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David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC MAIL

Re: *Real-Time Public Reporting of Swap Transaction Data*, RIN 3038-AD08

Dear Secretary Stawick:

I. INTRODUCTION.

On behalf of the Working Group of Commercial Energy Firms (the “Working Group”), Hunton & Williams LLP submits the following in response to the request for public comment set forth in the Notice of Proposed Rulemaking issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) and published in the *Federal Register* on December 7, 2010,¹ proposing to implement real-time reporting requirements for counterparties to swap transactions, pursuant to new Section 2(a)(13) of the Commodity Exchange Act (“CEA”), as established by Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial and residential consumers. Members of the Working Group are energy producers, marketers and utilities. The Working Group considers and responds to requests for public comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

¹ Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,141 (Dec. 7, 2010) (“*Proposed Real-Time Reporting Rule*”). The *Proposed Real-Time Reporting Rule* is being promulgated simultaneously with the Commission’s other recordkeeping and reporting rulemaking proceedings. See Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574 (Dec. 8, 2010) (“*Proposed General Reporting Rule*”); Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 76,666 (Dec. 9, 2010) (“*Proposed Daily Trading Records Rule*”). The Working Group encourages the Commission to reconcile these rulemakings as appropriate to avoid all unnecessary duplication.

Commercial energy firms, such as those in the Working Group, generally use the swap markets as an adjunct to their commercial activities. Historically, they have not been viewed as Swap Dealers. Members of the Working Group believe that, in principle, they should not fall within the definition of Swap Dealer under the Act or the Commission's regulations. However, at the present time, the Commission has not finalized the regulatory definition of Swap Dealer.

The Working Group will comment in the rulemaking proceeding further defining the term Swap Dealer, as the Commission's outstanding proposal is vague in certain material respects.² Given this uncertainty, commercial energy firms do not know whether they will fall within the definition of Swap Dealer and become subject to certain requirements contained in this and other CFTC proposals applicable to Swap Dealers. Members of the Working Group are therefore compelled to comment on such proposals in light of that possibility. In this letter, the Working Group refers to "Non-bank Swap Dealers," if, in fact, there are any, as commercial entities that are not affiliated with banks. These commercial entities have not been traditionally viewed by the CFTC or the swaps markets as Swap Dealers, but are nevertheless potentially within the scope of the Swap Dealer definition adopted as final by the Commission for all or part of their activities.

II. EXECUTIVE SUMMARY.

The Working Group strongly supports the goals of the Act to enhance transparency in the swap markets and offers the following comments to assist the Commission in developing the real-time reporting rules required by the Act. The comments cover a broad range of issues reflecting the Working Group's concerns with various portions of the *Proposed Real-Time Reporting Rule*, and, where appropriate, the Working Group respectfully offers proposed solutions and alternatives for the Commission's consideration. The following principles represent the Working Group's general concerns detailed in Part III, while Part IV provides responses to specific questions posed by the Commission.

- As drafted, the likely compliance costs and burdens on market participants associated with the *Proposed Real-Time Reporting Rule* outweigh any verifiable benefit to swap markets.
- The final rule should (i) reflect the unique operational characteristics and abilities of different participants in swap markets for physical commodities, and (ii) recognize that the technology necessary to comply with this rule may not yet exist.
- The Working Group supports a phased-in approach to implementation that recognizes, and accounts for, the differences between certain market participants.

² See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 75 Fed. Reg. 80,174 (Dec. 21, 2010) ("*Definitions NOPR*").

- In defining the term “as soon as technologically practicable,” the Commission should include sufficient flexibility to accommodate the unique characteristics of Non-bank Swap Dealers and end-users, and consider allowing next business day reporting of swap data, including block trades, to constitute “technologically practicable.”
- Real-time reporting should be limited to those post-execution events impacting the broader market for similar swaps, such as events having a material impact on the primary economic terms of the swap itself.
- Transactions with or between affiliates should not be required to be reported in real-time.
- Derivatives clearing organizations should be responsible for reporting swaps that are executed off-facility but are ultimately cleared.
- The Commission should adopt a single regulation to cover the retention of records for purposes of the *Proposed Real-Time Reporting Rule*, *Proposed General Reporting Rule*, and *Proposed Daily Trading Records Rule*.
- The Working Group supports the use of less-specific data, particularly with respect to location, in order to maintain the confidentiality of transacting parties.
- The Commission should ensure that all registered swap data repositories and third party service providers have a common format for swap transaction and pricing data submitted by market participants.
- The Commission should ensure that all data fields set forth in the *Proposed Real-Time Reporting Rule* are standardized and should mirror other reporting rules.
- Reporting parties should not be charged by swap data repositories for reporting data.

The Working Group appreciates the opportunity to provide these comments, and offers its continued assistance to the Commission as it develops the final rule in this proceeding.

III. GENERAL COMMENTS OF THE WORKING GROUP.

A. IMPLEMENTATION SCHEDULE AND ADOPTING A PHASED-IN APPROACH.

The Commission solicits specific comment with respect to various implementation issues, including scheduling and whether there should be a phased-in approach. The Working Group strongly supports a phased-in approach for purposes of implementing the *Proposed Real-Time Reporting Rule*, as well as the *Proposed General Reporting Rule* and *Proposed Daily Trading Records Rule*.³

1. The Commission Should Not Commence Implementation of the Real-Time Reporting Obligations Until All Reporting Criteria Have Been Established and Tested.

The Working Group supports an expeditious implementation process, but not to the extent that efficiency and the ability to minimize costs is sacrificed. As such, the Working Group requests the Commission to utilize the broad discretion afforded by Congress in the Act to implement a reasonable timeframe, providing market participants as much time as possible and taking into consideration the different characteristics of swap products, swap markets, and market participants.⁴ To this end, the Working Group recommends the phased-in implementation plan outlined in Part III.A.2, below. However, as a threshold matter, the phasing in of real-time reporting obligations on market participants should not commence until the Commission has assured that:

- All of the data elements necessary to implementation are finalized and defined by the Commission;
- Swap Data Repositories (“SDR”) have been formed, registered, and have the tested capability, and proven back-up capabilities, to accept swap data for public dissemination;
- Where there is not an SDR to accept data for a particular asset class or swap, the applicable third party service providers should have the tested capability, and proven back-up capabilities, to accept swap data for such asset class or swap;

³ In addition to the three reporting and recordkeeping rulemakings identified herein, the Commission also is responsible for implementing and overseeing two related Interim Final Rules. *See* Interim Final Rule for Reporting Certain Post-enactment Swap Transactions, 75 Fed. Reg. 78,892 (Dec. 17, 2010); Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. 63,080 (Oct. 14, 2010).

