March 28, 2011

<u>VIA ELECTRONIC DELIVERY</u>

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

Re: Comments on Proposed Rule Regarding Position Limits for Derivatives (RIN 3038-AD15 and 3038-AD16)

Dear Mr. Stawick:

I. INTRODUCTION.

BG Americas & Global LNG ("BGA") respectfully submits these comments in response to the Notice of Proposed Rulemaking, *Position Limits for Derivatives* ("Proposed Rule") issued by the Commodity Futures Trading Commission ("CFTC" or "Commission") on January 26, 2011.[1] In the Proposed Rule, the Commission seeks to establish position limits on 28 commodity futures and option contracts on exempt and agricultural commodities, and on "economically equivalent" swaps, including four major energy commodities.[2] BGA respectfully submits these comments primarily to address the adverse impacts that the Proposed Rule would have on the ability of energy market participants, including BGA, to manage the dynamic and complex risks associated with a physical energy business.

The Commission's regulations implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") will have a profound impact on the way in which BGA and other end-users manage their commercial risk with the use of commodity swaps and other derivatives. Therefore, BGA appreciates the opportunity to comment on the Proposed Rule.

BGA is a business unit of the BG Group plc ("BG Group"), a global natural gas company based in the United Kingdom and a major producer and supplier of natural

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[1] *Position Limits for Derivatives*, 76 Fed. Reg. 4,752, RIN 3038-AD15 and 3038-AD16 (Jan. 26, 2011).

[2] Hereinafter, the core referenced futures contracts and economically equivalent swaps identified in the Proposed Rule are collectively referred to herein as "Referenced Contracts."

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gas in the United States. BGA is responsible for all of BG Group's operations in North and South America, the Caribbean, the company's global marine operations and its global liquefied natural gas ("LNG") operations.

BG Group owns natural gas producing assets in Louisiana and Texas known as the Haynesville Shale and in Pennsylvania and West Virginia known as the Marcellus Shale. BG Group is one of the largest suppliers of LNG to the U.S. and owns import capacity rights at Southern Union Company's Lake Charles, Louisiana ("Lake Charles") and El Paso Corporation's Elba Island, Georgia import terminals. BG Group also has an interest in associated liquids that are extracted from imported LNG at the Lake Charles LNG import terminal. BG Group's subsidiary, BG Energy Merchants, LLC ("BGEM"), is a major marketer of natural gas and electricity throughout the U.S., natural gas liquids in the isolated market between Texas and Mississippi, and oil produced by BG Group in offshore Brazil to worldwide markets. BGEM regularly engages in swaps to hedge the commercial risk associated with BG Group's production and marketing activities relating to its natural gas, liquids and oil businesses.

II. <u>EXECUTIVE SUMMARY</u>.

BGA is supportive of Congress' efforts under the Dodd-Frank Act to reform over-the-counter ("OTC") swap markets in order to prevent the excessive risk taking, leverage and market abuses that led to the financial crisis of 2008. If properly designed and implemented consistent with the authority granted to the Commission under Section 4a of the Commodity Exchange Act ("CEA"), federal speculative position limits for the Referenced Contracts identified in the Proposed Rule should not unnecessarily disrupt today's highly efficient energy markets.

However, as discussed in Sections III.A-C, below, Congress did not mandate the establishment of position limits for such contracts. Moreover, it did not authorize the Commission to impose them without performing any substantive analysis establishing the need for, or appropriateness of, the proposed limits. CEA Section 4a(a)(1), which was not amended by the Dodd-Frank Act, establishes a condition precedent requiring the Commission to make a finding supporting the imposition of position limits to prevent excessive speculation that is based upon objective data before it establishes such limits. However, the Proposed Rule is completely devoid of such data. Accordingly, BGA submits that the instant proceeding should be stayed until such time that the Commission has gathered and analyzed actual data to determine whether positions limits are appropriate for each Referenced Contract.

Should the Commission move forward and issue a final rule in this proceeding, BGA is concerned that the proposed position limits will reduce liquidity in markets for

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the Referenced Contracts. Sections III.D-G, below, raise concerns that the unduly restrictive nature of the proposed position limits will impair the ability of end-users, such as BGA, to effectively and efficiently hedge commercial risk exposure or engage in meaningful price discovery for the Referenced Contracts. Section III.H, below, identifies several flaws in the proposed definition of a bona fide hedging transaction that threaten its utility for end-users in the energy sector. Moreover, this Section highlights concerns that the process for implementing and administering exemptions for bona fide hedging transactions is (i) commercially impracticable, and (ii) imposes a significant and disproportionate compliance burden on market participants relying on such exemptions.

If adopted in its current form, the Proposed Rule will create uncertainty and increase compliance risk. For example, the lack of any meaningful guidance in the Proposed Rule identifying the universe of "economically equivalent" swaps that will be paired with the identified core referenced futures contracts will likely result in conflicting and inconsistent interpretations among market participants and CFTC staff regarding what specifically constitutes a Referenced Contract. Section III.I, below, sets forth a proposed open and transparent process for identifying swaps that are deemed to be economically equivalent to a core referenced futures contract. This process is intended to help (i) minimize compliance risk for market participants that must comply with position limits applicable to the Referenced Contracts, and (ii) eliminate uncertainty for CFTC staff that must enforce such limits. On a similar note, Section III.J submits that the deliverable supply methodology adopted by the Commission must be (i) clear and transparent to all market participants, (ii) flexible enough to adapt to the continuing evolution and growth of markets for the Referenced Contracts, and (iii) subject to public notice and comment.

III. <u>COMMENTS</u>.

A. <u>The Proposed Position Limits Have Not Been Supported by Record Evidence as Required by the Dodd-Frank Act</u>.

Section 4a(a)(1) of the Commodity Exchange Act ("CEA") provides the Commission authority to establish position limits "*as the Commission finds* are necessary to diminish, eliminate or prevent" the burden on interstate commerce caused by excessive speculation. Similar discretionary authority to establish position limits is provided to the Commission in CEA Sections 4a(a)(2), (a)(3), (a)(5), and (a)(6), as amended by the Dodd-Frank Act.

