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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: *Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*

Dear Secretary Stawick:

On behalf of the Working Group of Commercial Energy Firms (the "Working Group"), Hunton & Williams LLP respectfully submits this letter in response to the Commodity Futures Trading Commission (the "Commission" or "CFTC")'s request for comment concerning the Commission's Notice of Proposed Rulemaking on *Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants* (the "Proposed Rule").[1]

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 legislative and regulatory developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

The Commission has not finalized the regulatory definitions of the terms "swap dealer," "major swap participant" and "swap." While members of the Working Group have never considered themselves or been viewed by others as swap dealers or major swap participants, they are concerned with the breadth and vagueness of the proposed rules. Thus, the Working Group has commented on proposed rules imposing obligations on swap dealers and major swap participants.

[1] 76 Fed. Reg. 6,715 (Feb. 8, 2011).

I. GENERAL COMMENTS OF THE WORKING GROUP.

A. ELECTIVE RULEMAKINGS.

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") mandates that the Commission promulgate documentation standards that apply to swap dealers and major swap participants and that promote "timely and accurate confirmation, processing, netting documentation and valuation of all swaps." In addition, the CEA authorizes the Commission to promulgate such regulations as are reasonably necessary to effectuate any of the provisions or purposes of the CEA.[2] While the Working Group acknowledges that Section 731 requires the Commission to promulgate rules as to documentation standards, many of the specific provisions in the Proposed Rule are not required by, or even indentified in, the Dodd-Frank Act and, in our opinion, are not "reasonably necessary" to achieve the goals of CEA as amended by the Dodd-Frank Act.

In lieu of the itemized, prescriptive approach demonstrated in the Proposed Rule, the Commission might have met its statutory mandate by publishing principle-based rules. For example, the Working Group believes the requirements of Section 731 would be fulfilled by more basic rules that promote the use of master agreements with credit support terms negotiated prior to the execution of a swap. This approach would leave it to the counterparties to determine the best approach to trading documentation. [3]

Alternatively, given the multitude of rulemakings the Commission is required to undertake pursuant to the Act and the corresponding number of obligations those rulemakings place on market participants, the Commission should (a) delay promulgating rules on swap documentation until after it has finalized all rules required to be issued under the Act and can fully analyze the potential effect of documentation rules on the swap markets[4] or (b) if the Commission elects to move forward with documentation rules before all related rules are finalized, adopt a general framework that provides market participants with an extended period of time to design and implement appropriate documentation standards. In either instance, the Working Group suggests that the Commission fully consider and evaluate the interrelationship of

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[2] Section 8(a)(5) of the CEA.

[3] The Commission asks "should any other aspects of the trading relationship be required to be included in 23.504?" (*Proposed Rule* at 6,720). The Working Group respectfully suggests that no other aspects of a trading relationship be required to be included in swap trading relationship documentation.

[4] The Commission might ultimately promulgate rules on required documentation in the future under its cited authority in CEA Section 8a.

all proposed rules affecting documentation before issuing any final rules, as a number of rules are potentially in conflict with one another.[5]

Finally, as in all circumstances where the Commission elects to promulgate rules not explicitly required under Title VII of the Dodd-Frank Act, the Commission should articulate the public policy benefits it attributes to the Proposed Rule. The Commission also should present analysis that demonstrates that the value of such public policy benefit exceeds the costs that would be imposed on (a) market participants and (b) the Commission itself. Such analysis would ensure the Commission satisfies its obligation under Section 15(a) of the CEA to consider and evaluate the costs and benefits of any Proposed Rule.

B. DISADVANTAGES TO COUNTERPARTIES UNDER OVERLY PRESCRIPTIVE DOCUMENTATION RULES.

The Working Group is concerned that the Proposed Rule, coupled with other proposed regulations concerning documentation,[6] will disadvantage counterparties in negotiating swap documentation with swap dealers and major swap participants. These rules contain many detailed documentation requirements and short deadlines. When considered together, these rules may inhibit a counterparty's ability to negotiate and negatively impact a counterparty who is more sensitive to execution delays.