⁴ Congress affords the Commission broad discretion to implement the real-time reporting provisions of the Act. Specifically, new CEA Section 2(a)(13)(B) authorizes the Commission to “make swap transaction and pricing data available to the public in such form and *at such times* as the Commission determines appropriate to enhance price discovery” (emphasis added).

- The Commission, as required by Section 728 of the Act, should have the tested capability to interface with SDRs and third party service providers to, among other things, confirm dissemination;⁵
- SDRs have published a reporting format and related requirements for standardized (i) data fields, (ii) data elements, and (iii) product descriptions; and
- All of the standards for Unique Swap Identifiers (“USI”), Unique Counterparty Identifiers (“UCI”), and Unique Product Identifiers (“UPI”) are established.

Moreover, implementation should not commence until a technology base is established and following a testing period with SDRs and third party service providers, as applicable. The consequences of pushing forward with insufficiently tested systems and processes could prove disastrous – requiring significant time and resources for multiple parties, including the Commission, to remedy, plus potentially requiring the re-submission of data on millions of transactions.

To begin implementation prior to satisfaction of the above-described requirements would prove unworkable due to the many technology-related obstacles that must be addressed. Given the numerous uncertainties likely to arise as the Commission seeks to implement and oversee the *Proposed Real-Time Reporting Rule*, the Working Group recommends that the Commission consider adopting, to the extent possible, naming conventions and other attributes of existing platforms such as ICE and Clearport, and carefully review previous examples of when new reporting or other information technology (“IT”) systems were recently put into place.⁶

2. Proposed Framework for Phasing In Real-Time Reporting Requirements.

The Working Group provides the below phased-in implementation plan for the Commission’s consideration. This approach is (i) consistent with, and in furtherance of, the policy objective in Title VII to bring transparency to swap markets, and (ii) intended to facilitate an effective, efficient, and orderly process for implementing the new industry-wide reporting

⁵ New CEA Section 21(c)(4) requires SDRs to “provide direct electronic access to the Commission . . . and provide the information . . . in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13).”

⁶ Prior examples of implementing new reporting and IT systems demonstrate the need for Commission guidance. For example, in September 2003, the Public Utility Commission of Texas (PUCT) ordered ERCOT to develop a nodal wholesale market design, which affected many business processes and systems, including: a day-ahead market, reliability unit commitment, real-time or security constrained economic dispatch, and congestion revenue rights. The implementation resulted in unexpected complexities, multiple delays, and increased costs. *See, e.g.,* Elizabeth Souder, *ERCOT’s New Nodal System for Electricity Grid Expected to Save Texas Consumers Billions*, THE DALLAS MORNING NEWS, Nov. 30, 2010 (“Installing the nodal system has taken longer (seven years) and cost twice as much (\$660 million) as expected.”). In this context, the Working Group suggests that the Commission should encourage an iterative process that provides market participants active engagement with the Commission to address specific concerns.

requirements adopted in the *Proposed Real-Time Reporting Rule*, *Proposed General Reporting Rule*, and *Proposed Daily Trading Records Rule*.

a. **Phase I - Swaps Executed On-Facility through DCMs and SEFs and Swaps Executed Off-Facility but Cleared through a DCO.**

The first phase of this proposed framework should cover all swaps executed on-facility and all swaps executed off-facility but subsequently cleared through a derivatives clearing organization (“DCO”).⁷ Swaps executed on-facility and over-the-counter (“OTC”) swaps that are cleared through a DCO constitute the vast majority of the aggregate trading activity in energy swap markets. Designated contract markets (“DCM”), swap execution facilities (“SEF”), and DCOs are uniquely situated to begin reporting swap transaction data in a relatively short timeframe and would likely incur limited costs to report such information compared to costs incurred by various classes of market participants. Finally, by commencing the phase-in of real-time reporting requirements with DCMs, SEFs, and DCOs, a significant amount of swap pricing data that is reflective of a large portion of trading activity will be available for public dissemination, thus achieving the price discovery objectives of the Act.

The Working Group recommends that Phase I commence 3 to 6 months after the threshold criteria identified in Part III.A.1, above, have been met.

b. **Phase II - Standardized Swaps Executed Off-Facility and Not Cleared.**

The second phase should apply to all designated reporting parties for standardized swaps executed off-facility. This phase would include Swap Dealers,⁸ other than Non-bank Swap Dealers which would only be included in the later stages of Phase II implementation.

Due the nature of their other business activities in financial markets, Swap Dealers other than Non-bank Swap Dealers often house significant IT divisions within their organizational structure. These divisions are supported by large, internal staffs from senior management down to mid-and back-office personnel with budgets of significant financial resources. Given the scale of their existing capabilities and resources, those Swap Dealers are better-positioned to develop and deploy the systems and software necessary to comply with real-time reporting before the reporting of Non-bank Swap Dealers, whose experience, staffing, and supporting resources, while appropriate for these firms’ underlying businesses, have yet to be developed or deployed sufficiently to comply with the reporting obligations of the scale and complexity created and required by the proposed rules.⁹

⁷ See discussion at Part III.C., *infra*, contending that DCOs should be responsible for reporting swaps executed off-facility that are ultimately cleared through a DCO.

⁸ See new CEA Section 1a(49).

⁹ Numerous transactions executed in OTC markets typically include a Swap Dealer as at least one of the counterparties. Thus, Swap Dealers will be subject to the real-time reporting obligations in the second phase of the

In light of the foregoing, the Working Group submits that, to the extent the Commission deems it appropriate, Non-bank Swap Dealers should be permitted to comply with the real-time reporting requirements, as well as the reporting requirements set forth in the *Proposed General Reporting Rule* and *Proposed Daily Trading Records Rule* after other Swap Dealers. At a minimum, however, the Commission should clarify, that, with respect to transactions between Non-bank Swap Dealers and other Swap Dealers, the latter would be the responsible party for purposes of real-time reporting.¹⁰

The Working Group recommends that Phase II commence 6 to 12 months after the threshold criteria identified in Part III.A.1, above, have been met.

c. **Phase III - Non-Standardized, Bespoke Swaps Executed Off-Facility and Not Cleared.**

The final phase would be applicable to all bespoke, non-standardized swaps executed in private OTC markets rather than on-facility. By definition, non-standardized transactions executed in private OTC swap markets that are designed to address bespoke risk are unique to the counterparties involved. They do not perform any specific price discovery function that would provide any meaningful benefit to swap markets. Moreover, the Working Group believes that there are relatively few such swaps involving energy commodities. Given that the real-time reporting and subsequent public dissemination of information related to such transactions will provide little value, the Working Group asserts that there is no immediate need for the Commission to require the reporting of this information.¹¹ As such, the real-time reporting of non-standardized swaps executed off-facility should not be required, if at all, until Phases I and II have been implemented.

implementation of the proposed rules. These reports will help the Commission achieve the objectives of the Act. Namely, given the existing IT resources of these entities, this approach will permit the Commission to expeditiously obtain a significant amount of organized, real-time market data, thereby enhancing the Commission's ability to bring greater transparency and price discovery to swap markets.