The Proposed Rule states that the Commission "is not required to find that an undue burden on interstate commerce resulting from excessive speculation exists or is

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likely to occur in the future in order to impose position limits."[3] The Proposed Rule also states that the Commission is not required "to make an affirmative finding that position limits are necessary to prevent sudden or unreasonable fluctuations or unwarranted changes in prices or otherwise necessary for market protection."[4] Rather, the Commission believes that it has the authority to impose position limits "prophylactically," based on its "reasonable judgment" that such limits are necessary for the purpose of diminishing, eliminating, or preventing such burdens on interstate commerce.

Assuming the Commission's interpretation of its statutory authority to impose position limits "prophylactically" were consistent with the mandates of CEA Section 4a, as amended by the Dodd-Frank Act, the Commission's proposals still must only set such limits as it justifies are *necessary* to diminish, eliminate, or prevent the burden on interstate commerce.[5] As a threshold matter, an administrative order must be supported by actual record evidence and not simply by a desire to address a theoretical potential for abuse or harm to the market.[6] The Court of Appeals for the District of Columbia has stated, "[p]rofessing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decision-making."[7]

Notwithstanding the Commission's argument that it has authority to use position limits absent a specific finding that an undue burden on interstate commerce had actually resulted, the language and intent of CEA Section 4a(a)(1) remains unchanged by the Dodd-Frank Act. As a consequence, the Commission has not been relieved of the obligation under Section 4a(a)(1) to show that proposed position limits for the Referenced Contracts are necessary to prevent excessive speculation.

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3 Proposed Rule at 4754.

4 *Id.*

5 *Id.*

6 *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006). Administrative agencies must also adhere to the principle set out in *SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943): "[A]n administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." *See also La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 898 (D.C. Cir. 1999); *Consol. Edison Co. of N.Y. v. FERC*, 823 F.2d 630, 641 (D.C. Cir. 1987).

7 *National Fuel Gas Supply Corp. v. FERC,* 468 F.3d at 843 (citing *State Farm*, 463 U.S. at 42-43).

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Apart from any data collected from a limited group of swap dealers and index traders pursuant to the ongoing special call instituted in 2008, BGA is unaware of any transactional data and other information collected and analyzed by the Commission necessary to make a finding that excessive speculation is a concern and that position limits applicable to the Referenced Contracts are warranted.[8] In this regard, the Proposed Rule itself offers no evidence that excessive speculation is taking place in the markets for the Referenced Contracts, or that excessive speculation involving such contracts is a burden to interstate commerce. BGA notes that three of the Commissioners have the same concerns about the Commission's lack of concrete evidence to support its proposed position limits,[9] as have members of Congress.[10]

Absent a finding that such limits are necessary, the Commission has not met the statutory requirements of CEA Section 4a(a)(1) to establish position limits for the Referenced Contracts. In light of the foregoing, BGA requests that the Commission stay the instant proceeding or withdraw the Proposed Rule until after it has gathered and analyzed the actual data to determine whether position limits are, in fact, necessary for each of the Referenced Contracts.

B. The Commission Has Not Considered the Impacts of the Proposed Limits on Liquidity and Price Discovery, as Required by the Dodd-Frank Act.

As discussed above, the Commission has a statutory obligation under CEA Section 4a(a)(1) to find that the proposed position limits are necessary to "diminish,

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[8] The Commission anticipates the collection of positional data to begin during the third quarter of 2011. *See* Proposed Rule at 4756.

[9] *See* statements of Commissioners Dunn ("to date CFTC staff has been unable to find any reliable economic analysis to support either the contention that excessive speculation is affecting the market we regulate or that position limits will prevent excessive speculation."), Sommers ("I understand that Congress has directed the Commission to implement position limits as appropriate. If we had a reasonable and enforceable position limit proposal before us today based on analysis of complete market information, I would support it. We have not in the past nor do we now have such a proposal before us."), and O'Malia ("This begs the question how can the Commission decide to impose position limits on swaps positions without having the facts or understanding the impact on the market? Without the actual data we have no idea as to the impact on liquidity or excessive speculation as a result of these limits. I hope that through a public comment period we will develop a better understanding of whether or not these proposed limits are appropriate or if they should be changed."). Open Meeting of the CFTC (Jan. 13, 2011).

[10] *See* Rep. Garrett's letter dated March 3, 2011, to Chairman Gensler. ("Given the increased costs associated with the proposed rule, including the risk that price discovery shifts to foreign boards of trade, doesn't a cost-benefit analysis dictate the CFTC should wait to impose position limits until it has demonstrated a need to do so?").

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eliminate, or prevent excessive speculation" or prevent market manipulation. The Dodd-Frank Act also requires that, should the Commission deem position limits appropriate, such limits must be designed to, among other things, (a) ensure sufficient market liquidity for bona fide hedgers and (b) preserve the price discovery function of the underlying market.[11]

BGA appreciates that, in considering the establishment of position limits, the Commission is required by the Dodd-Frank Act to balance carefully multiple objectives, including preventing excessive speculation and market manipulation, as well as ensuring that any limits do not disrupt liquidity and price discovery. In mandating these considerations, Congress was aware that the establishment of position limits has the potential to reduce liquidity. For example, former Chairwoman of the Senate Agriculture Committee Blanche Lincoln, prior to the passage of the Act, stressed that "regulators must balance the needs of market participants, while at the same time ensuring that our markets remain liquid so as to afford end users and producers of commodities the ability to hedge their commercial risk" and gain "accurate price discovery."[12] The Commission has an obligation to give due weight to each factor in setting any position limits rather than focusing solely on imposing limits to prevent excessive speculation.

BGA is concerned that the Proposed Rule does not adequately take these factors into consideration. As noted above, the Proposed Rule provides no indication that the Commission has the fundamental data it needs to make a determination that the imposition of position limits for the Referenced Contracts does not disrupt liquidity or harm price discovery in affected markets. The Commission neither has data on the size of the markets for each Referenced Contract, nor has it performed an analysis of what level of speculation should be considered to be "excessive" in each such market. As a consequence, the issuance of the Proposed Rule at this time is not warranted and, if adopted as proposed, will likely (i) result in a dramatic reduction of liquidity in the futures and swaps markets, (ii) harm price discovery in such markets, and (iii) impair the ability of markets participants, particularly end-users, to effectively and efficiently hedge commercial risks.[13]

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[11] *See* Dodd-Frank Act, Section 737(a)(4).

[12] Congressional Record (July 15, 2010).