Under the Proposed Rule, all terms of a swap effectively must be negotiated prior to execution of the swap. The Proposed Rule requires that swap trading relationship documentation address, in a detailed manner, areas such as the calculation and netting of obligations, valuation, and dispute resolution procedures among others. Traditionally, such areas are subject to significant negotiation and may require an extended period of time in which to reach an agreement. The proposed documentation requirements will inherently grant the counterparty that is least sensitive to the timing for executing a swap a substantial advantage in negotiations. For complex swaps that require the negotiation of multiple terms, the Proposed Rule would force a counterparty, that is sensitive to the timing of the swap, to accept (a) some slippage in economic terms or (b) reduced negotiating leverage to execute a swap within its desired time frame.

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[5] For example, under the Proposed Rule, all documentation must be completed before or contemporaneous with trade execution, including the confirmation. (Proposed CFTC Rule § 23.504). However, in the proposed rule on Confirmation, Portfolio Reconciliation and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, confirmations are done after trade execution. (Proposed CFTC Rule § 23.501).

[6] See *"Confirmation, Portfolio Reconciliation and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants,"* 75 Fed. Reg. 81,519 (Dec. 28, 2010); *"Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants,"* 76 Fed. Reg. 6,708 (Feb 8, 2011); *"Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties,"* 75 Fed. Reg. 80,638 (Dec. 22, 2010).

These requirements would make it very difficult for market participants to enter into short-term swaps. Given the time sensitive nature of these swaps, energy market participants often enter into such swaps as oral contracts and in some cases reduce such swaps to a written contract at a later time.[7] In certain circumstances, in fact, it may take longer to negotiate a written confirmation for a swap or complete the necessary mid- and back office processes than the planned duration of the swap at issue. The ability to enter into swaps orally is integral to the efficient operation of many swap markets.[8]

The Proposed Rule also requires that swap dealers and major swap participants adopt policies and procedures for compliance with documentation requirements, which must be approved by senior management.[9] The Working Group is concerned that this requirement provides certain negotiation advantages to swap dealers and major swap participants. Swap dealers and major swap participants could refuse to negotiate documentation with their counterparties, arguing that the terms of such documentation have been approved for regulatory purposes by senior management and, thus, are not open to modification or that any changes thereto will require a prohibitively lengthy internal approval process.

Even if swap dealers and major swap participants were not to use this potential negotiation advantage, imposing rigid documentation standards that must be approved by senior management could severely limit the flexibility in swap terms and structure that traders at swap dealers and major swap participants can offer end users. The Working Group recommends that the Commission allow current market practice with regards to approval of policies and procedures pertaining to swap transactions to remain in place. Typically, an entity's governing body will authorize certain personnel to enter into swaps and will also authorize the relevant internal managers to develop policies and procedures setting forth the appropriate parameters for

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[7] Almost all swaps are entered into under New York law, and market participants rely on an exception to the New York statute of frauds, which requires that certain contracts be reduced to writing to be legally enforceable, to enter into oral swaps. The Working Group is concerned that the Proposed Rule would run contrary to well established legal principles within the law that governs the vast majority of the domestic swap markets.

[8] In addition to swaps that are entered into as oral contracts, in some cases a market participant might choose to execute a trade with a counterparty with which it has not yet entered into a Master Agreement. Absent an executed Master Agreement, market participants routinely modify confirmations to incorporate all or a portion of a Master Agreement in order to avail themselves of the benefits of certain provisions of the Master Agreement until such time as a fully negotiated Master Agreement is realized. The incorporated Master Agreement, or portions thereof, will be part of the agreement of the parties even though such Master Agreement is incorporated by reference. It would be beneficial for market participants if the Commission would clarify whether this current market practice of incorporating a Master Agreement by reference satisfies the Commission's intentions with respect to reducing agreements to writing.

[9] CFTC Proposed Rule 23.504(a).

entering into swaps, including permissible types of swaps and counterparty qualifications. Under this paradigm, these internal managers generally have the authority to authorize deviations from an entity's standard trade documentation as long as such amendment does not violate the overarching policies and procedures. The Proposed Rule should be amended to allow swap dealers and major swap participants to continue this practice. The flexibility would allow swap dealers and major swap participants to execute customized swaps in a timely manner, providing end users with the most efficient and cost effective swaps.

