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June 9, 2011

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

**VIA ELECTRONIC MAIL**

Re: *Proposed Rule on Swap Data Reporting and Recordkeeping Requirements; Pre-Enactment and Transition Swaps*, RIN 3038-AD48

Dear Secretary Stawick:

**I. INTRODUCTION.**

On behalf of the Working Group of Commercial Energy Firms (the “Working Group”), Hunton & Williams LLP respectfully submits these comments to the “Notice of Proposed Rulemaking on Swap Data Reporting and Recordkeeping Requirements; Pre-Enactment and Transition Swaps” (“*Proposed Rule*”) issued by the Commodity Futures Trading Commission (“CFTC” or the “Commission”) pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) and published in the *Federal Register* on April 25, 2011.<sup>1</sup>

Section 723 of the Act requires the CFTC to adopt rules for the reporting of “historical” swaps – that is, swaps entered into before or after the date of enactment of the Act and prior to the effective date of swap data recordkeeping and reporting rules implementing new Section 2(h)(5)(B) of the Commodity Exchange Act (“CEA”) – to a registered swap data repository (“SDR”) or to the Commission. Pursuant to this mandate, on October 14, 2010 and December 17, 2010, the CFTC issued two *Interim Final Rules* requiring specified counterparties to Pre-enactment Swaps and Post-enactment Swaps (collectively “Historical Swaps”) to report certain information related to such transactions to a registered SDR or to the CFTC by either (i) 90 days following the July 15, 2011 effective date of the Act, or (ii) such other time as the Commission may prescribe.

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<sup>1</sup> See Swap Data Recordkeeping and Reporting Requirements; Pre-Enactment and Transition Swaps, *Notice of Proposed Rulemaking*, 76 Fed. Reg. 22,833 (April 25, 2011).

## II. COMMENTS OF THE WORKING GROUP OF COMMERCIAL ENERGY FIRMS.

The Working Group welcomes the opportunity to submit comments in this proceeding and looks forward to working with the CFTC as it develops a final rule addressing the reporting and recordkeeping requirements applicable to Historical Swaps.

### A. ISSUANCE OF THE PROPOSED RULE IN ADVANCE OF REGULATIONS FURTHER DEFINING THE TERM "SWAP" CREATES LEGAL AND REGULATORY UNCERTAINTY AND INCREASES COMPLIANCE RISK.

The Working Group is concerned that the issuance of the *Proposed Rule* in advance of a final rule further defining the term "swap" unnecessarily creates legal and regulatory uncertainty regarding the universe of swap transactions that are subject to the reporting and recordkeeping requirements of new Part 46. Until such time that a final rule further defining the term swap, as adopted in new CEA Section 1a(47), becomes effective, the Working Group requests that the CFTC issue guidance that market participants may rely upon to help identify existing transactions that are subject to the new reporting and recordkeeping requirements.

Without clear guidance regarding the scope and application of the *Proposed Rule*, participants in certain over-the-counter ("OTC") derivatives markets, notably energy markets, must make good faith determinations as to whether certain transactions are reportable as Historical Swaps.<sup>2</sup> In the absence of such guidance or, alternatively, the creation of a safe harbor for good faith attempts to comply with the requirements of new Part 46, the uncertainty created by the Commission's issuance of this *Proposed Rule* unnecessarily exposes participants in energy markets, among others, to increased non-compliance risk for failing to either (i) properly identify and report Historical Swaps, or (ii) retain records for such transactions, as required by new Part 46.2.