¹⁰ With respect to off-facility transactions between end-users, the obligation to report such transactions in real-time would commence during Phase II of the Working Group's proposed implementation plan, but at some point after Non-bank Swap Dealers.

¹¹ The Working Group does not anticipate that customized, non-standardized bilateral transactions will be subject to real-time reporting given that new CEA Section 2(a)(13)(C) only covers swaps subject to mandatory clearing (or otherwise cleared). The Commission interprets new CEA Section 2(a)(13)(C) broadly, concluding that all swaps must be reported. The clear statutory language, however, provides that the four categories described in Section 2(a)(13)(C) only cover swaps that are actually cleared or are required to be cleared. Pursuant to New CEA Section 2(h)(2), the Commission is required to determine whether a swap must be cleared based, in part, on "[t]he existence of significant outstanding notional exposures, trading liquidity and adequate pricing data." See new CEA Section 2(h)(2)(D). Arguably, therefore, the Commission could determine that certain swaps, particularly non-standardized, bespoke transactions, are not required to be cleared because they lack liquidity and pricing data. Consequently, if the Commission determines that certain non-standardized, bilateral swaps do not require clearing, such swaps would not be required to be reported in real-time, contrary to the Commission's conclusion that all swaps must be cleared pursuant to Section 727 of the Act.

Furthermore, given that the real-time reporting and subsequent public dissemination of information related to such transactions will provide little value, the Commission should not impose burdensome reporting obligations on counterparties to such transactions. Rather, for these non-standardized, bespoke swaps, the Commission should, pursuant to its broad discretion under Section 727 of the Act,¹² limit real-time reporting obligations to information related solely to primary economic terms such as price and volume, as required by the Act, and, perhaps, tenor, thus resulting in fewer data fields for these transactions.¹³ Doing so would relieve counterparties from the cumbersome and costly retention and real-time reporting of data that would provide little price discovery benefit to the Commission or market participants.

The Working Group recommends that Phase III commence, if at all, 12 to 15 months after the threshold criteria identified in Part III.A.1, above, have been met.

3. As Soon as Technologically Practicable.

a. The Commission Should More Thoroughly Consider the Availability of Current Technology and Industry Practice for Energy Markets.

The ability of Non-bank Swap Dealers and end-users to comply with the Commission's real-time reporting rules is largely contingent on the definition and interpretation of the term "as soon as technologically practicable." The Working Group supports the Commission's decision to take a broad approach toward defining this term, recognizing that:

this term may have different interpretations for different parties to a swap (*i.e.*, swap dealers, MSPs and end-users), for different types of swaps (*e.g.*, energy swaps, credit default swaps, interest rate swaps, etc.) and for different methods of execution (*i.e.*, SEFs, DCMs and off-facility).¹⁴

The Working Group, however, requests the Commission to go one step further to recognize and account for the fact that Non-bank Swap Dealers and end-users do not presently have the technology in place, or resources available, necessary to comply with the Commission's proposed real-time reporting requirements.

¹² See text accompanying *supra* note 4.

¹³ See new CEA Section 2(a)(13)(A) (providing that real-time public reporting means, in part, "data related to a swap transaction, *including price and volume . . .*" (emphasis added)). To this end, the Working Group recommends that the Commission undertake a study on the volume and nature of transaction activity in other contracts or instruments and require reporting of such transactions only if the Commission can demonstrate meaningful benefits relative to costs that would be imposed on market participants to report these transactions.

¹⁴ *Proposed Real-Time Reporting Rule* at 76,143.

The Commission itself notes the potential difference between market participants, emphasizing that:

[c]ost, access to the latest technology and other factors may prevent some of the fastest, most efficient technology from being available to all market participants Because of these factors, the Commission recognizes that what is “technologically practicable” for one party to a swap may not be the same as what is “technologically practicable” for another party to a swap.¹⁵

This is particularly true for Non-bank Swap Dealers and end-users transacting in energy markets.

For instance, Non-bank Swap Dealers and end-users generally do not have robust, internal IT systems and associated business processes that are designed for this scale of reporting. Rather, the IT systems and associated business processes of most Non-bank Swap Dealers and end-users transacting in energy markets are primarily designed to support trading activity associated with their underlying physical commodity businesses. From a trading perspective, these businesses are primarily focused on transactions that contemplate physical delivery of commodities. Consequently, Non-bank Swap Dealers and end-users do not currently have in place the necessary systems and appropriate business processes to report in the manner contemplated by the Commission’s proposed real-time reporting regime. As such, in defining the term “technologically practicable,” the Commission should include sufficient flexibility to accommodate the unique characteristics of Non-bank Swap Dealers and end-users.¹⁶

b. Next Business Day Reporting Should Qualify as Technologically Practicable for Certain Market Participants.

In light of the above, the Working Group encourages the Commission, in applying its broad discretion under Section 727 of the Act, to permit a broad range of options for satisfying the requirement that data relating to swap transactions be reported “as soon as technologically practicable after the time at which the swap transaction has been executed.”¹⁷ Namely, the Working Group submits that, for certain market participants, such as Non-bank Swap Dealers and end-users, “technologically practicable” should include next business day reporting.

Non-bank Swap Dealers and end-users typically prepare end-of-day reports for risk management purposes for distribution on or prior to the next business day. Consequently, the business processes and IT and risk management systems of these companies are set-up to receive

¹⁵ *Id.*

¹⁶ The Working Group also respectfully requests the Commission to consider the benefits and costs on those market participants presently lacking the “fastest, most efficient technology” when defining what is “technologically practicable.” In doing so, the Working Group encourages the Commission to consider the principles set forth in President Obama’s January 18, 2011 supplement to Executive Order No. 12866, *Improving Regulation and Regulatory Review*, particularly regarding benefits and costs.

¹⁷ *Proposed Real-Time Reporting Rule* at 76,172 (proposed CFTC Rule 43.2: “Definition of Real-Time Public Reporting”).

data on an end-of-day basis, often followed by overnight batch processing to deliver reports the next business day. If these companies do report to the exchanges or the Commission, the reporting is done on timelines issued by the exchanges or the Commission. To the extent that a DCM, or an exempt commercial market with significant price discovery contracts, reports information to the Commission, it is generally done at the next business day after market close or on another longer periodic basis.

Given the current process by which Non-bank Swap Dealers and end-users typically prepare and deliver reports, the Working Group encourages the Commission to allow next business day reporting to constitute “technologically practicable” for satisfying the proposed real-time reporting obligations. At a minimum, the Commission should permit next business day reporting for some period of time, such as for the first year after the above-proposed Phase II implementation commences. This would provide Non-bank Swap Dealers and end-users sufficient time to establish the IT systems and related business processes necessary to report on a more expedited basis.

