

February 7, 2011

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

Re: RIN Number 3038-AC96
Notice of Proposed Rulemaking
Confirmation, Portfolio Reconciliation, and Portfolio
Compression Requirements for Swap Dealers and Major Swap
Participants

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 regarding the Notice of Proposed Rulemaking (“NOPR”) on Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants.¹

1. Executive summary

The Commission’s NOPR includes new swap confirmation, portfolio reconciliation and portfolio compression requirements for swap dealers and major swap participants. The proposals are problematic when one considers that the Commission’s proposed definitions for swap dealer and major swap participant threaten to classify as swap dealers and/or major swap participants companies that function mainly as commodity traders and end-users. The Commission’s NOPR requirements fail to recognize that for a very large part of their business, energy commodity trading companies do not receive or maintain the type of information that

¹ 75 Fed. Reg. 248 (December 28, 2010) (“NOPR”).

traditional broker/dealers have for swap transactions. Therefore, the proposed confirmation and portfolio reconciliation requirements suffer from serious flaws by proposing that companies that may qualify as swap dealers and major swap participants, but do a majority of their business as traders, receive and process data that is typically only received and maintained by broker/dealers, and send confirmations within a very tight timeframe. The flaws in this NOPR highlight the larger flaw the Commission is making by trying to equate certain energy commodity trading companies with traditional broker/dealers through the proposed swap dealer and major swap participant definitions. The following comments highlight BGA's specific concerns with the proposed confirmation and portfolio reconciliation requirements.

2. BGA's comments

The Commission's NOPR would require each swap dealer and major swap participant that enters into a swap transaction with another swap dealer or major swap participant to execute a confirmation for the swap transaction on the same calendar day as execution.² A swap dealer or major swap participant that enters into a swap transaction with a counterparty other than a swap dealer or major swap participant would be required to send an acknowledgement of the swap transaction on the same day as execution.³ The times prescribed for achieving swap confirmation or sending an acknowledgement would vary, depending upon whether the swap transaction is electronically executed or electronically processed. If executed and processed electronically, the confirmation or acknowledgement would be required within 15 minutes of execution. If processed electronically, but not executed electronically, the confirmation or acknowledgement would be required within 30 minutes of execution. If not processed electronically, the confirmation or acknowledgement would be required within the same calendar day as execution.⁴

The proposed confirmation requirements for swap dealers and major swap participants underscore the problem with defining swap dealer and major swap participant broadly to include the energy commodity trading business. If this NOPR becomes final, many energy commodity trading companies that meet the swap dealer definition with respect to only a small portion of their business will be required to send a confirmation or acknowledgement within a very tight deadline for each and every swap transaction. Many energy commodity trading companies, however, perform a majority of their swap transactions on ICE and through traditional broker/dealers as clearing agents. For these transactions, the companies reconcile with ICE and with their broker/dealers, so there is no need to send a confirmation on a majority of their transactions. It is only with respect to a small portion of their

² NOPR at 81522.

³ *Id.*

⁴ *Id.*

businesses where they may face the market in buying and selling uncleared swaps off-exchange that a confirmation would be sent. Therefore, this NOPR would have energy commodity trading companies completely overhaul the way they do business on ICE and through broker/dealers, at a substantial compliance cost, to accommodate a requirement to send confirmations with every swap. Congress' purpose in issuing the Dodd-Frank Act was to increase transparency and thus, reduce systemic risk. The transactions highlighted above, which are largely performed on ICE, are already transparent; therefore, the Commission is not adding to transparency in a manner that would outweigh the significant compliance costs to energy commodity trading companies of having to confirm all swaps. The proposed mandatory confirmation requirement for all swaps entered by swap dealers and major swap participants has not been justified and should be reversed in the final rule. In addition, the Commission should recognize that it is inappropriate to try to fit energy commodity trading companies into a box reserved for traditional broker/dealers, and consider narrowing the definition of swap dealer and major swap participant to cover only those companies that truly function as broker/dealers.

In addition, the proposed 15-minute and 30-minute deadlines for confirmation or acknowledgement are inconsistent with current practice and unworkable in today's environment. With respect to bilateral swaps for which a confirmation may be sent, many energy commodity trading companies extract trading data in a batched cycle at the end of the day and generate confirmations the following day. This is to allow traders to correct their data as errors are found throughout the day. If a swap is performed on the ICE platform, the trader typically would not download trade data until the end of the day and, as already noted, would not typically receive a confirmation. The current system under which data is downloaded once a day at the end of trading, with confirmations sent the next day, provides an appropriate balance between cost efficiency and ensuring sufficient transparency and coordination between counterparties.