II. COMMENTS ON THE PROPOSED RULE.

A. APPLICATION OF THE PROPOSED RULE TO CLEARED SWAPS AND SWAPS EXECUTED ON FACILITY.

Imposing documentation requirements, including valuation modeling requirements, on counterparties to swaps that are intended to be cleared contemporaneously with execution through derivatives clearing organizations ("DCOs") and swaps that are executed on designated contract markets ("DCMs") or certain swap execution facilities ("SEFs" and, together with DCMs, "Facilities") would place unnecessary requirements on such transactions.[10] For example, the Proposed Rule would require that swap trading relationship documentation for swaps intended to be cleared include valuation methodology and disclosure on segregation arrangements.[11] At best, these requirements are unnecessary. A cleared swap will be valued at the daily price provided by the clearing house. At worst, these requirements could expose swap dealers and major swap participants to liability as they would be required to provide disclosure on a clearing house's segregation procedures. Such disclosure should be the responsibility of the clearing house. The Working Group recommends that the Proposed Rule not apply to swaps that are intended to be cleared contemporaneously with execution through a DCO or executed on a Facility. If the Commission has concerns about the documentation of such swaps, the appropriate place to address those concerns is in rules for DCOs and Facilities.

B. INCLUSION OF VALUATION METHODOLOGY.

Under the Proposed Rule, the documentation for a swap shall "include written documentation in which the parties agree on the methods, procedures, rules, and inputs for

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[10] It is unclear to the Working Group whether the Proposed Rule applies to swaps that are intended to be cleared contemporaneously with execution. Proposed CFTC Rule 23.504(a) requires swap dealers and major swap participants to execute written swap trading relationship documentation with its counterparty, other than a DCO, that complies with the Proposed Rule. However, the proposed CFTC Rule 23.504(b)(6) requires swap trading relationship documentation to include information related to clearing.

[11] *Proposed Rule* 23.504(b)(4).

determining the value of each swap at any time from execution to the termination, maturity, or expiration of such swap."[12] To the maximum extent practicable, the valuation of each swap shall be based on objective criteria.[13] Finally, the swap trading relationship documentation should include alternative methods for determining the value of the swap if any input required to value the swap becomes unavailable.[14]

Section 731 of the Dodd-Frank Act did not specifically require that the Commission's Proposed Rule mandate the inclusion of valuation methodology in swap trading relationship documentation. Accordingly, the Working Group respectfully recommends that the Commission not adopt a highly prescriptive approach to the regulation of by requiring the inclusion of valuation methodology in swap trading relationship documentation.

If the Commission is concerned about the impact of valuation disputes on swap markets it should focus its proposed rules on the valuation dispute resolution process and not the actual valuation methodology. Mandatory inclusion of valuation methodology in swap trading relationship documentation likely will do little to limit the number of valuation disputes, though the Commission states that it "expects the instances of valuation disputes will decrease over time as valuation agreements are committed to writing."[15] Even if counterparties are required to agree upon a common valuation formula, there will be legitimate disputes as to the application of such formulas and the values of inputs into such formulas. In fact, valuation disputes can provide swap market participants with valuable information when exogenous events disrupt traditional approaches to valuation.[16] That is to say, in periods of market turmoil, an agreed upon valuation formula will provide counterparties with one agreed upon value, but if the formula does not account for the causes of the market turmoil, that resulting value could be completely disconnected from the market price.[17] In a circumstance such as this, a valuation dispute can inform counterparties as to each other's view on the market and, once resolved, the resulting

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12 Proposed CFTC Rule § 23.504(b)(4).

13 *Id.*

14 *Id. at (4)(ii).*

15 *Proposed Rules at 6,725.*

16 Ultimately, a formulaic valuation methodology might not reflect market circumstances. The value of a swap is set by supply and demand, not the output of a formula.

17 The Working Group believes that it is in the public's interest for valuation disputes to surface. They provide information that is useful to both market participants and regulators. They help all parties evaluate pricing dislocations and associated credit risks. Argued in the extreme, if all credit default swaps referencing mortgage-backed bonds were valued by formula, there may have been less-than-clear signals about parties changing views about the inherent risk in the underlying security. Worse still, parties would have been unable to call for additional margin to cover perceived potential losses.

value will provide relevant pricing information to the market. In short, the resolution of the valuation dispute is what is important, not avoiding the dispute all together.