Additionally, inter-affiliate transactions should not be required to be reported as Historical Swaps. These inter-affiliate transactions serve legitimate business concerns, such as accounting and treasury management, and do not introduce risk into the market. The reporting of inter-affiliate transactions may cause price distortions or overstatement of other market measures, such as open interest. Thus, reporting of such transactions does not fulfill any policy goals that underlay Title VII of the Act or the Commission's proposed rules. Also, requiring reporting of inter-affiliate transactions might require many swap market participants to make even greater investments in systems and technology.<sup>3</sup>

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<sup>2</sup> The Working Group recognizes the definition of "swap agreement" set forth in Section 35.1(b)(1) of the CFTC's regulations, 17 C.F.R. § 35.1(b)(1). This definition focuses primarily on swap agreements covering excluded and other financial commodities. By its terms, it does not cover the transactions entered into in the energy markets, some of which may now be deemed swap agreements.

<sup>3</sup> Requiring inter-affiliate transactions to be reported would likely increase the number of end user to end user swaps and would put such end users in the position to report a non-trivial number of swaps, even though the Act's reporting requirements were structured to avoid such an outcome.

Further, the lack of clarity and uncertainty described above may lead market participants to retain more data than is necessary to comply with the requirements of the *Proposed Rule*. Doing so would be unnecessary and costly, especially for non-financial end users. In light of the many other rulemakings being issued concurrently, the Commission should prioritize efficiency and resources by providing market participants with clarity and guidance as to which transactions will be subject to the requirements of the *Proposed Rule*.

**1. The Existing Provisions of the CEA and CFTC Regulatory Requirements Should Apply for Purposes of Identifying Historical Swaps Subject to the Proposed Rule.**

The statutory definition of “swap” set forth in new CEA Section 1a(47) does not become effective until 360 days from the date of enactment of the Act, *i.e.*, July 15, 2011. Section 712(d) of the Act requires the CFTC and the Securities and Exchange Commission (“SEC”) to undertake a joint rulemaking specifically for the purpose of further defining the term “swap.” The issuance of such a final rule is not required until July 15, 2011. Based upon the comment deadline for the proposed rule further defining the term “swap,” it is clear that the CFTC and the SEC will not be able to issue the final rule in accordance with such deadline.<sup>4</sup>

Given the pendency of this joint rulemaking and the Congressionally stated need for further definition of the term “swap,”<sup>5</sup> the Working Group respectfully requests that the CFTC clarify that market participants should rely only on applicable provisions of the CEA, CFTC regulations, and related guidance in effect on the day before the date of the Act’s enactment for purposes of identifying transactions subject to the reporting and recordkeeping requirements of new Part 46 in the absence of any specific guidance published by the CFTC on the identification of Historical Swaps.

**2. Existing CFTC Guidance Interpreting the Forward Contract Exclusion Should Continue to Apply.**

The CFTC and Congress have previously recognized both the importance and unique characteristics of certain forwards and options transactions, particularly as these transactions

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<sup>4</sup> See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; *Joint Notice of Proposed Rulemaking*, 76 Fed. Reg. 29,818 (May 23, 2011) (“Proposed Swap Definition Rule”). The comment deadline for this proposed rule is July 22, 2011.

<sup>5</sup> See Section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

relate to energy commodities.<sup>6</sup> Such energy transactions have generally been excluded from regulation pursuant to various interpretations of the well-established forward contract exclusion in CEA Section 1a(19).<sup>7</sup> The *Proposed Rule*, however, is silent regarding whether forward contracts are outside of the scope of new Section 46.<sup>8</sup>

Given the transitional regulatory environment in which the *Proposed Rule* has been issued, this silence creates uncertainty and unnecessarily heightens non-compliance risks faced by market participants making good faith attempts to comply with new Part 46. As such, the Working Group requests the CFTC to clarify that: (1) existing guidance interpreting the forward contract exclusion in the CEA continues to apply; and (2) certain transactions taking place in physical markets, *i.e.*, pre- and post-enactment, unexpired (i) physical delivery forwards, (ii) physical delivery options on energy commodities, and (iii) embedded options in physical delivery forwards,<sup>9</sup> are not Historical Swaps and, therefore, are not subject to the reporting and recordkeeping requirements under the *Proposed Rule*.<sup>10</sup>

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<sup>6</sup> See Statutory Interpretation Concerning Forward Transactions, 55 Fed. Reg. 39,188-92 (Sept. 25, 1990), reprinted at [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,925. Energy markets are unique in that they are inextricably intertwined with a physical market structure which provides the capability for market participants to make and take delivery of a transaction's underlying commodity. Various forms of transactions are routinely executed in physical energy markets, including physical delivery forwards and physical delivery options on energy commodities. These transactions are critical for energy companies and consumers of energy commodities to make or take physical delivery of energy commodities and to manage various commodity risks.