[13] As an example, market participants use the Henry Hub LD1 Fixed Price contract ("HH LD1") transacted on the IntercontinentalExchange, Inc. ("ICE") to price natural gas throughout the entire U.S. and even in foreign markets. Participants typically take HH LD1 swaps to expiration to manage their fixed price risk at all U.S. natural gas locations. Imposition of restrictive position limits on the NYMEX Henry Hub Natural Gas futures contract and swaps tied to Henry Hub will significantly impact the way

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C. Even if the Commission Has Met the Requirements of CEA Section 4a(a)(1), It Is Premature to Implement Position Limits.

Even if the Commission were able to demonstrate that its proposed position limits are "necessary to diminish, eliminate, or prevent" burdensome excessive speculation, BGA respectfully submits that it is premature to impose the proposed position limits for the Referenced Contracts at this time. Significantly, the Proposed Rule does not provide any indication that the Commission has conducted any meaningful cost-benefit analysis addressing the impacts associated with implementing position limits for each Referenced Contract. This is inconsistent with the Dodd-Frank Act,[14] which requires the Commission to report biennially a comparison of pre-enactment and post-enactment compliance costs for market participants and reflects Congress' intent that such costs should be considered by the Commission in its proposed rules. Before issuing a final rule, the Commission should conduct a thorough cost-benefit analysis and publish it for public comment.

As part of its cost-benefit analysis, BGA directs the Commission's attention to the mandate set forth in the President's recent Executive Order No. 13563, "Improving Regulation and Regulatory Review." Executive Order No. 13563 calls for regulators to meaningfully consider the costs and benefits when promulgating regulations. Although Executive Order No. 13563 does not apply specifically to the CFTC, the Commission should (i) consider the "spirit" of the order, and (ii) given the likely significant impacts of the 30-plus rulemakings implementing Title VII of the Dodd-Frank Act on market participants and the U.S. economy, voluntarily comply with its mandate.

Further, the Commission should recognize that the new rules would require the industry to build complex new information technology systems to track and monitor compliance with the new limits and reporting obligations, which will require significant capital resources and time. As recently noted by Chairman Gensler in testimony before the Senate Committee on Agriculture, the Commission will also be required to make a significant investment in new technology given its new responsibilities to oversee the swaps and futures markets.[15] This will be challenging due to the fact that

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participants use Henry Hub to price physical natural gas and will undermine the current, efficient pricing of physical natural gas throughout the entire United States by limiting participation in the Henry Hub market and, in turn, liquid pricing at Henry Hub.

[14] Dodd-Frank Act, Section 719(a)(4).

[15] *See* Testimony of Chairman Gary Gensler dated March 3, 2011 to the Senate Committee on Agriculture ("To take on the challenges of our expanded mission, we will need significantly more staff resources and – very importantly – significantly more resources for technology. Technology is critical so that we can be as efficient an agency as possible in overseeing these vast markets.").

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its current funding is far less than what is needed to fulfill its expanded mission.[16] In fact, the Commission was recently forced to transfer a significant portion away from its *current* technology budget to avoid a reduction in employee head count.

Accordingly, the Commission should defer adopting positions limits for the Referenced Contracts until its has performed a thorough review of (i) the operational, compliance and information technology costs associated with tracking and monitoring compliance with the proposed limits and found the benefits of its proposals sufficient to outweigh such costs, and (ii) the potential threat that the position limits could force market participants to other jurisdictions that have not yet implemented similar position limits for commodities.

D. The Proposed Phase I Spot-Month Position Limits are Unduly Restrictive.

During Phase 1 of the implementation period, the Commission proposes that spot-month limits for Referenced Contracts will be set at the spot-month limit levels determined by [designated contract markets ("DCMs")] and equal to 25 percent of estimated deliverable supply.[17] The proposed spot-month limits would apply on an aggregate basis, thereby subjecting the economically equivalent swaps to the same spot-month limits, whether or not they are listed for trading on a DCM or swap execution facility ("SEF"), cleared or uncleared.[18] In relevant part, the Proposed Rule states:

> Proposed Section 151.4 would apply spot-month position limits separately for physically-delivered contracts and all cash-settled contracts, including cash-settled futures and swaps. A trader may therefore have up to the spot-month position limit in both the physically-delivered and cash-settled contracts. For example, if the spot-month limit for a referenced contract is 1,000 contracts, then a trader may hold up to 1,000 contracts long in the physically-delivered contract and 1,000 contracts long in the cash-settled contract. A trader's cash-settled contract position would separately be a function of the trader's position in

[16] *Id.*

[17] *See* Proposed Rule at 4757.

[18] Proposed Rule at 4757.

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referenced contracts based on the same commodity that are cash-settled futures and swaps.[19]

BGA is concerned that the proposed Phase I spot-month limits are much more restrictive than what is in place today for futures traded on DCMs or significant price discovery contracts traded on exempt commercial markets. First, it is unclear whether the Phase I limits will apply to the bilateral swaps market. BGA assumes that they do not. If they do, however, this will represent a much more restrictive regime than exists today. Beyond that, a market participant currently is permitted to carry a position in each of the over-the-counter ("OTC") cleared markets of an equal size, for example 1,000 on ICE and 1,000 on Clearport. However, under proposed CFTC Rule 151.4, a market participant would only be able to carry a combined total of 1,000 contracts on ICE **and** Clearport. These limits are unduly restrictive and will reduce liquidity in the energy markets, thereby impairing end-users' ability to hedge their commercial risk exposure or engage in meaningful price discovery for the affected Referenced Contract markets.

BGA is also concerned about setting the spot-month limit for swaps at the same level as the physically-delivered futures contracts. A key factor in adopting the spot-month limit for swaps set at 25 percent of deliverable supply is the assumption that the swap or cash contract is economically equivalent to a futures position for physical delivery. BGA agrees that, generally, in the natural gas market, due to arbitrage, a contract such as the ICE HH LD1 is in fact economically equivalent to NYMEX Henry Hub futures contract and should be aggregated for compliance with a single month and all month limit. However, during the limited window at expiry, where the spot-limit position limits are applicable, the NYMEX Henry Hub futures contract and the HH LD1 contract cease to become economically equivalent because they serve two different purposes.[20]

Specifically, upon expiry, the HH LD1 is settled through an exchange of cash flow between the counterparties. Although this amount is determined prior to the month of delivery, no physical gas is delivered. By way of contrast, upon expiration of the NYMEX Henry Hub futures contract, in lieu of an exchange of cash flow, physical

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[19] Proposed Rule at 4757.

