



May 17, 2011

VIA ELECTRONIC DELIVERY

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

Re: *Comments on Proposed Interpretive Order on Antidisruptive Practices Authority*

Dear Mr. Stawick:

I. INTRODUCTION.

BG Americas & Global LNG (“BGA”) respectfully submits these comments in response to the Proposed Interpretive Order, *Antidisruptive Practices Authority* (“Proposed Interpretive Order”), issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) and published in the *Federal Register* on March 18, 2011.¹ In the Proposed Interpretive Order, the Commission seeks to provide market participants and the public with guidance on the scope of the statutory prohibitions set forth in new Section 4c(a) of the Commodity Exchange Act (“CEA”), as established by Section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² BGA respectfully submits the comments set forth herein below primarily to address the adverse impacts that the Proposed Interpretive Order could have on the swap markets.

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 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.

¹ *Antidisruptive Practices Authority*, Proposed Interpretive Order, 76 Fed. Reg. 14,943 (Mar. 18,

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (hereinafter “Dodd-Frank Act”).

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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. COMMENTS.

A. VIOLATING BIDS AND OFFERS.

New CEA Section 4c(a)(5) applies to any trading, practice, or conduct on or subject to the rules of a registered entity (*i.e.*, a designated contract market ("DCM") or a swap execution facility ("SEF")). In the Proposed Interpretive Order, the Commission states that new CEA Section 4c(a)(5) will not apply to block trades or exchanges for related positions transacted in accordance with the rules of a DCM or SEF or bilaterally negotiated swap transactions.³

BGA respectfully requests that the Commission clarify its definition of "bilaterally negotiated swap transactions"⁴ as any transaction between two parties or a transaction effectuated through a voice broker. Doing so will avoid potential interpretational conflicts and provide certainty to market participants attempting to comply with the requirements of new CEA Section 4c(a)(5).

B. CLOSING PERIOD.

In the Proposed Interpretive Order, the Commission generally defines "closing period" as the period in the contract or trade when the daily settlement price is

³ See Proposed Interpretive Order at 14,945.

⁴ See *id.*



determined under the rules of that trading facility.⁵ The Commission then goes on to state that this prohibition will “encompass any trading, conduct, or practices occurring inside the closing period that affects the orderly execution of transactions during the closing period, [and that] potential disruptive conduct outside that period may nevertheless form the basis for an investigation of potential violations under this section and other sections under the Act.”⁶ BGA is concerned that the Commission has not provided sufficient clarity around the terms “orderly execution,” “disruptive conduct,” or “closing period.”

First, the terms “orderly” and “disruptive” are vague and subjective. For example, the Commission states that it will use existing concepts of orderliness of markets when assessing whether trades are executed, and lists the types of factors it may look to in determining whether conduct has violated this standard. Market participants and the industry need certainty around what conduct will be deemed by the Commission to be a violation. If the Commission fails to develop a concrete definition of the term “orderly,” it risks stifling appropriate market activity because a market participant will fear being second-guessed for conduct surrounding market disruptions that are completely unrelated to that market participant’s behavior.

Second, the proposed definition of “closing period” is also overly vague and requires further clarification, especially as it relates to the swaps market. Unlike futures, swaps do not have a “closing period.” Instead, the types of swap transactions into which BGA routinely enters settle financially against prices set by physical trades, futures contracts, or indices based on either physical or futures contracts. Of these, the only contract which currently has a “closing period” is the futures contract. In addition, it appears that the Commission is changing the definition of “closing period” relating to physical products that are priced using indices or benchmarks. These products do not have defined closing periods; therefore, it is inappropriate to apply a “closing period” concept to them. In summary, it is unclear how the Commission’s proposed construct would apply to energy commodity swaps. BGA requests that the Commission provide clarification as to how its proposal would apply to a swap contract

⁵ The Commission notes that closing periods may include the time period in which a daily settlement price is determined, the expiration day for a futures contract, and any period of time in which the cash-market transaction prices for a physical commodity are used in establishing a settlement price for a futures contract, option, or swap (as defined by the CEA). See Proposed Interpretive Order at 14,946 n.42.

⁶ See Proposed Interpretive Order at 14,946.



that settles against a contract with no closing period, or clarify that this provision does not apply to such products.

Further, the Commission has expanded the language in the statute to include potential disruptive conduct *outside* the closing period as forming the basis for an investigation of potential violations under the Commission's new authority. It is unclear why the Commission is focusing in this provision on activities outside of the closing period, since it currently has the necessary statutory authority to address manipulative conduct outside the closing period through other statutory provisions. Moreover, it is difficult to envision how trading outside the closing period could affect prices within the closing period. Therefore, the Commission should focus its efforts on those practices occurring during the closing period.

Given the Commission's enhanced penalty authority, market participants face enormous potential penalties for engaging in activities that may have been deemed to be antidisruptive trading practices. Should the Commission decline to provide greater clarity surrounding what conduct will constitute a violation of these standards, market participants will face regulatory uncertainty and may curtail their activity in swap markets. With fewer market participants, volatility will likely increase in these markets, which may have the unintended consequence of chilling market liquidity and creating upward pressure on physical commodity prices.

C. Spoofing.

New CEA Section 4c(a)(5)(C) prohibits market participants from engaging in what is commonly known to the trade as "spoofing" (*i.e.*, bidding or offering with the intent to cancel the bid or offer before execution). The Proposed Interpretive Order states that "spoofing" includes, but is not limited to: (i) submitting or cancelling bids or offers to overload the quotation system of a registered entity; (ii) submitting or cancelling bids or offers to delay another person's execution of trades; and (iii) submitting or cancelling multiple bids or offers to create an appearance of false market depth." It states further that the "spoofing" prohibition is not intended to cover non-executable market communications such as requests for quotes and other authorized pre-trade communications.⁷ Further, the Commission states that a market participant must act with some degree of intent to engage in the "spoofing" action prohibited by this section, and that "orders, modifications, or cancellations will not be classified as

⁷ See Proposed Interpretive Order at 14,947.



'spoofing' if they were submitted as part of a legitimate, good-faith attempt to consummate a trade."⁸

BGA recommends the Commission clarify that, if a bid or offer has the risk of being hit or lifted by the market, for any period of time, this activity be deemed legitimate conduct and not be deemed "spoofing." BGA sees value to market liquidity in participants sending out high-volume bids and offers, and is worried market participants may decline to make such bids or offers in the future if there is a risk such conduct may be swept under the definition of spoofing. Again, the Commission needs to provide precise definitions of what conduct will and will not fall within the definitions of antidisruptive trading practices so market participants do not face regulatory uncertainty or risk in performing such activity. Otherwise, parties may decline to participate as readily in swap markets, which will diminish the beneficial effects a liquid swap market has on price discovery in physical commodity markets.

III. **CONCLUSION.**

BGA appreciates this opportunity to comment and respectfully requests that the Commission consider the comments set forth herein as it develops any final interpretive order in this proceeding.

Respectfully submitted,

/s/ Lisa Yoho
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/s/ Matt Schatzman
Matt Schatzman
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⁸ See *id.*