B. REPORTABLE TRANSACTIONS.

Pursuant to the *Proposed Real-Time Reporting Rule*, counterparties to swap transactions are required to report data relating to “reportable swap transactions,” defined as any executed swap, novation, swap unwind, partial novation, partial swap unwind or such post-execution event that affects the price of a swap in real-time. The *Proposed Real-Time Reporting Rule* applies to *all* swaps, whether cleared or uncleared and whether or not they are executed on a SEF, DCM, or off-facility.¹⁸

1. Novations, Partial Novations, and Post-Execution Events.

a. Novations, Partial Novations, and Cancellations.

A novation is generally defined as a mutual agreement among all concerned parties to substitute a new contract in place of a valid existing agreement.¹⁹ Novation may be accomplished by a substitution of another for one of the parties to the contract, or substitution of the performance to be made under the contract. The effect of a novation that substitutes one party for another is to bind the substituted party to all the terms of the original contract to the same extent as the original party so that the discharged party may not sue or be sued on the original contract.

Given that a novation generally does not involve any change or revision to the original terms of a contract, particularly primary economic terms, the Commission should not require real-time reporting of novated swap transactions. Indeed, there appears to be no justification as

¹⁸ *Id.* at 76,141 n.9.

¹⁹ *See User’s Guide to ISDA 2004 Novation Definition*, International Swaps and Derivatives Association, Inc. This document may be found at <http://www.isda.org/publications/pdf/2004ISDANovDefinitionsUG.pdf>.

to why such information needs to be reported in real-time because such data does not promote price discovery, particularly in that the *original* information will have already been reported by a party to the transaction and publicly disseminated in real-time. In this context, the reporting of novations should be satisfied through requirements to periodically report “state data” pursuant to the *Proposed General Reporting Rule*, rather than through real-time reporting. The resulting delay in reporting of this information would not have an adverse impact on price discovery and would not thwart the market monitoring function of the Commission as it would receive the information with minimal delay and have the ability to delve further into the market activity of any given registered entity at any time (*e.g.*, request additional data, etc.).

In addition, the parties to the transaction prior to and after the novation will be required to maintain and report all data relating to the transaction pursuant to the *Proposed General Reporting Rule*. However, the Working Group submits that once a transaction is novated and notification of the novation has been provided to an SDR or the CFTC, the reporting obligations for the novating party or parties should cease under both the *Proposed Real-Time Reporting Rule* and the *Proposed General Reporting Rule* because, once novated, the transaction is no longer on the novating counterparty’s books. The remaining parties for the novated transaction would determine a new reporting party using the criteria outlined by the Commission in the *Proposed General Reporting Rule*.

b. Post-Execution Events.

As noted above, because the primary purpose of real-time public reporting is to enhance price discovery, real-time reporting should be limited to those post-execution events impacting the broader market for similar swaps, such as events having a material impact on the primary economic terms of the swap itself, which would primarily be correction of errors in price, volume, or tenor, as well as amendments or restatement, of a swap transaction that affect the price of such swap. However, apart from errors or omissions, for which the Commission should provide safe harbor protection, and amendments or restatement, the Working Group is generally unaware of other post-execution events particular to energy markets that would affect price discovery by other market participants.

With regard to cancellations of existing swap transactions, which are not due to an error in the primary economic terms (*i.e.*, price, volume, and tenor), the Working Group respectfully submits that such information need not be reported in real-time, and is more properly submitted in accordance with the periodic reporting requirements specified in the *Proposed General Reporting Rule*.²⁰ For cancellations which are not triggered by such errors, both SDRs and the Commission will receive full and adequate information through reporting in the normal course under the *Proposed General Reporting Rule*.

²⁰ Given that the purpose of the *Proposed Real-Time Reporting Rule*, as provided in Section 727 of the Act, is to enhance price discovery, the Working Group recognizes that real-time price reporting of a cancellation and corrected price information may be appropriate where an error in the primary economic terms occurs.

Likewise, amendments or restatement of non-economic terms and conditions should not require reporting under the *Proposed Real-Time Reporting Rule* given that the express purpose of real-time reporting, pursuant to Section 727 of the Act, is to “make swap transaction and pricing data available to the public . . . to enhance price discovery.”²¹ As such, for purposes of satisfying this price discovery mandate, the Working Group submits that changes only to the primary economic terms of a swap are relevant.

2. Transactions Between Affiliates Should Not Be Considered Reportable Swap Transactions.

Transactions with or between affiliates should not be required to be reported under the *Proposed Real-Time Reporting Rule*.²² In particular, inter-affiliate transactions, which represent intra-corporate allocations of risk, are not appropriate for reporting under the *Proposed Real-Time Reporting Rule*. Requiring the real-time reporting of inter-affiliate transactions will not provide any transparency benefits to swap markets, nor would doing so assist the Commission in addressing systemic risk concerns.²³ Importantly, any related external transaction would be reported in real-time as required under the *Proposed Real-Time Reporting Rule*. Information about transactions among affiliates would be of little value, if any, to persons outside the parent company, and reporting of such transactions would create an unnecessary burden.²⁴

In addition, the Working Group respectfully submits that transactions between affiliates that are organized under the laws of a foreign nation, and that are not located in the U.S., need not be reported in real-time if the transactions are not executed on a CFTC-jurisdictional DCM or SEF, or cleared on a DCO. Pursuant to new CEA Section 2(i), the requirements of Title VII of the Act do not apply to activities outside the U.S. unless those activities “have a direct and significant connection with activities in, or effect on, commerce of the [U.S.],” or contravene rules or regulations the Commission may promulgate to prevent evasion. Although the Commission must determine what activities meet this criterion, the Working Group submits that

²¹ New CEA Section 2(a)(13)(B).

²² The Working Group submits that, if the Commission determines that data about transactions between affiliates is essential to perform its oversight and enforcement duties of a particular company, it has the authority to request specific information from individual companies as necessary rather than have all affiliate transactions reported.

²³ Price reporting services generally exclude inter-affiliate transactions in their price calculations because such transactions lack relevance and/or value in the pricing of affiliate transactions. *See, e.g.*, Platt’s Methodology & Specifications Guide: North American Electricity (Dec. 2010) and Platt’s Methodology & Specifications Guide: North American Natural Gas (Aug. 2010) (neither reporting guide requests submission of data related to affiliate transactions).