[20] In proposing a conditional spot-month limit that allows a trader to hold five times the spot month position limit for the physical contract if the trader exits the physically settled market in the spot month, the Commission acknowledges that core referenced futures contracts and paired swaps are not always economically equivalent. *See* Proposed Rule at 4758.

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gas is delivered over the contract month.[21] BGA recognizes that this analysis applies specifically to the period approaching physical delivery. However, it is the unique characteristic of delivery which causes the spot-month position limit for the physically-settling futures contract to be set so low. By applying the same low spot-month limit to cash settled swaps the Commission would be dismissing not only the major differences that exist between the swaps and futures at expiry but also the much larger size of the swap market. Based on the foregoing, should the Commission adopt a final rule implementing position limits, it should ensure that the proposed spot-month limit level for swaps be set at a level that takes into account the size of the specific swap market itself and the overall physical market it serves, instead of a spot-month limit based on the size of the deliverable supply at the futures delivery location. BGA also urges the Commission to publish an analysis on the size of the uncleared swap positions going to expiry.

E. The Commission Should Ensure its Proposed Position Limits Will Not Result in a Drastic Reduction Between the Spot-Month and Single-Month Limits.

The Proposed Rule would adopt all-months-combined and single-month position limits tied to a specific percentage of overall open interest for a particular referenced contract. The limits would be set at an amount equal to 10 percent of the first 25,000 contracts of the average all-months-combined aggregate open interest in the contract, and 2.5 percent of the open interest for any amounts above 25,000 contracts. Depending on the ultimate determination of open interest, the proposed spot-month limit, which is based on 25 percent of deliverable supply, has the potential to drastically reduce the limit within one business day going from the single-month limit to the spot-month limit.[22] In the *Final Rule on Significant Price Discovery Contracts in Exempt*

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[21] Specifically, receiving a settled payment based on the final NYMEX settle price at the Henry Hub is not a close substitute for physical natural gas that is required to be burned in an industrial facility or to generate power in a power plant. The HH LD1 contract will settle a few days prior to the month of delivery, and the payment will be fixed and known before the month begins. With a futures contract, physical gas begins to flow to Henry Hub on the first of the month. This gas must be either consumed or physically moved to a different location for consumption or storage.

[22] In particular, BGA has concerns that setting such limits at 2.5 percent of the open interest for amounts above 25,000 contracts is unduly restrictive. BGA suggests that the Commission develop a thorough understanding of the relevant supply characteristics and delivery practices for each Referenced Contract before adopting the parameters it will use to set position limits. As part of this process, the Commission should hold a technical conference(s) or other meetings to solicit comments and input from the exchanges and commercial market participants, including end-users, in addition to those provided in this proceeding, before adopting position limits for the Referenced Contracts in any final rule issued in this proceeding.

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Commercial Markets, the Commission itself stated that, "the primary goal for an ECM with a SPDC should be to ensure that large positions not be disruptive to the market. Indeed, a sudden decrease in a position to meet the proposed position limit could itself be disruptive." [23]

Based on the foregoing, should the Commission adopt a final rule implementing position limits, it should ensure that the proposed spot-month swap limit and single-month limits are similar in size or scale down rationally so that the market will not be disrupted by panic selling on the day before the spot-month limit becomes effective. Further, BGA urges the Commission to review and provide an analysis to the public, prior to implementing a new position limit regime, of: (1) the size of the uncleared market; (2) the total bilateral and cleared open interest positions going to expiry; and (3) the number of players using hedge exemptions to hold positions greater than the contract limit.

F. The Proposed Conditional Spot-Month Limit Threatens to Drain Liquidity Out of the Settlement Process.

Under the Proposed Rule, participants without a hedge exemption would be allowed to "acquire position levels that are five times the spot-month limit if such positions are exclusively in cash-settled contracts and the trader holds physical commodity positions that are less than or equal to 25 percent of the estimated deliverable supply."[24] The proposed conditional limit would disrupt the efficient pricing of natural gas by creating a disincentive to hold physically delivered gas positions.

The Henry Hub natural gas price serves as a benchmark for prices of physical natural gas traded throughout the U.S. and indeed throughout North America and foreign markets. The Henry Hub price is established through the settlement process on the NYMEX. The settlement price is based upon transactions in the physically delivered futures contract executed on the NYMEX during the close. The integrity of this settlement price depends, in large part, on the volume of transactions and the variety of participants trading natural gas during this closing period.

Under the Proposed Rule, however, participants would be incentivized to get out of their physically delivered futures positions in order to access the higher spot-month cash settled position limit. This, in turn, would draw liquidity away from the physically delivered futures contract listed on the NYMEX. Thus, if the conditional spot-month limit were to become a popular method of accessing higher cash settled limits, the

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[23] 74 Fed. Reg. 12,178, 12, 183 (Mar. 23, 2009).

[24] Proposed Rule at 4758.

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likely result would be markedly fewer participants and less liquidity in the closing period, undermining the robustness of the very process by which the benchmark settlement price is established on the NYMEX.

Additionally, less liquidity and fewer participants in the physically delivered contract would create greater opportunity for manipulation of the settlement process. The conditional spot-month limit appears to be intended to prevent manipulative conduct by precluding participants from holding positions in the physically delivered contract as a condition for holding a larger cash settled position, *i.e.,* by attempting to push the settlement price up or down to benefit positions (cash settled swap contracts tied to the NYMEX settlement price) held in other markets. However, the positions that stand to benefit from a manipulation of the NYMEX settlement price are not limited to cash settled swap contracts. Rather, there are numerous physical gas positions tied to the NYMEX settlement price -- physical basis contracts being one such example -- that would benefit from a manipulation of the NYMEX price.

With the drain on liquidity and concentration of participants in the closing period, physical participants with large exposure to the NYMEX settlement price would now find it easier to influence that price, even where a participant is not intending to do so. To the extent that the CFTC is focused on minimizing the opportunities for participants to manipulate price, BGA encourages the CFTC to eliminate the conditional spot-month limit exemption, rather than adopting it which could have the unintended effect of driving participants from the market and thereby increasing the potential for market manipulation with a very small volume of trades.

G. <u>The Commission Should Clarify the Mechanics of How Position Limits Will Be Monitored and How Violations of the Limits Will Be Handled</u>.