Valuation methodology is only really an issue when there is a dispute regarding value. Otherwise, parties should be free to value any swap transaction by any means they choose.[18] Even if each party to a swap uses a different valuation method, so long as their results fall within certain tolerances, then valuation is not a material issue. Requiring formulaic valuation is inconsistent with the way the market currently operates, and would greatly inhibit the ability of commercial energy firms, swap dealers and major swap participants to each use their proprietary models as the "agreed" valuation. Commercial energy firms, swap dealers and major swap participants are unlikely to want to share their proprietary models, and requiring them to utilize other formulaic valuation methodologies is likely only to increase their pricing requirements because of the increased reliance on third parties to provide input and analysis.[19] We also submit that requiring alternative methodology in swap documentation will only increase transaction costs and extend the time required to negotiate a swap transaction.

By focusing on the valuation dispute resolution process, the Commission could provide the market with a general framework that would allow disputes to be resolved in an orderly manner. Drafting rules that focus on the resolution of disputes and that do not force counterparties to accept a common valuation methodology would also reduce the pre-execution negotiating burden and allow counterparties to enter into swaps in a more timely and cost-effective manner.

1. INCLUSION OF VALUATION METHODOLOGY FOR CLEARED SWAPS, SWAPS EXECUTED ON FACILITY AND OTHER STANDARDIZED SWAPS.

If the Commission elects to apply the Proposed Rule to swaps that are traded on Facilities and swaps cleared through DCOs, then swap dealers and majors swap participants should be permitted to satisfy the valuation methodology requirements of the Proposed Rule for such swaps by referencing the price provided by the appropriate Facility or DCO. In addition, swap dealers and major swap participants that enter into standardized swaps that can be cleared, but

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[18] The Working Group would also note that counterparties exchange valuation information on and measure exposure on a portfolio basis. They do not exchange valuation information on individual swaps unless there is a material dispute as to the exposure between the parties. To do otherwise would be unnecessarily burdensome.

[19] The Working Group does not believe it is possible to state valuation methods and inputs with enough specificity to allow the counterparty and the Commission to value a swap in a substantially comparable manner, as required by proposed CFTC Rule 23.504(b)(4)(i), without disclosing confidential proprietary information protected under proposed CFTC Rule 23.504(b)(4)(iii).

are not cleared,[20] should also be able to satisfy the valuation methodology requirement of the Proposed Rule by referencing the price provided by the appropriate DCO.[21] In short, for these swaps, a valuation formula is not needed because an objective price reference exists.

2. INCLUSION OF VALUATION METHODOLOGY FOR CUSTOMIZED SWAPS.

The Working Group believes that a requirement to include valuation methodology in swap trading relationship documentation for customized swaps is unnecessary, at least with respect to energy swaps.[22] Valuation issues are not prevalent in all swap markets, and, therefore the Commission should not adopt rules that might be necessary to cure problems in certain markets, but are unnecessary and burdensome for other markets. In particular, endemic valuation issues are not prevalent in swap markets with underlying physical markets. The presence of those underlying physical markets provides a clear, objective basis from which parties determine the value of their swaps. That is not to say that these markets are free from valuation disputes, but such disputes are bounded by prices in the physical markets. The Commission must regulate quite disparate markets with its derivatives regulations, and rules that may make sense for one market may not work in others. The types of contracts in which Working Group members transact are typically closely related to underlying physical commodities (primarily energy-related commodities), and thus are not generally comparable with credit-default swaps (an example of a market in which valuation issues may arise with more frequency and severity, leading to unnecessary risk in that market).

The members of the Working Group generally use market values and other inputs to value their swaps. To require the parties to agree on some formulaic valuation methodology would only interfere with their ability to negotiate contracts promptly. Not only that, but it will be more costly to enter into swaps because, despite a party maintaining a proprietary model, a party would need to agree upon and then monitor a formulaic model. Additionally, counterparties often enter into master trading agreements to trade a certain kind of swap, but might later end up trading a wide variety of swaps under such documentation. The Proposed Rule should be applied in a manner that is flexible enough to allow counterparties to use

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[20] This could occur either because a counterparty is utilizing the end user clearing exception or because a swap is cleared by a DCO, but is not subject to the mandatory clearing requirement in Section 2(h) of the CEA.

