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Senior Vice President and
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VIA Electronic Submission

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

Re: Comments of Noble Energy, Inc. on the CFTC Proposed Rule "End-User Exception to Mandatory Clearing of Swaps"

Dear Mr. Stawick:

Noble Energy, Inc. ("Noble Energy") respectfully submits the following comments with regard to the proposed regulations relating to the end-user clearing exception provided in Section 723 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").¹ Section 723 of the Dodd-Frank Act revises sections of the Commodity Exchange Act ("CEA") creating requirements for the mandatory clearing of most swaps while providing clearing exemptions for end-users.² The Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed regulations to implement the elective exception to mandatory clearing for certain swaps that were published in the Federal Register on December 23, 2010.³ Noble Energy appreciates the opportunity to comment.

Noble Energy is an end-user of commodity swaps that are utilized solely to hedge commercial risk. The company does not engage in speculative or proprietary trading and the nature and scale of its hedging activity do not pose any "systemic risks." Noble Energy believes that the Commission's proposed definition of the term "hedge or mitigate commercial risk" is appropriate because it will permit companies like Noble Energy to use the end-user exception to mandatory swap clearing in a manner fully consistent with the language and intent of the Dodd-Frank Act.

Noble Energy acknowledges the transparency and market integrity rationales behind requiring an end-user to notify the CFTC how it "meets its financial obligations

¹ Public Law No. 111-203, (2010)

² Dodd-Frank § (as codified at 7 U.S.C. § 2(d) et seq.).

³ *End-User Exception to Mandatory Clearing of Swaps*, 75 Fed. Reg. 80747 ("End-User Exception regulations" or "proposed rule").

associated with non-cleared swaps."⁴ Noble Energy, however, urges the Commission to implement any such requirement in a more reasonable fashion than has been proposed.

I. Description of Noble Energy

Noble Energy is a leading investment grade, independent U.S. energy company engaged in worldwide oil and natural gas exploration and production. Noble Energy's commodity hedging program enables the company to reduce exposure to price volatility, ensure predictability of cash flow and earnings, secure revenue to support capital investment and major project economics and protect its balance sheet and multi-year investment programs in exploring for, and producing, oil and natural gas.

II. Information Required for Notification to the CFTC

Section 39.6 (b) of the proposed End-User Exception regulations requires an end-user not only to notify the Commission of "how it generally meets its financial obligations associated with non-cleared swaps,"⁵ but also to provide "ten additional items of information."⁶ The ten additional items of information relate to the meeting of financial obligations, the identity and status of the person electing the exception, and the hedging or mitigating of commercial risks. If the counterparty electing to use the exception is an SEC filer, this additional information also would include: the electing counterparty's SEC Central Index Key number and whether the appropriate committee of the board of directors of that counterparty has reviewed and approved the decision to enter into swaps that are subject to the clearing exception.⁷ This information, in all but one instance, is wholly non-transaction specific and is already made available as discussed below.⁸

Specifically, the proposed rule would require an end-user to explain how it will mitigate credit risk associated with non-cleared swaps. To fulfill this requirement an end-user would report information to the swap data repository ("SDR") or the CFTC if no SDR is available, in addition to the information already required under the Commission's proposed rules for swap data recordkeeping and recording. Requiring this additional information for each and every trade, even in a "check-the-box" format, would serve no real purpose and would not foster any greater transparency in actuality.

The proposed End-User Exception regulations explain that "a principal feature distinguishing cleared swaps from non-cleared swaps is that non-cleared swaps do not have a uniform method of mitigating counterparty credit risk,"⁹ and therefore the end-user will need to provide how it meets its financial obligations. Noble Energy, as do other end-users, currently use International Swaps and Derivatives Association ("ISDA")

⁴ *Id.* At 80748.

⁵ Proposed Rule at 80749.

⁶ *Id.*

⁷ See proposed rule at 80750, 80757. In this regard, the proposed regulation needs to be rewritten to make clear, as the preamble states and Noble Energy understands is the intent of the CFTC, that a committee of the board of directors is required to review and approve only a company's entire hedging program that includes entering into swaps subject to the clearing exception and not each individual non-cleared swap made pursuant to the company's overall trading program. The latter approach would be a wholly unreasonable requirement, if not a literal impossibility.

⁸ The only item that is arguably transaction specific is whether the transaction is entered into solely to hedge commercial risk, which, for Noble Energy, is the case for all of its swaps.

⁹ *Id.*

Agreements to execute their non-cleared swaps. The ISDA Agreement sets standard terms and conditions of the transaction and provides representations and warranties of the end-user and counterparty's credit exposure. These agreements are uniformly used for all non-cleared swaps and are not filed on a transaction-by-transaction basis. Hence, the credit security methodology, as set forth in an ISDA Agreement, remains constant with each trade. As such, it would be wholly unnecessary to place an additional reporting burden upon an end-user by requiring it to also file a "Financial Obligation Notice," as set forth in §39.6 (b)(5) of the proposed End-User Exception regulations. An end-user's declaration of how it is meeting its financial obligations in a non-cleared swap is accomplished through the requirements of the ISDA Agreement. Therefore, transparency already exists and a requirement for an end-user to file the CFTC's Financial Obligation Notice should *only* be when, and if, the end-user's security methodology for meeting non-cleared swap financial obligations has *changed*.

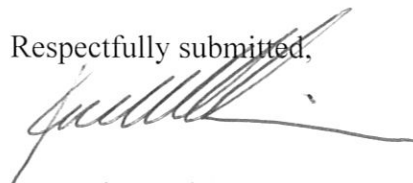
Requiring an end-user to report the ten additional items is redundant and will add administrative costs that should not have to be incurred. Noble Energy's responses to the "check-the-box" questions, for example, would remain exactly the same for each and every transaction. Hence, it would not enhance the transparency sought by the Dodd-Frank Act and would only burden the CFTC, who would be handling the reports, with no added value.

III. Conclusion

The definition of the term "hedging or mitigating commercial risk" as used in the proposed End-User Exception regulations is appropriate and should be adopted as written. Noble Energy, however, strongly urges that an end-user who engages in non-cleared swaps should be required to notify the Commission of how it generally meets its financial obligations *only* when the end-user's security methodology for swap trading changes. We also encourage the Commission to dispense with the reporting of non-transaction specific information with each swap. As explained herein, the proposed rule in both regards would set forth requirements that are redundant and unnecessary.

Please contact me at (281) 872-3100, if you have any questions regarding these comments.

Respectfully submitted,



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