The Commission's Proposed Rule fails to indicate the manner in which positions will be monitored. Under current practice, positions are monitored by DCMs and ECMs with significant price discovery contracts (collectively, the "Exchanges"), which have advanced systems to monitor positions and alert market participants when they are nearing their limits. Although there is no real-time system in place to allow traders to know where they stand on an intra-day basis, the current system works well to ensure that there is not excessive speculation in the market. The Exchanges monitor the market efficiently and give market participants sufficient notice when they are nearing their limits. The Exchanges also have the necessary authority and capability to prevent traders from taking additional positions on the Exchanges if they fail to come back under their limits.

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It is unclear in the Proposed Rule whether the Exchanges will continue to monitor position limits or whether the Commission will implement some other mechanism to manage positions within the market. BGA believes the Exchanges should continue to have this responsibility. Indeed, they already have the systems and authorities in place and the process is working well. While the Exchanges certainly would need to implement new monitoring capability to track bilateral swaps, any entity managing the new position limits framework would be required to do so.

In addition, the Proposed Rule does not indicate what will happen when a market participant exceeds a position limit. The Commission should provide more guidance and clarity on the effect of such an event and the Commission's intended enforcement mechanisms. Further, the Commission should provide market participants an opportunity to comment on the market effects of such proposals prior to their implementation.

H. <u>The Commission's Proposed Exemption for Bona Fide Hedging is Defined Too Narrowly and Will Be Difficult to Administer</u>.

1. <u>Definition of Bona Fide Hedging</u>.

The Proposed Rule states, "[t]he plain text of the new statutory definition of *bona fide* hedging recognizes bona fide hedging for derivatives that are subject to this rulemaking only if such transactions or positions represent cash market transactions and offset cash market risk."[25] BGA submits that there are several flaws with the proposed definition of a *bona fide* hedging transaction. As such, BGA provides the following comments addressing its concerns with specific provisions of the *Proposed* Rule. BGA recommends that the Commission establish a separate rulemaking process with a notice and comment period to develop a workable, commercially practicable definition of bona fide hedging that takes into account the complex, multi-faceted, commodity-related risks that businesses need to manage and mitigate commodity risks.

a. <u>Bona Fide Hedges Should Not Be Limited to Enumerated Transactions</u>.

Without providing a reasoned basis, the Proposed Rule excludes from the definition of bona fide hedging in proposed CFTC Rule 151.5 provisions that would define "non-enumerated hedges" or provide a process for an end-user to apply for, and receive, an exemption from speculative position limits for "non-enumerated hedges."

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[25] Proposed Rule at 4761.

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Rather, the Proposed Rule states that the only transactions or positions that would be recognized as bona fide hedges would be those described under proposed CFTC Rule 151.5(a)(2) as "enumerated hedges." Specifically, the Proposed Rule states, in relevant part:

> "[N]o transactions or positions shall be classified as *bona fide* hedging for purposes of § 151.4 unless . . . the provisions of paragraph (a)(2) of this section have been satisfied."[26]

In taking this position, the Proposed Rule has effectively eliminated the general definition of bona fide hedging transactions or positions as set forth in proposed CFTC Rule 151.5(a)(1), which came directly from CEA Section 4a(c)(2), as amended by the Dodd-Frank Act. In doing so, the Proposed Rule has removed from the definition of bona fide hedging numerous types of industry-recognized hedging transactions that Congress certainly intended to include.[27]

Further, proposed CFTC Rule 151.5(a)(1) includes as a hedge the anticipated <u>ownership</u>, production, manufacture, processing, or <u>merchandising</u> of an exempt or agricultural commodity.[28] Yet proposed CFTC Rule 151.5(a)(2), which sets forth "Enumerated Hedging Transactions," fails to provide a parallel provision. Only "unsold anticipated production"[29] and "unfilled anticipated requirements," including requirements for "processing, manufacturing, and feeding"[30] qualify as enumerated hedges. As a consequence, certain bona fide hedging transactions currently

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26 Proposed CFTC Rule 151.5(a)(1)(iv)(B).

27 BGA does not believe that it is in the public interest to structure a rule that eliminates its flexibility to allow hedge exemptions based on "non-enumerated hedging transactions." Markets, by nature, are dynamic. Many of the proposed rules being implemented by the Commission pursuant to the Dodd-Frank Act, particularly the Proposed Rule, may have the result of diminishing liquidity in certain markets. With this concern in mind, the Commission should preserve its ability to allow exemptions based upon non-enumerated transactions. Although not compelled to do so, the Commission could address such transactions on a case-by-case basis. Such an approach would avoid a situation in which the Commission is forced to promulgate an amendment to Part 151 when it believes it may be warranted in adding liquidity to a particular market at a particular time.

The Proposed Rule also simultaneously establishes and eliminates the availability of the so-called "pass-through" exemption identified in proposed CFTC Rule 151.5(a)(1)(iv) and CEA Section 4a(c)(2). BGA respectfully submits that the Commission could not have intended such a result.

28 *See* analogous new CEA Section 4a(c)(2).

29 Proposed CFTC Rule 151.5(a)(2)(i)(B).

30 Proposed CFTC Rule 151.5(a)(2)(ii)(C).

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undertaken in accordance with generally accepted anticipatory hedging practices will no longer qualify as such under the Proposed Rule.[31]

In addition to the foregoing, the purpose and effect of a seemingly intentional distinction in proposed CFTC Rule 151.5(a)(2) are unclear to BGA. Specifically, the language in proposed subpart 151.5(a)(2)(ii) states that "purchases of *referenced contracts*" may qualify as *bona fide* hedges provided the right conditions are met. However, language in proposed subpart 151.5(a)(2)(i) states that "sales of *any commodity underlying referenced contracts*" may qualify as *bona fide* hedges provided the right conditions are met. Nowhere in the *Proposed Rule* does the Commission explain the purpose behind this distinction. Under the existing CFTC Rule 1.3(z) (which is a direct analog to proposed CFTC Rule 151.5(a)(2)), purchases and sales are treated equally—that is, purchases or sales of futures contracts (and not the underlying commodity) may qualify as *bona fide* hedging transactions. Accordingly, BGA respectfully requests that the Commission either harmonize the two provisions in the *Proposed Rule* or explain the intent behind such distinction in any final rule issued in this proceeding.

b. ***The Proposed Rule Imposes a Disproportionate Compliance Burden on Market Participants that Engage in Portfolio Hedging.***

Additionally, BGA is concerned that the Commission's proposal appears to require a one-to-one relationship between a hedging position and the underlying physical commodity position in order to qualify for the hedge exemption. Companies like BGA manage the various risks associated with physical assets on a portfolio basis. The one-to-one matching, even if it were practical in a dynamic marketplace, such as the natural gas business, is inconsistent with the way companies hedge risk exposure. This will have the perverse result of *increasing* risk by preventing end-users from effectively hedging their commercial exposure. If energy producers are unable to lay off their risk because of overly restrictive position limits that prevent sufficient hedge exemptions, they will drill for less natural gas and oil, which will reduce our nation's energy supply, and ultimately increase (i) energy costs for consumers, and (ii) energy independence and national security concerns.