[21] The Working Group would also recommend that counterparties be permitted to elect, as they currently do, a different valuation paradigm in the event of a close out or termination. See Section II.B.2. for further discussion of this issue.

[22] The Commission requests comment as to whether the valuation agreement in proposed CFTC Rule 23.504(b)(4) requires greater specificity (*Proposed Rule* at 6,720). The Working Group does not believe the valuation agreement is necessary, so it should not be included at all, let alone require greater specificity.

different valuation methodologies under the same master trading agreement and should allow swap dealers and major swap participants to make valuation disclosures when appropriate.

Finally, the Proposed Rule might not allow for the common market practice of designating different valuation methodologies based on why the valuation is being conducted. In most swap markets, counterparties often agree to value a swap using one method, such as the mid-market price, when determining counterparty exposure for the purposes of exchanging collateral, while agreeing to use another method, such as replacement cost, in the event the valuation is being conducted in conjunction with a termination of the contract. The Working Group requests that the Commission clarify that the Proposed Rule would allow parties to continue to use different valuation methodologies under different circumstances.[23]

C. RETROACTIVE APPLICATION.

The Commission has requested comment on the implementation of the Proposed Rule, particularly with respect to existing agreements. The requirements of the Proposed Rule should not be applied to existing contracts. There is no suggestion in Section 731 that Congress intended the Commission to require counterparties to amend and renegotiate the terms of existing contracts. In fact, Section 739(5) of the Dodd-Frank Act provides that "[u]nless specifically reserved in the applicable swap, neither the enactment of the [Dodd-Frank Act], nor any requirement under that Act or any amendment made by that Act, shall constitute a … regulatory change that would permit a party to … renegotiate, modify, amend, or supplement 1 or more transactions under the swap."[24]

Imposing these requirements on existing agreements would clearly require that existing agreements be "renegotiated." There are several legal and pragmatic issues that arise should the final rules require parties to modify existing swap trading relationship documentation. For example, what if the parties cannot agree on a formulaic valuation model? Does that mean their previous agreement is somehow rendered insufficient?

The Commission also requests comment as to the amount of time necessary for swap dealers and major swap participants to bring their existing swap trading relationship

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[23] The Commission acknowledges this market practice in note 58 of the Proposed Rule on *Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties* 75 Fed. Reg. 80,638 (Dec. 22, 2010).

[24] Section 739 of the Dodd-Frank Act proves that "[u]nless specifically reserved in the applicable swap, neither the enactment of the [Dodd-Frank Act], nor any requirement under that Act or any amendment made by that Act, shall constitute a …regulatory change that would permit a party to … renegotiate, modify, amend, or supplement 1 or more transactions under the swap."

documentation into compliance with the Proposed Rule.[25] The Working Group is unclear as to what is included in the phrase "existing documentation." Does the Commission mean the documentation associated with each existing swap? Or, does the Commission mean existing master trading agreements, under which market participants will continue to enter into swaps after the Proposed Rule becomes effective? While we would not support this exercise for the reasons state above, if the Commission elects the former, then the Working Group recommends the Commission provide market participants with a good faith safe harbor and allow such market participants no less than 36 months to bring their existing documentation into compliance, as doing so will be a long and costly process.[26] If the Commission elects the latter, the Working Group recommends the Commission allow market participants one year to bring existing documentation into compliance.

D. FAILURE TO COMPLY.

The Commission requests comments as to what the appropriate repercussions for failure to comply with the Proposed Rule should be.[27] To provide market participants with a degree of legal certainty, the Commission should clearly indicate the regulatory and legal consequences of one or more parties to a swap failing to meet the requirements of the Proposed Rule. However, those consequences should be non-monetary and should not include invalidation of swaps entered into under the deficient swap trading relationship documentation. A swap could be a vital part of the overall portfolio of those counterparties and invalidation due to improper documentation could be highly detrimental as it could take weeks or months to negotiate a replacement swap, and during that time period the market might move substantially.

