO recently organized branches in Paris and the Dubai International Financial Center and operates with three United Kingdom corporations, two of which are registered with the Financial Services Authority, a Cayman Islands exempted company, and a corporation organized in Singapore. All of these entities are used in the continually evolving development and implementation of a worldwide energy trading strategy effectuated by a series of spot and forward purchase and sales agreements, equity, foreign exchange, physical oil storage and chartered vessel transactions from time to time, swaps and other derivative transactions in crude oil, petroleum products, natural gas, and power, and freight transactions.

As a commercial participant in the commodity markets, Hess Corporation does not expect that it will be required to register with the CFTC as a swap dealer or a major swap participant. However, Hess's subsidiaries and affiliates are engaged in a range of activities that may not cleanly fit into the various categories of participants defined by Congress. Given the considerable uncertainty as to how the Commission will define what constitutes a "swap" or "swap dealing," Hess, on its own and on behalf of its subsidiaries and affiliates, has an interest in the Proposed Rule.

II. EFFECTIVE COMPLIANCE SHOULD BE FULLY INTEGRATED WITH AN ENTITY'S CORE BUSINESS FUNCTIONS

A. Hess's Approach to the Role of Compliance within the Organization

Hess is committed to promoting and sustaining a strong culture of compliance throughout its many businesses. To that end, Hess continuously devotes substantial time and resources to support compliance training, technology infrastructure, and a wide-range of related internal risk management programs. These efforts actively involve employees at all levels of Hess's organization, including its corporate leadership. Significantly, Hess has never viewed compliance as a discrete issue that can be addressed only on a periodic basis or delegated to a single department that operates in isolation from the business as a whole. Rather, Hess believes that an effective compliance program should be fully integrated with an entity's core business functions so that compliance issues can be addressed efficiently, proactively and effectively.

In contrast, the Proposed Rule appears to concentrate the responsibility and authority for most compliance related matters in a single individual: the chief compliance officer ("CCO"). Indeed, proposed Part 3.3(a) states that the CCO would be vested with "the *full responsibility and authority* to develop and enforce, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations."³ Hess believes that such an approach to compliance may impose unrealistic expectations on many CCOs by requiring the individuals in this position to have knowledge about, and authority over, areas of the business for which CCOs traditionally do not have responsibility (*e.g.* accounting, information technology, corporate finance) and may not be qualified to most effectively supervise. For Hess and many other large, complex organizations it is not practicable for one person to oversee the day-to-day activity of thousands of employees operating in dozens of distinct businesses. As the Commission acknowledges in the Proposed Rule, "[t]he chief compliance officer can only ensure the registrant's compliance to the full capacity of an individual person..."⁴ For this reason, Hess believes that it is more effective to align authority with accountability by allocating compliance responsibility to business unit leaders while reserving for the CCO responsibility for administering the organization's overall compliance policy.

Hess manages compliance and risk in a similar way because both present common issues that, to be effective, require substantial institutional support and coordinated corporate controls.⁵ At the highest level, Hess manages risk through a Risk Committee chaired by the Chief Financial Officer and comprised of various senior officers, including the Chief Risk Officer, whose primary role is to serve as an intermediary between senior management and Hess's various business units for any issues related to compliance or risk management. For day-to-day compliance issues, Hess's Legal Risk Controls group and Compliance Controls Department provide advice to business unit leaders while developing and helping to effectuate an effective

³ 75 Fed. Reg. at 70,887 (emphasis added).

⁴ 75 Fed. Reg. at 70,883.

⁵ Hess's compliance and risk management policies are set forth in its Corporate Risk Policy.

compliance infrastructure for the organization at large. For example, the Legal Risk Controls group focuses on legal risks that may arise in connection with specific transactions (*e.g.*, contract negotiations, transaction documentation, bankruptcy issues), whereas the Compliance Controls Department develops and implements policies, procedures, training, and internal monitoring programs to effectuate the requirements of the Commodity Exchange Act, CFTC regulations, exchange rules, and other applicable regulatory requirements. Together, the Legal Risk Controls group and the Compliance Controls Department work closely with the business units, particularly those employees who have business line supervisory authority, to ensure that Hess's employees understand how to comply with the company's policies, the applicable laws and regulatory requirements, and industry best practices.

Hess believes that this integrated approach is highly-effective from a compliance, risk, and business perspective. However, Hess is concerned that the Proposed Rule could require Hess and other similarly situated organizations to change its approach to compliance in a significant and not necessarily positive way that will overemphasize the independent role of the CCO to the exclusion of a more holistic approach to compliance that leverages those employees within the various business units that possess the most relevant knowledge and day-to-day experience. Hess respectfully submits that, although concentrating compliance responsibility in a single CCO may be effective for some organizations, for Hess and other similarly situated entities, a less prescriptive approach would be more effective.

B. Comments on the Proposed Rule

Hess has reviewed the comments to the Proposed Rule filed by Newedge USA, LLC ("Newedge") and, as discussed below, agrees in concept with many of its substantive points.

1. *The Commission should not require CCOs to implement or enforce compliance policies and procedures that govern individuals and activities over which the CCO may have only limited knowledge or control.*

Newedge notes that vesting CCOs with "full responsibility and authority to develop and enforce... appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations" is an enormous responsibility that most CCOs, particularly in large, complex organizations, may not have sufficient first-hand knowledge or authority to carry out effectively.⁶ Hess believes that compliance responsibility should be allocated in the manner that takes best advantage of each individual's specific areas of expertise and authority. It has implemented a compliance structure that is intended to do just that. Accordingly, Hess agrees with Newedge that in most cases it would be more effective to allow those entities that are designated as swap dealers or major swap participants to allocate compliance responsibility to business unit leaders in coordination with the CCO rather than concentrating this authority in the CCO alone.