²⁴ In other regulatory contexts, physical gas and power transactions with affiliates are not currently reported to index developers pursuant to Federal Energy Regulatory Commission regulations. *See, e.g.*, 18 C.F.R. § 260.401 (FERC Form No. 552); *Transparency Provisions of Section 23 of the Natural Gas Act* (Order No. 704-A), 124 FERC ¶ 61,269 (Sept. 18, 2008) (excluding from Form No. 552 reporting volumes associated with affiliate transactions).

the transactions between foreign affiliates described above do not have a direct and significant connection with activities in, or effect on, U.S. commerce.

C. REPORTING RESPONSIBILITIES.

The Working Group supports the Commission's position that SEFs and DCMs are the appropriate entities to be responsible for the real-time reporting of standardized transactions executed on-facility. Indeed, the Working Group agrees with the Commission's conclusion that, with respect to standardized swaps that are executed on a swap market (*i.e.*, SEF or DCM), the transacting parties' real-time reporting and dissemination requirements under the Act are satisfied.²⁵

With respect to off-facility transactions, the *Proposed Real-Time Reporting Rule* places the requirement to report swap transaction and pricing data in real-time to a registered SDR "in a manner similar to that in which all swap transaction information for uncleared swaps would be reported to a registered SDR pursuant to Section 4r(a)(3) of the CEA."²⁶ The Working Group generally supports this approach but for one specific type of off-facility transaction – swaps executed off-facility, but cleared through a derivatives clearing organization ("DCO").

The Working Group recognizes the Commission has chosen to exclude DCOs from the reporting responsibilities of the *Proposed Real-Time Reporting Rule*.²⁷ However, the Working Group believes that, if a DCO clears a swap executed off-facility, then the DCO is in the best position to report data related to the transaction for dissemination in real-time. To the extent the Commission is concerned that there is a time lag between execution and clearing that would impede the price discovery goal of the Act, the Working Group respectfully submits that the time between execution of the over-the-counter ("OTC") swap and its subsequent clearing on a DCO is quite narrow. Indeed, if the subsequent clearing of a swap is a term or condition of the swap, then it is likely that the clearing will happen simultaneously with its execution, as the parties to the trade conditioned the formation of a binding transaction on the acceptance of such transaction

²⁵ *Proposed Real-Time Reporting Rule* at 76,142.

²⁶ *Id.* at 76,142. Section 4r(a)(3) of the CEA provides that for swaps in which only one counterparty is a Swap Dealer or major swap participant ("MSP"), the Swap Dealer or MSP is required to report the swap to a registered SDR. For swaps in which only one counterparty is a Swap Dealer and the other is an MSP, the Swap Dealer is required to report to a registered SDR. For all other swaps, Section 4r(a)(3) provides that the counterparties to the swap shall select a counterparty to report to a registered SDR. *See also Proposed Real-Time Reporting Rule* at 76,172 (proposed CFTC Rule 43.3(3)).

²⁷ *Proposed Real-Time Reporting Rule* at 76,142 n.16: "Section 1a(40) of the CEA, as amended by Section 721(a) of the Dodd-Frank Act, defines "registered entity" to include SEFs, DCMs and SDRs, but does not include swap dealers and MSPs. Section 1a(40) also defines registered entity to include DCOs. *The Commission has determined not to apply this requirement to DCOs because it believes that the value of timely public dissemination outweighs the benefit of waiting until a swap is presented to a clearing organization.*" (Emphasis added). *See also Id.* at 76,146 n.34.

for clearing.²⁸ As such, requiring DCOs to report such transactions is consistent with the price discovery benefits sought by the Commission and required by the Act.

D. SCOPE AND DEFINITIONAL CONCERNS.

The Working Group submits comments on the following issues identified by the Commission regarding the scope and definition of various matters.

1. Definition of Asset Classes.

The Working Group respectfully submits that asset classes should be defined in a granular manner that would reflect the different types and classes of swaps within a given category of swaps. Rather than generally defining “other commodity swaps” as energy swaps, metal swaps, etc., the Commission should instead recognize that within each general category of swaps there are numerous separate and distinct types of swaps. For instance, in energy markets there are several different types of swaps, such as power swaps, natural gas swaps, crude oil swaps, etc. Defining asset classes in a granular manner is particularly important in the energy sector where energy companies trading in multiple energy commodity swaps may have separate information technology systems for each distinct type of commodity. Furthermore, the Working Group believes that determining how asset classes are defined should be applied consistently across the Commission’s proposed rules, particularly the Commission’s proposed rule further defining the term “Swap Dealer.”²⁹

2. Confirmation, Affirmation, and Execution.

The *Proposed Real-Time Reporting Rule* defines the terms “confirmation,” “affirmation,” and “execution,” but the proposals discussion of these concepts and usage of the terms in the proposed regulations is less than clear. Specifically, it appears that “execution,” which is defined in a relatively straight-forward manner (*i.e.*, the point at which there is a legally binding obligation), is the only term with substantive meaning with respect to the proposed real-time reporting requirements. However, the Working Group believes that the Commission must permit market participants to use a level of commercial reasonableness in determining an official time of execution, particularly when transactions are being entered into via oral agreement. The Commission should not be placing an additional burden on traders to “agree” to an execution

²⁸ The Working Group recommends that the Commission consider establishing a framework by which DCOs should be required to report swaps executed off-facility if cleared within a reasonable time. For example, if an off-facility swap is cleared within 15 minutes of execution, then the DCO should be responsible for reporting. Clearing beyond such a deadline would be treated as a novation and be reported under the State Data requirement of the *Proposed General Reporting Rule*.

²⁹ See *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,”* Notice of Proposed Rulemaking, 75 Fed. Reg. 80,174 (Dec. 21, 2010) (“*Definitions NOPR*”). The Working Group plans to submit detailed comments to the *Definitions NOPR*, including comments specifically regarding how asset classes are defined for purposes of being applied to the definition of “Swap Dealer.”

time, particularly given that the only way to verify the execution time is to require back office personnel to later review the tapes to determine it.

E. RECORDKEEPING REQUIREMENTS.

1. Using Section 1.31 of the Commission's Regulations.

The Commission solicits comment on whether the proposed recordkeeping requirement under the *Proposed Real-Time Reporting Rule* should be the same as Section 1.31 of the Commission's regulations. The Working Group submits that Section 1.31 is outdated and inappropriate for application to the proposed recordkeeping rules. In its present form, its application to the real-time recordkeeping requirements would be severely onerous and difficult to comply with, making it an unworkable model for these purposes. Specifically, Section 1.31 appears to apply to written documents, including electronic images of such documents, and does not seem suitable for electronic records such as those in a trading system, that do not originate from a written document. As such, to be made workable for purposes of complying with the proposed obligations set forth in the *Proposed Real-Time Reporting Rule*, Section 1.31 would require significant revision to reflect current technologies and industry practices relating to digitized data storage.