<sup>7</sup> See CEA Section 1a(19), 7 U.S.C. § 1a(19) and 17 C.F.R. § 32.4, respectively.

<sup>8</sup> The Working Group submits that despite the silence of the *Proposed Rule* regarding the application of the forward contract exclusion to Historical Swaps, the Commission has proposed applying the exclusion under the Proposed Swap Definition Rule. Given that this application may change under the Commission's final rule defining the term "Swap," the Commission should issue a statement that the forward contract exclusion applies to Historical Swaps.

<sup>9</sup> Physical delivery transactions in the energy markets, whether forward transactions or options to deliver a physical commodity, by structure and design, are distinct from OTC derivatives transactions in securities, interest rates or other financial markets.

<sup>10</sup> The Working Group incorporates by reference comments submitted to the CFTC on November 15, 2010 and January 18, 2011, in response to the Commission's Interim Final Rules for Reporting Pre-enactment and Post-Enactment Swaps. See Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 Fed. Reg. 63,080 (Oct. 14, 2010) ("*Pre-Enactment Swap Rule*") and Interim Final rule for Reporting Certain Post-Enactment Swap Transactions, 75 Fed. Reg. 78,892 (Dec. 17, 2010) ("*Post-Enactment Swap Rule*"), respectively. In particular, the Working Group's arguments at pp. 6-9 of the *Pre-Enactment Swap Rule* comments and pp. 4-5 of the *Post-Enactment Swap Rule* comments provide support as to why certain transactions taking place in physical markets should not be subject to the Historical Swap recordkeeping and reporting obligations, *i.e.*, unexpired (i) physical delivery forwards, (ii) physical delivery options on energy commodities, and (iii) embedded options in physical delivery forwards. Those arguments are applicable to this proceeding and are incorporated herein with respect to why similar transactions should not be subject to the Historical Swap recordkeeping and reporting obligations.

**B. RECORDKEEPING AND REPORTING REQUIREMENTS.**

**1. Minimum Primary Economic Terms.**

The Working Group appreciates that the *Proposed Rule* contains a limited list of required asset class-specific primary economic terms that must be reported for Historical Swap transactions, and that the Commission has recognized that minimum primary economic terms can vary widely depending on the asset class of the underlying product of a transaction. In response to the Commission's request for comment on appropriate minimum primary economic terms, the Working Group has appended a suggested set of terms for "Other Commodity Swaps" to these comments.<sup>11</sup> The Working Group also suggests that for non-standard transactions or options, the Commission should allow for a "check-the-box" indicator where information for all of the minimum primary economic terms specified under the *Proposed Rule* is not available.

Further, in its final rule on recordkeeping and reporting for Historical Swaps, the Commission should issue a finite list of required primary economic terms that are aligned with data that is already captured during the normal course of business. The requirement to retain and report "any other primary economic term(s) of [a] swap matched by the counterparties" in the Commission's proposed list of primary economic terms is not consistent with the notion of limiting data required to be retained and reported for Historical Swaps. A finite list of primary economic terms will provide certainty and consistency for the retention and reporting of Historical Swap data.

Regarding the Commission's request for comment on the asset class definitions in the *Proposed Rule*, the Working Group recommends that the Commission work with industry participants through its Technical Advisory Committee to establish such definitions.