⁶ 75 Fed. Reg. at 70,887.

Hess notes that if the Commission adopts the Proposed Rule in its current form, it could have the unintended effect of *reducing* compliance oversight within many organizations. For example, Hess currently holds its business leaders accountable for the actions of employees within their respective business units. At the same time, the Compliance Controls Department *independently* monitors the activity of Hess's employees to ensure that these employees do not violate company policies or regulatory requirements, and that the group leaders are effectively monitoring their business units. If oversight responsibility is concentrated too heavily in the CCO, the existing role of the CCO as the "monitor of the monitors" would be eliminated.

2. *The Commission should promote compliance policies that encourage interaction between the CCO and key business leaders.*

Newedge notes that allocating compliance responsibility to business unit leaders could indirectly encourage greater interaction between the CCO and other business leaders. Based on its own experience, Hess agrees that greater interaction between the CCO and other business leaders is a foreseeable byproduct of allocated compliance responsibility. Furthermore, Hess believes that this type of interaction provides companies with significant benefits because it promotes consistent compliance policies and facilitates the rapid propagation of new best practices throughout an organization.

3. *The Commission should adopt an annual reporting requirement that does not impose unworkable requirements in terms of the scope or accuracy.*

Hess agrees with Newedge that the annual reporting requirement in the Proposed Rule is simply too broad. It is not practical for any registrant to provide a "complete" description of its compliance "with respect to the Act and Commission regulations and each of the registrant's compliance policies..."⁷ Similarly, it is not practical for the CCO to have responsibility and authority over "all policies, procedures, codes, safeguards, rules, programs, and internal controls required to be adopted or established by a registrant pursuant to the Act and Commission regulations, including a code of ethics."⁸ Instead, Hess believes that a summary of a registrant's compliance policies and procedures is consistent with, and achieves the mandate of Congress. A broader definition of compliance and "compliance policies" is unnecessary to effectuate Section 4s(k) of the CEA, and inconsistent with well-accepted notions of what constitutes compliance for regulated entities.⁹

In addition, Hess believes that the Commission should interpret the certification requirement for the annual report broadly. Section 4s(k)(3) of the CEA requires the CCO's annual report to include "a certification that, under penalty of law, the compliance report is accurate and complete."¹⁰ If interpreted narrowly, this section could penalize CCOs for certifying a report that is inaccurate or incomplete, even if the report is diligently prepared and

⁷ 75 Fed. Reg. at 70,887.

⁸ 75 Fed. Reg. at 70,887.

⁹ 7 U.S.C. § 6s(k).

¹⁰ 7 U.S.C. § 6s(k)(3)(B)(ii).

any inaccuracy or omission was the product of a good faith mistake. Many CCOs understandably would be reluctant to make any statement for fear that it may inadvertently be wrong. Hess believes that the Proposed Rule's requirement that CCOs certify that the annual report is accurate and complete "to the best of [the CCO's] knowledge and reasonable belief"¹¹ strikes a meaningful balance. This standard would not impose strict liability for any inadvertent errors or good faith mistakes and, therefore is sufficiently broad to accommodate most compliance programs.

4. *Swap dealers and major swap participants should not be subject to the same compliance requirements as futures commission merchants.*

Newedge explains that because swap dealers and major swap participants do not participate in derivatives markets in the same way as futures commission merchants, it is inappropriate to subject such different types of entities to the same compliance requirements. Hess agrees, albeit from the perspective of a commercial participant. The compliance issues associated with an institutional dealer that acts as an intermediary are fundamentally different from the compliance issues associated with a commercial entity like Hess. Hess believes that the Commission should provide significant flexibility with regard to how all registrants satisfy their compliance obligations. Prescriptive regulations that do not distinguish between swap dealers and major swap participants, and futures commission merchants likely will be unnecessarily burdensome and inefficient in practice.

5. *The Commission should not impose unreasonable limits on who may serve as the CCO.*

Newedge states that the Commission should not prohibit an in-house attorney or general counsel from serving simultaneously as an entity's CCO. Newedge also states that the Commission should not prohibit one CCO from serving simultaneously as the CCO for one or more affiliated entities. Hess agrees with Newedge on both points. The potential conflicts of interest that the Commission describes are, from Hess's perspective, remote and, to the extent they arise, can be addressed by the company at that time. In most cases, the interests of the individuals and parties will be naturally and completely aligned. Therefore, permitting one person to fill more than one role will provide valuable efficiencies to the company without negative consequences.

6. *The Commission should harmonize the compliance requirements applicable to futures commission merchants, swap dealers, and major swap participants with analogous requirements of other regulators.*

Hess agrees with Newedge's assertion that the Commission should harmonize its compliance requirements with analogous requirements imposed by the Securities and Exchange Commission and, to the extent applicable, the relevant self-regulatory organizations. Inconsistent regulatory requirements complicate compliance for all regulated entities. The

¹¹ 75 Fed. Reg. at 70,887.

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Commission should, to the extent possible, harmonize the Proposed Rule with other compliance requirements that may be applicable to futures commission merchants, swap dealers, and major swap participants.

III. CONCLUSION

Hess welcomes the opportunity to discuss these issues further with the Commission and its Staff. Please contact us at (202) 756-8000 if you have any questions regarding Hess's comments.

Respectfully submitted,



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