2. Retention of Records.

The Working Group strongly recommends that the Commission adopt a single regulation to cover the retention of records for purposes of the *Proposed Real-Time Reporting Rule*, *Proposed General Reporting Rule*, and *Proposed Daily Trading Records Rule*. Alternatively, the Working Group respectfully requests the Commission to revise the timing for when the proposed five-year retention period would be triggered under the *Proposed Real-Time Reporting Rule*. Proposed CFTC Rule 43.3(i) provides that “[a]ll data related to a reportable swap transaction shall be maintained for a period of not less than five years *following the time at which such reportable swap transaction is publicly disseminated pursuant to this part.*”³⁰

The Working Group asserts that the Commission's decision to tie the commencement of a reporting party's recordkeeping obligation to an action of the SDR or third party service provider will not only prove cumbersome but also is inconsistent with the proposed retention requirements set forth in the *Proposed General Reporting Rule*. In particular, it will prove difficult for the obligated reporting party to know the timestamp associated with the public dissemination of the swap data by the SDR or third party service provider. This approach is impractical and could lead to inadvertent errors or unnecessary costs, particularly if the reporting party has to establish a feed by which to receive a timestamp for each reportable swap regarding dissemination from the SDR or third party service provider. Given these issues, the Working Group recommends that the retention requirement commence at deal end, as proposed in the *Proposed General Reporting Rule*.

³⁰ *Id.* at 76,173 (proposed CFTC Rule 43.3(i)).

In addition, the Working Group seeks clarification as to what “all data” means for end-users. Specifically, the *Proposed Real-Time Reporting Rule* requires that “all data related to a reportable swap . . . be maintained.”³¹ This requirement further sets forth what is required to be maintained by SEFs and DCMs, as well as Swap Dealers and MSPs, but does not provide any detail for end-users.

3. Cost and Implementation Concerns.

The Working Group respectfully submits that the costs and burdens associated with requiring Non-bank Swap Dealers and end-users to comply with the proposed record retention requirements clearly outweigh any demonstrable benefit to swap markets.³² To facilitate the cost-effective implementation of Title VII, as encouraged by President Obama in the recently-issued supplement to Executive Order No. 12866, the *Proposed Real-Time Reporting Rule* should be revised to (i) reflect the unique operational characteristics and abilities of different participants in swap markets for physical commodities, and (ii) recognize that (a) the technology necessary to comply with this rule may not exist and (b) any benefits to swap markets associated with implementing such technology, when available, do not justify the costs imposed on market participants. Accordingly, the Commission should further evaluate the actual cost, availability of technology, and ability of market participants to develop and deploy the technology required to comply with the record retention requirements set forth in the *Proposed Real-Time Reporting Rule*, *Proposed General Reporting Rule*, and *Proposed Daily Trading Records Rule* before issuing any final rule in these matters.

F. SWAP TRANSACTION & PRICING DATA TO BE PUBLICLY DISSEMINATED IN REAL-TIME.

1. Confidentiality of Reported Information.

As established by Section 727 of the Act, new CEA Section 2(a)(13)(E) requires that:

[w]ith respect to the rule providing for the public availability of transaction and pricing data for swaps . . . the rule promulgated by the Commission shall contain provisions . . . to ensure such information does not identify the participants³³

³¹ *Id.* (emphasis added).

³² The Working Group, concurrently with the submission of these comments, has filed comments regarding specific cost and implementation concerns in response to the Commission’s *Proposed General Reporting Rule* and *Proposed Daily Trading Records Rule*.

³³ 7 U.S.C. § 2(a)(13)(E)(i). New CEA Section 2a(13)(C)(iii) also provides that, with respect to swaps that are not cleared at a registered DCO and which are reported to a SDR or the Commission, “the Commission shall require real-time public reporting for such transactions, *in a manner that does not disclose the business transactions and market positions of any person.*” (Emphasis added).

However, the Commission's proposed real-time reporting regulations fail to follow this statutory duty to protect the confidentiality and anonymity of market participants. Indeed, the Commission readily concedes in the *Proposed Real-Time Reporting Rule* that:

. . . it is conceivable that in situations where few parties trade a particular type of underlying asset, the description of that asset may inadvertently reveal the identity of one or more party(ies) to the swap.

For off-facility swaps, particularly other commodity swaps with very specific underlying assets, market participants may be able to infer the identity of a party or parties to a swap based on the description of the underlying asset.³⁴

To the extent the Commission adopts a final rule consistent with this proposal, it would violate the Act.

Despite this inconsistency, the Working Group nevertheless offers that the Commission can ensure anonymity by not requiring the dissemination of any information for non-standardized, bespoke transactions executed off-facility. As noted in Section III.A.2.c., above, requiring the real-time reporting and dissemination of such transactions is unnecessary given that non-standardized swaps do not perform a price discovery function because the primary economic terms are customized to address bespoke risk.

Regarding protecting the identity of market participants, the Commission requests comment as to whether any additional data fields should be allowed to have less specificity to ensure anonymity of the parties, specifically delivery location for commodity-related swaps.³⁵ The Working Group agrees that delivery location is probably more sensitive for commodity-related swaps than other asset classes because, as the Commission recognizes, the delivery location can reveal the identity of market participants, particularly for off-facility swaps, and therefore the Commission recommends using a broader geographic region rather than a specific delivery point.³⁶ The Working Group supports the use of less-specific data, particularly with respect to location, in order to maintain the confidentiality of the parties.

Furthermore, for uncleared, bespoke swaps, credit support arrangements are negotiated between the parties. Given the customized nature of these transactions, credit is generally factored into the overall price of the swap. If the confidentiality of this information is not adequately protected, other market participants may be able to reverse engineer the credit pricing and other information in a manner that undermines the deal.

³⁴ *Proposed Real-Time Reporting Rule* at 76,150.

³⁵ *Id.* at 76,150-151.

³⁶ *Id.*

2. Form and Format of Swap Transaction and Pricing Data.

a. In General.

The Working Group encourages the Commission to require all registered SDRs and third party service providers to adopt a common format for swap transaction and pricing data submitted by market participants. Implementation costs for market participants will increase dramatically if each SDR or third party service provider is allowed to adopt its own format for data submission on swap transactions. The Working Group realizes that the Commission may not be in the best position to prescribe the format, but it should nevertheless require registered SDRs and third party service providers to collectively develop and adopt a uniform format.

The Working Group also urges the Commission to develop a standardized and uniform approach to information published by SDRs and third party service providers. Doing so will permit traders to better understand information published by SDRs and third party service providers, thereby enhancing price discovery and transparency.

b. Underlying Asset and Tenor Data Fields.

The adoption of clear and standardized rules regarding the specificity of data to be reported is of critical importance to both market participants and the Commission. Particularly from an IT viewpoint, if multiple or complicated rules are implemented, it will increase reporting costs and implementation burdens. Moreover, reporting of less specific data will not provide much value; thus, for data fields in which the Commission may be willing to accept reporting of less-specific data, the Commission should consider whether such fields are even necessary to report at all, particularly given that the purpose of Section 727 of the Act is to enhance price discovery. Furthermore, the Working Group believes that determining how asset classes are defined should be applied consistently across the Commission's proposed rules.