**2. Confirmation, Master Agreement, and Credit Support Agreement Data.**

The Working Group agrees with the Commission's proposal to require the retention of confirmations of a Historical Swap transaction only if a counterparty has the confirmation in its possession on the date of publication of the *Proposed Rule*. However, the Working Group requests clarification on the definition of "confirmation data" under the *Proposed Rule*. The proposed definition includes all the terms of the swap "matched and agreed to" by the counterparties. The Working Group is concerned that this definition would not allow for the use of paper confirmations, where terms are not matched as they are for purposes of electronic confirmations, but simply "agreed to." The definition of "confirmation data" should be amended to clarify that paper confirmations, including electronic images of same, may be used to satisfy recordkeeping and reporting requirements of Part 46.

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<sup>11</sup> See Appendix A of these comments for the Working Group's suggested list of minimum primary economic terms for other commodity swaps.

The Working Group requests clarification on the requirement to keep records of credit support agreements or “equivalent documentation relating to the swap.” Specifically, the term “equivalent documentation” is undefined and broadly worded. The Working Group requests that the Commission issue guidance or further define what constitutes such documentation.

The Commission asks for the master agreement identifier (if any) used by the reporting counterparty to be included in the initial data report for Historical Swaps still in existence on the compliance date so that it can “aggregate transactional data to calculate net or gross exposure of a particular counterparty.” Counterparties to transactions are in the best position to make such calculations. Further, the Commission already has the ability to request such information from market participants. The Commission should not be responsible for making such a calculation; swap dealers are already required to make this calculation pursuant to capital and margin requirements.

### **3. Reporting of Images of Documentation.**

The *Proposed Rule* requires the electronic reporting of Historical Swap data to SDRs or the Commission. The definition of “electronic reporting” specifically excludes the use of images of documents to satisfy reporting obligations under the *Proposed Rule*. The Working Group strongly disagrees with the prohibition of the use of document images. The use of paper documentation for swap transactions is common among many market participants. Creating electronic images of such documentation is the most efficient method to retain such documentation and is a method currently engaged in and recognized by many market participants. Given this common form of data storage, the Commission should allow reporting counterparties to submit images of paper swap documentation to an SDR or the Commission, as applicable. By prohibiting the use of images for the reporting of unexpired transactions, the Commission is effectively requiring market participants to pursue more burdensome, costly, and less efficient means of gathering and submitting the required data, which is already reflected in their paper records and respective images of same, for electronic transmission.

Additionally, the Commission has not specified the form and manner of reporting electronic records that is “acceptable” under the *Proposed Rule* or its other proposed reporting and recordkeeping rules. For companies that retain many or all of their records as images, the *Proposed Rule* would effectively require them to create new electronic records of those images without knowing the form that such records must take. Aside from the large amount of uncertainty created by this lack of clarity, creating new electronic records from images would be extraordinarily costly and labor-intensive, if not impossible. The Working Group strongly urges the Commission to reconsider this prohibition and allow for the reporting of images of documents.

### **4. Data Retention and Retrieval Requirements.**

The *Proposed Rule* would require records to be retained in a “form and manner acceptable to the Commission.” The Working Group requests clarification or guidance as to what the Commission believes to be “acceptable.” In the absence of such guidance, the Working

Group submits that required data should be allowed to be retained as they currently are in an entity's normal course of business.

Additionally, the *Proposed Rule* requires that records be retrievable via "real time electronic access" throughout the life of the swap and for two years following final termination. The Working Group requests clarification or guidance as to the definition of "real time" access and suggests that for purposes of Historical Swaps that the Commission require instead that such records be retrievable within three business days of any request by the Commission. As noted above, these Historical Swaps have limited price discovery value as they will not be disseminated to the public. Rather, such data will provide the Commission with information on the breadth of existing transactions in the marketplace.