The Commission should weight the value of having an expedited confirmation process against the enormous cost for companies that would have to add resources to allow equipment to run throughout the day in order to perform the proposed rolling confirmations, and the inefficiency of having to correct confirmations because the traders did not have enough time to correct their deal entries prior to sending the confirmations. In addition, it is unclear to BGA whether having faster confirmations actually would enhance transparency or reduce systemic risk in accordance with the purposes for the Dodd-Frank Act. Absent some overwhelming benefit to having faster confirmations, the Commission should adopt deadlines that are consistent with today's practices.

The Commission also proposes that the swap transactions to which the acknowledgement and confirmation requirements apply would be defined to include

all events that would result in a new swap or in a change in the terms of a swap. Such events would include execution as well as various ownership actions that might occur during the life cycle of the swap, such as termination prior to the scheduled maturity date or the assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of the rights or obligations of the swap.⁵ This requirement is vague and is inconsistent with current practices.

Typical energy commodity trading companies do not send new confirmations under many of the proposed scenarios and to do so would require significant upgrades to current processes. For example, for a novation, counterparties reconcile the trades being novated, but do not necessarily send a new system-generated or formal confirmation. Also, the term “amendment” is vague and should only refer to an amendment of critical fields of a confirmation. For example, some amendments would be immaterial to the transaction, such as an amendment to correct a trader name, which would have no impact on the underlying transaction, or an amendment to correct the trade date of an after-hours trade. Traders typically only send a reconfirmation for a change in volume, price, term, or commodity. The Commission’s NOPR should be modified to require new confirmations only for changes to deal components that will impact the economics or settlement of the trade.

The NOPR also proposes that a swap dealer or major swap participant would be required to make and maintain certain records of the required acknowledgements and confirmations. These records would include the time and date of transmission or receipt of any acknowledgment or confirmation, the length of time between transmission of any acknowledgment to a counterparty and receipt of the signed confirmation, and the length of time between execution and confirmation of the swap.⁶ This proposal fails to recognize that, except for trades performed on ICE, traders typically are unable to determine the time of execution of a swap. The time stamp reflects the time at which a dealer inputs their transaction. Energy commodity traders place an order with a broker/dealer and are unaware when the trade is actually executed. Therefore, energy commodity traders that meet the definition of a swap dealer or major swap participant will not be able to keep accurate records of the length of time between execution and confirmation of a swap. Again, this highlights the problem with adopting a broad definition of swap dealer or major swap participant to include energy commodity trading companies that do not fit the typical function of a broker/dealer. They do not have this type of information available for a majority of their transactions; therefore, these proposed requirements should be rejected in the final rule.

⁵ *Id.*

⁶ NOPR at 81523.

BGA has a single comment with respect to the Commission's proposals for portfolio reconciliation. Under the NOPR, swap dealers and major swap participants would be required to reconcile swap portfolios with other swap dealers or major swap participants daily (for portfolios consisting of 300 or more swaps), weekly (for portfolios consisting of between 50 and 300 swaps), or quarterly (for portfolios consisting of fewer than 50 swaps). The NOPR would not require swap dealers and major swap participants to resolve discrepancies in the valuation of the swap if the difference between the lower valuation and the higher is less than or equal to ten percent. Discrepancies greater than ten percent would be required to be resolved within one business day following discovery of the discrepancy.⁷

BGA typically reconciles its portfolio with its clearing agent on a daily basis. While BGA appreciates the 10 percent safe harbour within which discrepancies do not need to be resolved, BGA has had instances where it has taken longer than a day to resolve a discrepancy. The Commission's one-day requirement for resolving discrepancies fails to consider that swap dealers and major swap participants do not have control over their counterparties and, therefore, resolution of discrepancies may take longer than a day. For example, there are instances where a clearing agent does not recognize a product for clearing and would have to map the product, which may take longer than a day. In addition, having a hard-and-fast deadline for swap dealers and major swap participants could remove leverage and put the swap dealer or major swap participant at a disadvantage in negotiating an appropriate resolution to a discrepancy with a counterparty that is not working under an imposed deadline for resolving discrepancies. The Commission should adopt a requirement that swap dealers and major swap participants should attempt to resolve all discrepancies beyond the 10 percent safe harbour threshold within one business day, but not penalize them for failing to meet the deadline.

⁷ NOPR at 81524.

3. Conclusion

BGA's underlying concern with this NOPR is that there is a disconnect between the proposed processes mandating confirmations, portfolio reconciliation and portfolio compression by swap dealers and major swap participants, and the current practices of energy commodity trading companies that may be defined as swap dealers and major swap participants. Many energy commodity trading companies will have great difficulty meeting these mandated data retention and dissemination requirements for swaps because they do not maintain and process data like typical broker/dealers. This concern evidences the need for the Commission to rethink trying to fit energy trading companies into a box reserved for traditional broker/dealers. Absent narrowing the definitions of swap dealer and major swap participant, the Commission should modify the proposed confirmations and portfolio reconciliation requirements in accordance with these comments.

Respectfully submitted,

/s/

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