G. THE COMMISSION SHOULD ENSURE STANDARDIZED AND UNIFORM DATA FIELD REQUIREMENTS.

The Commission solicits comments regarding numerous aspects of the data fields set forth in the *Proposed Real-Time Reporting Rule*. As a general matter, the Working Group submits that the data fields should be standardized and should mirror other rules. The Working Group believes that the data fields listed in Table A-1 of the *Proposed Real-Time Reporting Rule* are generally reasonable but in some cases, unnecessary, or needs to be improved. No additional fields should be added unless they would clearly enhance price discovery. To be sure, including other data fields or requiring more information runs the risk of adding unnecessary complexity to the real-time reporting regime. Indeed, too much information in real-time would confuse, rather than enhance, price discovery.

In terms of specific, existing proposed data fields, the Working Group submits the following:

- Swap Instrument Field: Needs to be standardized; otherwise the real-time data will be of little value to the market or the Commission.
- Additional Price Notation Field: Data is likely to have little application for most commodity transactions, and it will be challenging to compute and populate in real-time.
- Notional Amount Field: For commodities, reporting the notional amount in total dollar value provides little value in terms of price discovery to the market. Notional quantity reported in units of the underlying quantity (*i.e.*, MMBtu or MWh) would provide market participants with more relevant information on the size of a given trade or the level of market activity as a whole.
- Indication of Other Price Affecting Terms: The Commission should reconsider whether this data field is necessary given that the data field applies only to non-standardized or bespoke swaps. As explained in Part III.A.2.c., above, the Working Group submits that this data field is not necessary because only price and volume should be required, if anything, for bespoke deals. Even if market participants transacting in such deals complete all the proposed data fields and check “other price affecting terms,” there remains little price discovery value in the information because there are other terms not disclosed that may affect price.
- Execution Time Stamp: This data field should be modified to delete the requirement that the time of execution be displayed to the second. The Working Group generally believes that an hour and minute requirement is reasonable; however, displaying time of execution to the second is unnecessary and not aligned with current industry practice.
- Price-Forming Continuation Data: This data field should be modified so as not to require novations, partial novations, and other post-execution events. Rather, for the reasons denoted in Part III.B., above, this data field should be revised to only require amendments, errors, or omissions that have a material impact on the primary economic terms of the transaction.
- Contract Type: The Working Group submits that this data field should be modified to delete “options” (to the extent the Commission is referring to physical options) and “forwards,” given that the Commission does not have jurisdiction over physical transactions.

H. BLOCK TRADES AND LARGE NOTIONAL SWAPS.

The Commission's proposal to require the public dissemination of block trades 15 minutes after execution is problematic given that such a short timeframe would negatively affect the willingness of counterparties to enter into block trades and large notional swaps. The ability of Swap Dealers and other counterparties to enter into transactions to lay off the risk of large swap trades is known as "hedge liquidity." If other market participants know that a counterparty needs to enter into transactions to lay off the risks from a large trade, prices for the swaps necessary to lay off that risk will increase, resulting in a loss of hedge liquidity. In the energy commodities markets, Swap Dealers and other market participants are generally unable to lay off the risk associated with a sizeable transaction within 15 minutes, and thus the proposed 15-minute timeframe would undermine their ability to do so in an economic manner. As a result of the loss of hedge liquidity, the affected market participants are likely to (i) choose not to enter block trades, or (ii) increase their pricing to reflect such risk, with the price increases being borne by the consumer. The Working Group therefore recommends the Commission to permit next business day reporting to constitute real-time reporting for block trades, as described in Part III.A.3, above.

I. REPORTING PARTIES SHOULD NOT BE REQUIRED TO PAY SDRS FOR REPORTING DATA.

Proposed CFTC Rule 43.3(j) permits a SDR to assess charges against reporting parties that submit data to the SDR. The Working Group submits, however, that reporting parties should not be charged for reporting data given that, but for the efforts of the reporting parties, the data would not be available in the first instance for the market's benefit. Indeed, given the significant resources reporting parties will expend to develop and deploy the necessary IT systems and software, the service provided by SDRs should be free for reporting parties that provide the data. Moreover, SDRs are likely to earn substantial revenues from the subsequent sale of information submitted by reporting parties, and thus the collection of fees from reporting parties would be an additional windfall to SDRs. To the extent SDRs earn substantial revenues from the subsequent sale of pricing data, the Commission should collect a portion of such revenues. Under this scenario, any payments collected by the Commission should go toward offsetting the costs of implementing Title VII of the Act.

IV. RESPONSES TO SPECIFIC REQUESTS FOR COMMENTS.

The Working Group respectfully requests the Commission fully consider the critical policy issues and principles addressed above with respect to real-time reporting. Once these overarching concerns have been addressed, the Working Group recommends the Commission to then solicit further input from various segments of the swap markets to develop consensus on the many technical issues raised by the Commission's specific requests for comment (*i.e.*, specific data fields and technical specifications). Doing so will ensure that the technical details fit within the larger scope of the Commission's real-time reporting regime.

Nevertheless, the Working Group provides the following responses to certain questions set forth in the *Proposed Real-Time Reporting Rule*.

A. SWAP TRANSACTION & PRICING DATA TO BE PUBLICLY DISSEMINATED IN REAL-TIME - CONFIDENTIALITY.

Question: In what situations, if any, would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the underlying asset(s) of a swap and how should such underlying asset(s) be reported? Please provide specific examples.

Response: If public dissemination will reveal the identity of a party, it is appropriate to report less specificity in the underlying asset(s) of a swap.

Question: Do commenters believe that it is appropriate to allow for less specificity than the month and year (as described in appendix A to proposed part 43) for the tenor of the swap? If not, why? If so, in what situations would it be appropriate for a reporting party to report, for the purposes of public dissemination, less specificity in the tenor of a swap and how should the tenor be reported? Please provide specific examples.

Response: Reporting and public dissemination should follow the convention in which products are traded. Energy products, in particular, often trade in seasonal strips. Public dissemination of reported data should clearly differentiate between pricing and terms associated with an individual pricing period and pricing and terms for a particular pricing period derived from a transaction involving multiple pricing periods.

Question: Should there be an indication to the public that a description of the underlying asset or tenor lacks specificity in order to protect the identities of the parties to the swap?

Response: The Working Group supports the proposal requiring an indication to the public that a description of the underlying asset or tenor lacks specificity to protect the identities of the parties to a swap transaction.