**C. THE CFTC SHOULD CLARIFY THAT UNDER THE PROPOSED REPORTING HIERARCHY, AN ENTITY'S STATUS AS A SWAP DEALER OR MAJOR SWAP PARTICIPANT SHOULD TAKE PRECEDENCE OVER ITS JURISDICTIONAL STATUS.**

The Working Group appreciates the consistency with which the Commission has applied its proposed hierarchy to determine which counterparties must report swap transaction data across each of its proposed rules on recordkeeping and reporting requirements. However, Part 45.5 of the Commission's proposed rule on general swap data reporting<sup>12</sup> and Part 46.5 of the *Proposed Rule* are written such that a market participant's jurisdictional status (*e.g.*, U.S. versus foreign counterparty) trumps its status as a swap dealer, major swap participant ("MSP"), or non-financial end user. Under both of these proposals, transactions in which only one counterparty is a foreign entity would place the reporting obligation on the U.S. counterparty, regardless of the U.S. counterparty's status. Thus, in a transaction where one counterparty is a U.S. non-financial end user and the other is a foreign swap dealer or MSP, the burden of reporting would fall to the U.S. non-financial end user.

This scenario is inconsistent with the proposed "entity status" reporting hierarchy, which requires swap dealers or MSPs to report swap data when transacting with end users. Additionally, under Section 729 of the Dodd-Frank Act, Congress makes no reference to an entity's jurisdictional status when determining its obligation to report swap data for uncleared swaps. As such, use of the "entity status" reporting hierarchy is more consistent with the statute.

The Commission should amend its proposed rules to require that, to the extent an entity is registered as a swap dealer or MSP, regardless of its jurisdictional status, that entity shall have the obligation to report swap transaction data when transacting with a U.S. non-financial end user counterparty. An entity's jurisdictional status should only be taken into consideration when both counterparties fall within the same class of market participant.

The Commission should not require reporting of Historical Swaps until the definitions of registered entities (*e.g.*, swap dealer, MSP) are finalized. Also, to the extent that a firm has

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<sup>12</sup> See *Swap Data Recordkeeping and Reporting Requirements*, Notice of Proposed Rulemaking, 75 Fed. Reg. 76,574 (Dec. 8, 2010) (referred to herein as the "General Reporting Rule").

registered an internal division as a limited designation swap dealer, only the swaps entered into by the registered division should be treated as swap dealer transactions for purposes of the reporting hierarchy. A swap entered into by a non-registrant division of a firm should be treated as an end user transaction, to the extent such division and the applicable swap qualify, for purposes of the reporting hierarchy, despite the fact that the firm also has a division registered as a limited designation swap dealer.

**D. IMPLEMENTATION.**

**1. Reporting Requirements Should Not be Implemented Until SDRs, the Commission, and Other Entities Have the Tested Capacity to Effect Reporting.**

The Working Group has previously submitted comments under the Commission's General Reporting Rule that the reporting of swap transaction data should not be required until certain criteria are met.<sup>13</sup> Specifically, reporting requirements under the *Proposed Rule* should not be implemented until:

- ◆ Final rules defining entity status as well as entity registration have been issued and are effective;
- ◆ All of the data elements necessary to implementation are finalized and defined by the Commission;
- ◆ SDRs have been formed and registered and have the tested capability, and proven back-up capabilities, to accept Historical Swap data for public dissemination;<sup>14</sup>
- ◆ CFTC has interface capability, and proven back-up capabilities, with SDRs and third party service providers, as new CEA Section 21(c)(4)(A) requires SDRs to provide direct electronic access to the Commission;
- ◆ SDRs have published a reporting format and related requirements for standardized (i) data fields, (ii) data elements, and (iii) product descriptions; and
- ◆ All of the standards for Unique Counterparty Identifiers ("UCI") are established, the issuing entities for UCIs are formed, registered, and have issued UCIs to reporting counterparties, and all other registered entities have been issued UCIs.

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<sup>13</sup> See comments submitted to the CFTC on February 7, 2011 in response to the General Reporting Rule at pp. 4-5.