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[31] For example, end-users in the energy sector routinely hedge their foreign supply contracts with swaps tied to the Henry Hub. Because that supply may or may not be delivered into the U.S., these transactions would not appear to qualify as a bona fide hedge because they would not fall within the criteria established for "enumerated transactions" in proposed CFTC Rule 151.5(a)(2).

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2. ***Administering the Bona Fide Hedge Exemption Process***.

The Proposed Rule establishes exemptions from positions limits for bona fide hedging transactions. It is unclear from the Proposed Rule who will be responsible for determining whether a transaction qualifies as a bona fide hedge. Currently, the exchanges have a clear process to request and be granted a hedge exemption.[32] The rulemaking includes a Commission-approval process for traders seeking anticipatory hedge exemptions, but fails to indicate whether there is an approval process for transactions that are not pre-designated as qualified hedge exemptions through the anticipatory hedge process. BGA recommends that the exchanges continue to be responsible for administering the hedge exemption process for energy contracts. Under the current regime administered by NYMEX and ICE, participants can be certain that their transactions qualify for a hedge exemption and are not forced to take on compliance risk that they will exceed their position limits after-the-fact if their transactions are deemed not to qualify.

a. ***Pass Through of Bona Fide Hedge Exemptions to Counterparties***.

In addition, it is unclear what kinds of representations end-users will be required to provide to dealers who want to avail themselves of an end-user's hedge exemption, and what assurances swap dealers will receive that they can rely on the end-user's representation that a transaction qualifies as a hedge when seeking to manage hedges for others. Again, the Commission should consider adopting a process similar to current practice under which end-users and swap-dealer counterparties have a clear designation from an exchange that their swaps qualify for a hedge exemption.

b. ***Daily Reporting Obligations for Market Participants Relying on Bona Fide Hedge Exemptions***.

BGA opposes the Proposed Rule's imposition of a daily reporting obligation on end-users relying on a bona fide hedge exemption, which requires a person to notify the Commission that it has exceeded a position limit by 9:00 a.m. on the business day following each day the trader exceeds a position limit.[33] This process is commercially impractical and unmanageable, especially given that position limits apply to all market participants, including end-users who may not have monitoring and reporting capability to meet this requirement. BGA urges the Commission to allow the exchanges to continue to grant annual hedge exemptions, which do not include an onerous daily

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[32] *See* NYMEX Rule 559 or ICE OTC Rule 1.16.

[33] *See* proposed CFTC Rules 151.5(i) & 151.10.

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reporting obligation. Absent this, the Commission should require position hedging reports no less than monthly.

BGA is also concerned with proposed CFTC Rule 151.5(j)(2), which permits a party to exceed a position limit only "to the extent and in such amounts that the qualifying swap directly offsets, and continues to offset, the cash market commodity risk of a bona fide hedger counterparty." This provision implies that a counterparty relying on a bona fide hedge exemption must monitor and track the status of a each transaction it represented to its counterparty as a bona fide hedge and continually inform and represent to its counterparty that such swap continues to be a bona fide hedge. Such requirement would result in significant and costly burdens on end-users and other hedgers.

I. <u>The Commission Should Identify the Specific Contracts Considered to be "Economically Equivalent" to Each Core Referenced Futures Contract</u>.

The Dodd-Frank Act requires the Commission to develop, concurrently with position limits for DCM futures and options contracts, position limits for swaps that are economically equivalent to such contracts.[34] Pursuant to proposed CFTC Rule 151.1, a swap would be considered "economically equivalent" to a core referenced futures contract if it is either:

- Directly or indirectly linked, including being partially or fully settled against, or priced at a differential to, the price of any core referenced futures contracts.

- Directly or indirectly linked, including being partially or fully settled against, or priced at a differential to, the price of the same commodity for delivery at the same location, or at locations with substantially the same supply and demand fundamentals, as that of any core referenced futures contracts.

The proposed regulatory text defines a Referenced Contract as:

> Referenced contract means, on a futures equivalent basis with respect to a particular core referenced futures contract, a futures listed in Section

[34] Section 4a(a)(5).

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> 151.2, or a referenced paired futures contract, option contract, swap or swaption, other than a basis contract or contract on a commodity index.[35]

The Proposed Rule does not clearly define or identify what is meant by "economically equivalent" contracts, nor does it provide enough information as to what would constitute an economically equivalent contract. As such, the determination of whether a swap is economically equivalent to a core referenced futures contract appears to be left to the subjective judgment of market participants and Commission Staff. BGA is concerned that the absence of any objective guidance provided by the Commission identifying the economically equivalent swaps for each core referenced futures contract identified in the Proposed Rule will very likely result in inconsistent and conflicting interpretations regarding what specifically constitutes a Referenced Contract for position limit compliance purposes.

Given the transition to new regulation under Title VII of the Dodd-Frank Act, market participants must have legal and regulatory certainty, particularly when there is a compliance enforcement risk of violating position limits. Accordingly, the Commission should publish an initial list of swaps deemed to be "economically equivalent" to each core referenced futures contract and provide market participants with notice and an opportunity to comment.

Further, after the initial list is finalized and published, the Commission may use the process for determining whether a swap is subject to mandatory clearing for identifying if any other swaps should be listed as economically equivalent to a core referenced futures contract. Finally, because the Commission cannot identify uncleared contracts until they are executed, it should limit the list of economically equivalent swaps to only those that are cleared.

J. The Commission Should Adopt a Transparent and Clear Process for Determining Deliverable Supply and Seek Public Comment Each Time a New Deliverable Supply Level Is Set for a Referenced Contract.