B. SWAP INSTRUMENTS AND REQUIRED DATA FIELDS.

Question: Do commenters agree with the proposed data fields that would be required to be reported in real-time? If not, what additional data fields should be reported and why? How would public dissemination of these data fields enhance transparency and price discovery?

Response: The CFTC should consolidate all reporting requirements into a single rule that defines data fields to be reported and specifies timeframe for reporting each data field.

Question: Do commenters agree that tenor should only be reported with month and year? Is this a useful method for protecting the anonymity of the counterparties? Does this provide an adequate level of transparency?

Response: Reporting and public dissemination should follow the convention in which products are traded. Energy products, in particular, tend to trade in seasonal strips except for short tenors. Accordingly, it may be beneficial to report seasonal strips rather than month for certain transactions.

Question: Do commenters agree with the proposed method for real-time reporting and public dissemination of non-standardized swaps? Should the “indication of other price affecting term” data field contain more specificity as to what type of term is affecting the price? If so, what additional information should be included and how should it be reported?

Response: Additional detail beyond a “standardized/non-standardized” notation is of little value in real-time. Further, as discussed in Part III.A.2.c., above, real-time reporting data for non-standardized swaps provide little, if any, value for purposes of price discovery.

Question: Would public dissemination of information concerning non-standardized swaps materially reduce market liquidity? If so, why?

Response: In real-time, market participants have limited capacity to evaluate a series of data elements. Dissemination of too much data in real-time could be detrimental. Public dissemination of data related to non-standardized or bespoke swaps provides little value for purposes of price discovery.

Question: Would information concerning the type of counterparties that enter into a swap enhance transparency and price discovery (e.g., whether the counterparty is a swap dealer, MSP, or not)? If so, why?

Response: As stated above, in real-time, market participants have limited capacity to evaluate data elements. Dissemination of too much data in real-time could be detrimental to price discovery.

Question: Would separately reporting embedded option information enhance price discovery and transparency? If not, why?

Response: Embedded option information is too complex to be analyzed effectively in real-time and, therefore, is not beneficial for price discovery.

Question: What would be the costs of reporting and publicly disseminating the proposed data fields? What would be the benefits? Please provide examples, if possible.

Response: It is difficult to develop a monetary cost estimate for the reporting and dissemination of the proposed data fields. The Working Group provides under Part III.E.3, above, additional discussion regarding the Working Group's cost of implementation concerns.

Question: Should the portion of the amount reported in the additional price notation data field that relates to the creditworthiness of counterparty be extracted and reported as a separate data field? If so, why? Should the creditworthiness of counterparty be reported in some other way?

Response: Creditworthiness of the counterparty should not be reported or disseminated in real-time. Market participants determine creditworthiness subjectively and, for purposes of price discovery, can assume that any executed transaction will be supported by adequate credit arrangements.

C. METHOD, RESPONSIBILITY, AND TIMING FOR REAL-TIME REPORTING.

Question: Should the Commission establish maximum timeframes in which reporting parties must report to a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real-time (e.g., as soon as technologically practicable but no later than five minutes)? If so, what should the maximum timeframes be and how should they be determined?

Response: The Commission should refrain from establishing specific timeframes. Doing so may create an unfair advantage for entities that have more advanced reporting systems in place and thus are able to report data more rapidly. Similarly, maximum deadlines could subject entities with less-advanced systems to compliance violations if they are technologically unable to meet the reporting deadline. The Working Group provides under Part III.A.3, above, additional discussion regarding the Working Group's comments on what is "technologically practicable."

Question: Is there a better or more efficient alternative to have swap transaction and pricing data reported by a reporting party to a registered SDR for public dissemination in real-time? If so, what would that be?

Response: An alternate approach to reporting swap transaction data may be for the Commission to establish a website or market data service that captures on-market swap data and feeds that data into SDRs for public dissemination. Any such service should allow market participants to download their off-market transactions at the end of the day.

Question: Should the Commission's final rules address the reporting and public dissemination of swap transaction and pricing data for swaps, which are transacted between two non-U.S. persons? If so, how should the Commission's final rules address these situations?

Response: The requirements in the final rule should be consistent with those of the *Proposed General Reporting Rule* with respect to the treatment of swaps transacted between two non-U.S. persons.

Question: In off-facility swap transactions where a non-U.S. swap dealer or non-U.S. MSP transacts with a U.S.-based end-user, which party to the swap should have the obligation to report to a real-time disseminator? Are there other situations involving non-U.S. parties where this issue may arise? How should the Commission address these situations in its final rules?

Response: Non-U.S. swap dealers and MSPs should be subject to the same requirements as domestic swap dealers and MSPs. The reporting obligations should not change on the basis of the location or domicile of the swap dealer or MSP, and no additional burdens should be placed on end-users or other market participants. The requirements in the final rule should be consistent with those of the *Proposed General Reporting Rule* with respect to the treatment of swaps transacted between non-U.S. swap dealers or non-U.S. MSPs with U.S.-based end-users.

Question: Should swap markets have requirements regarding hours of operation for the purposes of the real-time reporting requirements?

Response: The Working Group believes that swap market hours of operation should support efficient global trading.

Question: Do commenters agree that registered SDRs that accept and publicly disseminate swap transaction and pricing data should have the capability to receive and hold such data in queue during special closing hours? If not, why and are there any alternatives?

Response: SDRs should have the capability to queue data. This would simplify the real-time reporting requirements.

Question: Should there be an alternative method of reporting and subsequently disseminating swap transaction and pricing data in real-time when no registered SDR is available to accept and publicly disseminate such data? If there is no registered SDR available and there is no third-party service provider available to accept and publicly disseminate data for a swap transaction, what should the real-time reporting requirement be for such transaction?

Response: If there is such little activity that no SDR can make a business case to accept a swap for reporting, it is difficult to conceive of meaningful benefits to be achieved through real-time reporting and dissemination of the trade data. The Working Group believes that there should be no real-time reporting requirement for any such transaction.

D. SWAP TRANSACTION & PRICING DATA TO BE PUBLICLY DISSEMINATED IN REAL-TIME - NOTIONAL QUANTITY.

Question: Should registered SDRs publish the aggregate volume for each category of swap instrument on a daily basis? If so, why? If not, why not?

Response: The Working Group submits that daily publication of volume for each category of swap instrument by individual SDRs may be problematic, and suggests the publication of aggregate volume for each category of swap combined over all SDRs.

V. CONCLUSION.

The Working Group supports tailored regulation that brings transparency and stability to the Swap markets in the United States. We appreciate the balance the Commission must strike between effective regulation and not hindering the uncleared energy-based swap markets. The Working Group offers its advice and experience to assist the Commission in implementing the Act.

The Working Group expressly reserves the right to supplement these comments as deemed necessary and appropriate.

Please let us know if you have any questions or would like additional information.

Respectfully submitted,

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