<sup>14</sup> Once SDRs are formed, registered, and tested, reporting counterparties will need additional time to pull together data that must be reported in the manner specified by the SDRs or the Commission, and to reach agreements on which counterparty shall report for transactions involving two entities of the same classification (e.g., swap dealer, MSP, or end user), before Historical Swap data can be reported. The Commission should allow additional time for reporting counterparties to do so before requiring them to report Historical Swap data.



## **2. Unique Counterparty Identifiers.**

Under the *Proposed Rule*, non-reporting counterparties are granted 180-days from the compliance date of the *Proposed Rule* to obtain a UCI. For transactions reported before that time, the reporting counterparty must report their internal identifier for the non-reporting counterparty. Once a non-reporting counterparty obtains a UCI, the reporting counterparty must “re-report” the transaction with the appropriate UCI.

The Working Group requests that the Commission reconsider requiring UCIs for non-reporting counterparties to Historical Swaps if assigning UCIs takes longer than one year past the compliance date. In such case, there is little additional value to be gained from requiring the re-reporting of a transaction simply to re-assign the non-reporting counterparty a UCI, especially in the case of Historical Swaps that expire or terminate before the UCI can be assigned. For Historical Swaps still in existence past the compliance date and the date at which UCIs are assigned, reporting counterparties should have the option to provide a cross-referenced table of their internal counterparty identifiers matched with the new UCIs.

## **3. Reporting of Transaction Data.**

Counterparties should have the option to report all data pertaining to reportable transactions, in excess of the data required by the *Proposed Rule*, as long as the required swap data is contained in such a report. In many cases, it may be more efficient and less costly for a reporting counterparty to simply report its entire record of documentation for a swap transaction, rather than to review and establish separate reportable records containing only the required data.

Should the Commission require reporting before finalizing its rules on entity status definitions and registration, both counterparties should have the option to report all of their Historical Swap data to an SDR. If the Commission requires compliance with the *Proposed Rule* before entity status definitions and registrations are finalized, counterparties will not know who should report data pertaining to a Historical Swap. Allowing both counterparties to report their data provides each counterparty with a way to ensure compliance with the *Proposed Rule*.

For Historical Swaps, counterparties that have the same defined entity status may not be able reach an agreement as to who should be the reporting counterparty, as opposed to swaps entered into after the compliance date (in which counterparties will be required to reach an agreement beforehand as to who will be the reporting counterparty). If such an agreement cannot be reached, it is likely that both counterparties will choose to report their Historical Swap data in order to ensure compliance with the *Proposed Rule*. The Commission should allow for this scenario as well, or provide guidance as to how a reporting counterparty should be chosen when an agreement cannot be reached between counterparties with the same entity status. The Working Group believes the Commission should develop a straight-forward, objective and non-discriminatory protocol for determining the reporting counterparty when two counterparties with the same entity status cannot reach an agreement. Furthermore, the Commission should issue a statement that a counterparty will not be held liable for failure to report Historical Swap data if it has a reasonable belief that it is not the reporting counterparty.

#### **4. Compliance Date.**

Under the *Proposed Rule*, the compliance date for the reporting of Historical Swap data would be the same as the compliance date for the Commission's General Reporting Rule. Combining the effective dates of the reporting rules increases the chances of information technology complications, reporting errors, and other problems that in turn increase the risk of non-compliance. The Working Group recommends that the Commission separate the compliance dates of the proposed reporting rules in order to ease the compliance burden from a technological standpoint.

The Working Group also recommends using the reporting of Historical Swaps as a test case in order to identify, and determine solutions to, reporting problems that may arise before the Commission's General Reporting Rule becomes effective. Further, the same sets of minimum primary economic terms would be required to be reported under the *Proposed Rule* as under the Commission's General Reporting Rule, providing the Commission and market participants with a real-world view of swap data reporting before all swaps are required to be reported.

