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June 3, 2011

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

VIA ELECTRONIC SUBMISSION

Re: *Commissioner O'Malia Proposal for Sequencing of Release of Final Rules Under the Dodd-Frank Act*

Dear Secretary Stawick:

On behalf of the Working Group of Commercial Energy Firms (the "Working Group"), Hunton & Williams LLP respectfully submits this letter regarding Commissioner O'Malia's proposal ("Sequencing Proposal") to sequence the final rules that the Commodity Futures Trading Commission (the "Commission") might issue under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Working Group appreciates the opportunity to share its views with the Commission.

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

The Working Group encourages the Commission to further organize a rulemaking process that has, thus far, occurred in a piecemeal manner. By ordering the release of rules under the Dodd-Frank Act in a more logical manner, the Sequencing Proposal will help alleviate the growing uncertainty concerning new regulations in the swap markets. Indeed, the Sequencing Proposal closely aligns with suggestions that the Working Groups submitted in a March 23rd letter to the Commission. The Working Group, therefore, strongly urges the Commission to publish for comment a full schedule for the release of final rules under the Dodd-Frank Act. The Working Group largely agrees with the Sequencing Proposal but has a few important suggestions which are submitted for the Commission's consideration.

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Sequencing the release of final rules is an important first step in harmonizing the rulemaking process under the Dodd-Frank Act. However, to achieve maximum effectiveness, this effort should be coupled with ordered implementation of those rules. The Working Group's March 23rd letter contains a rule release schedule largely mirroring the Sequencing Proposal, along with suggested timelines to implement those rules. As the Commission considers sequencing its issuance of final rules, it should likewise account for the date these rules become effective as well as when the rules are implemented. Just as the Commission should post for comment its proposed final rule sequencing, it should also propose for comment a proposed implementation schedule.

As it has in past letters, the Working Group reiterates that Congress granted the Commission discretion necessary to implement rules under the Dodd-Frank Act in an efficient manner. In particular, Section 723 of the Dodd-Frank Act provides that the Commission, upon petition by market participants, could continue the availability of the exclusion of Section 2(h) of the Commodity Exchange Act with respect to certain commodity transactions for up to one year after the general effectiveness of Title VII of the Dodd-Frank Act. Numerous entities applied to the Commission for the continued application of Section 2(h). The Commission should provide such continuation of Section 2(h) to facilitate an orderly transition to a new regulatory regime under the Dodd-Frank Act. If implementing certain rules extends beyond the maximum one year Section 2(h) extension period, then the Working Group suggests that the Commission use its existing statutory authority to address any gaps in the regulatory treatment of swaps and swap market participants. In addition, Section 754 of the Dodd-Frank Act allows the Commission to set effective dates for rules required under Title VII at no earlier than sixty days after the publication of such rules. The Commission, thus, can utilize authority under Sections 723 and 754 of the Dodd-Frank Act to efficiently sequence the issuance and implementation of rules pursuant to the Dodd-Frank Act.

Furthermore, in implementing these rules, the Commission should recognize that swap dealers are not a single homogenous group. The Sequencing Proposal would be strengthened by first concentrating Commission resources on overseeing compliance by market participants traditionally subject to prudential regulation by a financial regulator. As the Working Group's March 23rd letter points out, 25 bank holding companies are party to the vast majority

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of swaps.¹ By concentrating on these banks first, the Commission captures much of the U.S. based-swap market and will likely be imposing regulation on those entities most prepared to comply in short order.

The Working Group further recommends some modifications and clarifications to the Sequencing Proposal itself. Clearing rules for Designated Clearing Organizations (“DCOs”) should be moved from Phase III to Phase II, and Rule 1.25 clearing as well as Segregation for Cleared Swaps from Phase IV to Phase III. Swap market participants will need to develop extensive reporting systems in order to satisfy their obligations under the Dodd-Frank Act. However, such reporting obligations only apply to uncleared swaps. Reporting obligations with regards to cleared swaps are imposed on derivatives clearing organizations. A substantial portion of the swap markets will likely be subject to the Dodd-Frank Act’s mandatory clearing requirement. Issuing and implementing clearing rules earlier in the process will prevent entities from expending resources to develop portions of systems that may ultimately prove unnecessary as many types and classes of swaps will likely be subject to the mandatory clearing requirement.

The Working Group supports the inclusion of the large trader reporting rules in Phase I. It is crucial for the Commission to have access to market information as it implements Title VII of the Dodd-Frank Act. However, given the Dodd-Frank Act’s multiple reporting requirements, the Large Trader Reporting Rules are only an interim measure. As such the Commission should take care to impose a minimal burden on swap market participants to comply with such rules. The Working Group respectfully suggests that the Commission only apply the Large Trader Reporting Rules to those entities subject to the Commission’s special call issued in 2008. Because such entities already have the infrastructure in place to report directly to the Commission, any costs incurred by these entities to modify their existing reporting systems would be significantly less than the costs incurred by market participants that do not have such systems in place. Additionally, focusing the Large Trader Reporting

¹ See *Public Hearing to Review Implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Hearing Before the House Committee on Agriculture*, 112th Cong. (Feb. 10, 2011) (testimony of CFTC Chairman Gary Gensler explaining that the size of the U.S. swaps market is approximately \$300 trillion and that “the largest 25 bank holding companies currently have \$277 trillion notional amount of swaps.”). Based on Chairman Gensler’s figures, the largest 25 bank holding companies control approximately 92 percent of the U.S. swap markets. See also “Goldman Sachs, Morgan Stanley Would Be Least Affected by Swaps Proposal,” *Bloomberg News* (June 23, 2010), available at <http://www.bloomberg.com/news/2010-06-23/goldmansachs-morgan-stanley-would-be-least-affected-by-swaps-proposal.html> (concluding that the five major U.S. commercial banks and their subsidiaries held 97 percent of the notional amount of outstanding derivatives in the fourth quarter of 2009).

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Rules to those entities subject to the 2008 special call should cover a significant portion of the swap markets without unduly burdening smaller market entities.²

In conclusion, the Working Group generally supports the Sequencing Proposal. However, the Sequencing Proposal would be strengthened by more clearly specifying the dates rules would be effective and implemented. Doing so will allow affected entities sufficient time to put in place proper compliance mechanisms. The Working Group commends Commissioner O'Malia's efforts here and encourages the Commission to, likewise, publish a sequence of rule issuance, effectiveness and implementation for rulemaking under the Dodd-Frank Act.

Respectfully Submitted,

/s/ Mark Menezes

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² See Explanatory Note on scope of data collected during the 2008 Special Call, stating that "The entities subject to the special call include well-known financial institutions that are among the largest international swap dealers." available at <http://www.cftc.gov/MarketReports/IndexInvestmentData/ExplanatoryNotes/index.htm>. Based on the figures cited above in Footnote 1, it can be reasonably assumed that the Special Call included many of the 25 largest bank holding companies, which control a significant portion of U.S. swap markets.