As proposed in the Proposed Rule, position limits for the spot-month will be set at 25 percent of estimated deliverable supply at current levels set by the exchanges. Under Phase II of the proposal, the spot-month limits will be based on 25 percent of estimated deliverable supply as determined by the Commission, and there will be an annual adjustment of the limits. The central issue is determining what the "deliverable supply" is for each of the Referenced Contracts.

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[35] Proposed Rule at 4768.

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BGA has serious concerns surrounding how "deliverable supply" will be calculated in Phase II given its importance in setting position limits. The Proposed Rule indicates that each DCM will submit an estimate of deliverable supply by the 31st of December each calendar year for each physical delivery referenced contract that is subject to the spot-month limit, along with a description of the calculation methodology and supporting data, and the Commission will either adopt that estimate or rely on its own estimate.[36] This proposed methodology is flawed for the following reasons.

First, BGA is concerned that the proposed definition of deliverable supply treats futures and swaps as if they were the same product. The Proposed Rule states:

> [i]n general, the term deliverable supply means the quantity of the commodity meeting a derivative contract's delivery specifications that can reasonably be expected to be readily available to short traders and saleable by long traders at its market value in normal cash marketing channels at the derivative contract's delivery points during the specified delivery period, barring abnormal movement in interstate commerce.[37]

It may be appropriate for the Commission to establish position limits on *futures contracts* based on deliverable supply because they contemplate delivery of the underlying commodity and are, therefore, tied to the physical limits of the market. A swap, however, does not provide for physical delivery, but is a cash-settled contract. Therefore, BGA believes that it is inappropriate to tie the position limits for swaps to the physical market (*i.e.*, as a function of deliverable supply). Rather, the Commission should establish position limits, if necessary and appropriate, for swaps based on the size of swap markets, and not on deliverable supply.

Second, it is imperative that the calculation of deliverable supply be transparent and consistent. While the Commission provides that the DCMs should provide a description of their calculation methodology and supporting data, there are no clear parameters for the calculation and the weight given to the supporting data; therefore, there will be no consistency in how deliverable supply is calculated by each DCM. In addition, the Commission can disagree with a DCM's calculation and choose its own level of deliverable supply with no transparency or review of that calculation. If the Commission decides to move forward with this proposed methodology for setting position limits based on deliverable supply, it should adopt a clear and consistent

36 *See* proposed CFTC Rule 151.4(c).

37 Proposed Rule at 4757.

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methodology for calculating deliverable supply, including the weight that should be given to each piece of supporting data.

Third, prior to establishing limits based on deliverable supply and each time a new deliverable supply level is calculated, the Commission should establish a notice and comment period to permit industry participants who understand the fundamentals of the markets in which they operate an opportunity to provide valuable feedback. Such an approach will help inject transparency into the marketplace, will result in a more accurate and appropriate calculation of deliverable supply, and provide market participants with requisite procedural due process.

Fourth, BGA is concerned with the Commission's proposal to calculate deliverable supply anew each year. Position limits should be set and remain static for as long a period as possible. If the limits are reset too frequently and the change in the limit is sizable, it could result in a "flash crash" where market participants make large position changes to come under the new limit. BGA suggests the Commission set the deliverable supply level for a period longer than a year to allow the market to adapt to new levels, and provide the market with a lengthy, several-month cure period so that participants are not forced to unwind with little notice large positions to come under changing position limits.

Finally, BGA respectfully requests that the Commission grandfather any positions put on in good faith prior to the effective date of any final rule implementing position limits for the Referenced Contracts.

K. Proposed Visibility Levels Are Not Necessary and Are Unduly Burdensome.

Under the Proposed Rule, the Commission "would set position visibility reporting levels and establish reporting requirements for all traders exceeding those levels."[38] It would "require traders with positions above visibility levels in referenced base and precious metals and energy commodities to submit additional information about cash market and derivatives activity, including data relating to substantially the same commodity."[39]

The Proposed Rule fails to adequately address and analyze the compliance costs of meeting such visibility requirements and articulate any material benefit accruing to swap or futures markets. In contrast to speculators, compliance with the

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[38] Proposed Rule at 4761.

[39] Proposed Rule at 4761-62.

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proposed visibility levels will result in a substantial and disproportionate burden on bona fide hedgers, as hedgers will be required to produce voluminous data.

The visibility and consequent reporting requirements are unnecessary given the transparency provisions that currently exist under the CEA and those being implemented under Title VII of the Act. For example, transparency is provided under: (i) the Large Trader Reporting System for futures markets; and (ii) reporting requirements adopted under Title VII applicable to (a) large swap traders, (b) registered entities, including derivative clearing organizations ("DCO"); and (iii) reporting requirements of uncleared OTC transactions to SDRs or the Commission itself. Further, to the extent that the Commission seeks specific information regarding the hedge exposures of a large market participant (or group of large market participants), it can exercise its special call authority set forth in Rule 18.05 of the CFTC Regulations.[40] Accordingly, BGA submits that the proposed visibility reporting requirements serve no incremental purpose beyond federal accountability limits already in place and will significantly increase compliance costs imposed upon end-users, and, therefore, should be removed from any final rule adopted in this proceeding.

L. <u>Ownership and Control on Aggregation of Accounts</u>.

BGA supports the Commission's approach to permit the disaggregation of positions held by "owned non-financial entities" and exemption permitting such disaggregation set forth in proposed CFTC Rule 151.7(f). Under proposed CFTC Rule 151.7(f), BGA, an "owned non-financial entity" that is a business unit of BG Group, would be permitted to disaggregate its positions from those of its affiliates, so long as it can demonstrate that BGA is independently controlled and managed. BGA seeks clarification that the "owned non-financial entity" exemption would apply not only to ownership interests held in it by BG Group, but also to any ownership interests that BGA itself may hold in other entities, such as joint venture ownership interests that qualify as an "owned non-financial entity" themselves, and otherwise comply with the requirements of proposed CFTC Rule 151.7(f).

Recognizing that the application process for the owned non-financial entity exemption set forth in proposed CFTC Rule 151.7(g) is a departure from the Commission's self-executing exemption in Part 150 of its regulations, BGA respectfully requests clarification on the scope and application of the "indicia" of independent control. Specifically, BGA submits that the Commission should permit the sharing of non-operational, corporate support staff employees, such as attorneys, accountants, and risk management personnel, between affiliated companies, so long as such

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[40] 17 C.F.R. § 18.05.