E. EVIDENCE OF END USER EXCEPTION REQUIREMENTS.

Proposed CFTC Rule 23.505(a) imposes requirements for documentation obtained by a swap dealer or major swap participant in connection with a swap with an end user that is taking advantage of the end user exemption from clearing. That document must provide a "reasonable basis" on which the swap dealer or major swap participant believes its counterparty satisfies the end user clearing exception requirements. The Commission's reporting requirements in proposed CFTC Rule 39.6, however, require swap dealers and major swap participants to collect from an end user counterparty, the information required to show that such counterparty is eligible to use the clearing exception. The Working Group believes that it should not be the

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25 *Proposed Rule* at 6,720.

26 The Working Group notes that, based on legitimate differences in opinion, counterparties to existing swaps might not be able to agree to an amended valuation methodology that complies with the Proposed Rule.

27 *Id.*

obligation of a swap dealer or major swap participant to make a judgment based on that information to ensure that its counterparty is in fact eligible to utilize the end user clearing exception.[28] To subject a swap dealer or major swap participant to potential liability for its counterparty's failure to adhere to the CEA is to impose a fiduciary-like duty on swap dealers and major swap participants. The Working Group believes no market participants, not even end users, benefit from the imposition of such duties on swap dealers and major swap participants. Accordingly, the Working Group requests that, because proposed CFTC Rule 39.6 already requires swap dealers and major swap participants to collect and report the information relevant to the end user clearing exception, the Proposed Rule be amended to impose no obligations with regards to the end user clearing exception.

F. COST IMPLICATIONS OF THE PROPOSED RULE.

The Commission's estimates of the costs associated with the Proposed Rule substantially understate the rule's potential impact. *First*, the Commission states that the costs of renegotiating any existing swap trading relationship documentation will be spread among multiple parties "thereby reducing the per counterparty burden."[29] As a threshold matter, the Working Group is unable to fully evaluate that statement as margin requirements have yet to be proposed. The negotiation of credit support arrangements is among the most complex, time consuming and potentially contentious portions of the negotiation of a swap. Without knowing the potential parameters of the margin requirements, the cost implications of the Proposed Rule cannot be estimated. In addition, the negotiation of swap trading relationship documentation currently can take months leading to substantial costs.

Second, the Commission anticipates that "standardized swap trading documentation will develop quickly…dramatically reducing the cost to individual participants."[30] If swap trading relationship documentation is required to include agreed upon valuation methodology this is not likely. Market participants often have their own preferred and proprietary methods for valuating swaps and likely will not agree to standard valuation methodology. Because of this preference, valuation methodology will need to be negotiated as a threshold matter when entering into swap trading relationship documentation, which could be costly and time consuming in each instance.

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[28] For a full discussion of the end user clearing exception see the Working Group 's comments to the Commission's Proposed Rule on the *End-User Exception to Mandatory Clearing of Swaps* filed with the Commission on February 22, 2011.

[29] *Proposed Rule* at 6,725.

[30] *Id.*

Third, the Commission does not explicitly discuss the costs associated with the audit required under Proposed Rule 23.504(c), though it implies that the burden associated with such requirement will be "relatively minimal" because most swap dealers and major swap participants have existing resources that will allow them to comply with little additional effort.[31] The cost implications of requiring swap dealers and major swap participants to audit 5% of their existing swap trading relationship documentation could be substantial as they might have thousands of existing swaps in place and each swap may have multiple associated documents.

Fourth, the Proposed Rule will significantly alter the process by which counterparties enter into swaps, which will have market-wide impacts as participants adjust to a changing market. The Commission should consider these cost implications associated with the such a restructuring of swap markets. Accordingly, the Working Group requests that the Commission consider the cost implications more carefully when finalizing the Proposed Rule.

G. OPEN COMMENT PERIOD.

Given the complexity and interconnectedness of all of the rulemakings under Title VII of the Act, and given that the Act and the rules promulgated thereunder entirely restructure over-the-counter derivatives markets, the Working Group respectfully requests that the Commission hold open the comment period on all rules promulgated under Title VII of the Act until such time as each and every rule required to be promulgated has been proposed. Market participants will be able to consider the entire new market structure and the interconnection between all proposed rules when drafting comments on proposed rules. The resulting comprehensive comments will allow the Commission to better understand how their proposed rules will impact swap markets.

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31 *Id.*

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

Respectfully submitted,

/s/ David T. McIndoe
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