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corporate support staff do not actively and personally organize or direct day-to-day activities involving the management of, or the execution of trading decisions by, the owned non-financial entity.

BGA submits that the requirement that owned non-financial entities exempt from aggregating positions with its affiliates under proposed CFTC Rule 151.7(f) must retain separate employees and risk management systems is (i) redundant as it relates to non-operational corporate support staff, and (ii) will impose significant and unnecessary costs on entities qualifying for this exemption. For many owned non-financial entities, the requirement to retain separate corporate support staff will result in the balkanization of employees and mitigate operational efficiencies obtained through shared services arrangements.[41]

With regard to proposed CFTC Rule 151.7(g), BGA requests that the Commission treat the application for exemption from aggregation requirements for owned non-financial entities as a self-certification requirement that is effective immediately upon filing. In addition, the Commission should provide a safe harbor for owned non-financial entities that submit such applications in good faith to promptly correct inadvertent errors or make adjustments to comply in an orderly manner with newly implemented regulatory requirements under Title VII of the Dodd-Frank Act.

Finally, BGA requests that the Commission clarify and/or correct the following aspects of proposed CFTC Rule 151.7(g). First, pursuant to subpart (g)(ii), the Commission requires in the initial disaggregation application an "independent assessment report." Such report is not defined or mentioned elsewhere in the *Proposed Rule.* In order to provide both legal and regulatory certainty, the Commission should clarify the meaning of this undefined term and inform market participants as to the type of information to be included in such report. Second, subpart (g)(ii) cross references rules that do not exist in the *Proposed Rule*. Specifically, subpart (g)(ii) states that an "independent assessment report is described in proposed CFTC Rules 151.9(c)(1)(iii) and 151.9(f)(3)." These references may simply be typographical errors.

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[41] Given the nature of their non-operational role, corporate support staff are neither responsible for, nor authorized to make, policy, management, or trading decisions on behalf of owned non-financial entities. If the Commission is concerned about potential abuses resulting from the sharing of non-public market information between an owned non-financial entity exempt from aggregating positions under proposed CFTC Rule 151.7(f) with any non-exempt financial affiliate, BGA would support the imposition of a reasonable and practical restriction on the sharing of information between such affiliates, so long as such restriction does not impair the ability of (i) executive-level officers from fulfilling their general corporate oversight obligations under applicable federal and state securities and corporate law or (ii) corporate support staff from executing their duties and responsibilities.

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Accordingly, BGA requests that the Commission clarify or correct these references (as appropriate).

M. <u>Market Participants Have Been Denied a Meaningful Opportunity to Comment on the Commission's Rulemakings Implementing Dodd-Frank Due to the Commission's Implementation Schedule</u>.

BGA understands that the Commission is under tight deadlines to promulgate regulations implementing the Dodd-Frank Act. However, the order and pace in which the proposed rules have been issued and finalized, together with the complexity, interrelatedness and sheer number of the proposals, make it very difficult, if not impossible, for market participants to fully evaluate the impact of the proposed rules and submit thoughtful and meaningful comments.[42] For example, market participants have found it difficult to comment on proposed rules on position limits for swaps when the Commission has not yet finalized its definition of a swap, and is admittedly uncertain of the size of the swap market to which the position limits will apply. It is difficult for market participants to comment on the market and business impacts of a formula approach where it is unknown what position limits will actually result from the formula. This has created confusion and uncertainty, as market participants are required to make assumptions on yet-to-be finalized rules as they assess the potential impacts on markets and their business operations and comment on other rulemakings dependent on these rules.

The Commission should ensure that market participants who are dramatically impacted by its Proposed Rule have a meaningful opportunity to comment on and participate in the rulemaking process, consistent with the Administrative Procedure Act. In addition, Section 4a(a)(1) of the Act states that "[f]or the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, **after due notice and opportunity for hearing**, by rule, regulations, or order, proclaim and fix such limits" on the positions held in commodity swaps and derivatives. The Commission has not met its burden under the Administrative Procedures Act or the Dodd-Frank Act to provide due notice or a meaningful opportunity to comment.

Market participants—and the regulators—will benefit from a more measured, thoughtful approach to an undertaking as significant and complex as developing new regulations for the OTC derivatives market. It is also important to remember that Congress began this process in an effort to mitigate systemic risk. In a rush to judgment, the Commission does not want to have the unintended consequence of ***increasing*** risk by creating regulatory uncertainty, or by putting in place limits that are

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42 See Rep. Bachus letter to CFTC and other agencies (dated Mar. 9, 2011).

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too restrictive or onerous to allow end-users to access a well-functioning market to hedge their commercial risks and discover prices.

BGA urges the Commission to reorganize the rulemaking process. BGA is encouraged by Chairman Gensler's recent testimony before the U.S. Senate Agriculture Committee, where he acknowledged the need for a phasing of the implementation of the rulemakings under Dodd-Frank, stating that "[p]hasing implementation will benefit market participants as they come into compliance with the Dodd Frank Act's requirements." In response to Chairman Gensler's request for input from the industry on the best way to phase in implementation, BGA recommends that the Commission issue rules on:

(1) key definitions;

(2) mandatory capital and margin requirements;

(3) clearing requirements;

(4) registration of swap data repositories and reporting requirements; and

(5) position reports for physical commodities and position limits.

This more logical and orderly sequencing of rulemakings will give the Commission and the industry the additional time it needs to put in place the necessary changes and investment, while allowing businesses and markets to operate fluidly throughout the implementation of the Dodd-Frank Act.

Finally, the Commission should implement any new rules on a timeframe consistent with other nations. As Commissioner O'Malia states: "[i]t is not in America's interest for regulators to create an uneven playing field, and I have no desire to hinder the ability of American companies to compete with their Asian and European counterparts."[43]

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[43] *See* Scott D. O'Malia, So Many Regulations, So Little Time: The Dodd-Frank Act Is Causing A Radical Restructuring of the Over-the-Counter Derivatives Market, Wall Street Journal (Feb. 26, 2011).

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IV. CONCLUSION.

BGA appreciates this opportunity to comment and respectfully requests that the Commission consider the comments set forth herein.

Respectfully submitted,

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/s/ Lisa Yoho____________
Lisa Yoho
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cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
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