#### **5. Cost-Benefit Considerations.**

The Commission should weigh all of the possible ramifications listed in Section II.D, above, with respect to the cost of implementation of the *Proposed Rule*. Without a definition of the term "Swap," SDR standardization, or unique identifiers, the Historical Swap information being reported will be of little value to the CFTC or to broader market transparency. The Commission should explain the benefits, if any, of reporting Historical Swap data and explain how those benefits outweigh the significant costs to market participants in complying with the reporting requirements for transition swaps.

#### **E. THE CFTC SHOULD ISSUE GUIDANCE FOR THE PROPOSED RULE OR CREATE A SAFE HARBOR FOR GOOD FAITH COMPLIANCE EFFORTS.**

The requirement to issue the *Proposed Rule* in advance of final rules issued pursuant to Sections 712(d) and 721(c) of the Act further defining the term swap, together with the need for CFTC guidance discussed herein, creates legal and regulatory uncertainty regarding the scope and applicability of the recordkeeping requirements set forth in new Part 46. The Working Group requests that the CFTC amend the *Proposed Rule*, or through a stand-alone issuance, publish the requested guidance to ensure effective compliance with these requirements.

As the CFTC makes the transition to new regulation under Title VII of the Act, the dedication of limited agency resources on the development of such guidance will help market participants more effectively comply with the new reporting and recordkeeping requirements adopted by the *Proposed Rule*. In the absence of such guidance, market participants making demonstrative, good faith efforts to comply with new Part 46 should be granted safe harbor protection from possible enforcement action for failing to (i) properly identify and report Historical Swaps, or (ii) retain records for such transactions, as required by Part 46.

**III. CONCLUSION.**

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. The Working Group (i) supports tailored regulation that brings transparency and stability to the energy swap markets in the United States, and (ii) appreciates the balance the CFTC must strike between effective regulation and not hindering the swap markets for energy commodities. Accordingly, the Working Group respectfully requests that the CFTC consider its comments to the *Proposed Rule*.

The Working Group expressly reserves the right to supplement these comments as deemed necessary and appropriate.

If you have any questions, or if we may be of further assistance, please contact the undersigned directly.

Respectfully submitted,

/s/ R. Michael Sweeney, Jr.

R. Michael Sweeney, Jr.

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Working Group of Commercial Energy Firms

## APPENDIX A

### MINIMUM PRIMARY ECONOMIC TERMS

DATA FIELD	DESCRIPTION
<b>Primary Economic Terms</b>	
<b>Reporting Party</b>	Full legal name of reporting party
<b>Reporting Party UCI</b>	Reporting party UCI when available
<b>Counterparty</b>	Full legal name of counterparty (non-reporting party)
<b>Counterparty UCI</b>	Counterparty UCI when available
<b>Agreement Type</b>	ISDA Master Agreement
	Other Master Agreement
	Stand-Alone Agreement
<b>Agreement Date</b>	Effective date of governing agreement
<b>Product ID</b>	UPI, when/if available
<b>Transaction Type</b>	Fixed Price Swap
	Index Swap
	Financial Option
	Swaption
	Structured Transaction
<b>Transaction Date</b>	Date parties agree to legally binding agreement
<b>Transaction ID</b>	Reporting party internal reference or USI, when available
<b>Commodity</b>	Natural Gas, Electricity, Crude Oil, etc.
<b>Unit of Measure</b>	MMBtu, MWh, Gallons, Tons, etc.
<b>Periodic Quantity</b>	Amount per measurement period
<b>Measurement Period</b>	Month, Day, Hour, etc.
<b>Power Period</b>	All Hours
	Peak Hours
	Off-Peak Hours
	Other
<b>Total Quantity</b>	Total notional quantity
<b>Start Date</b>	Start date of first pricing period
<b>End Date</b>	End date of last pricing period
<b>Reporting Party Pay Index</b>	“Fixed Price” or name of specified index (underlying index, as applicable, for options)
<b>Reporting Party Factor</b>	Fixed price or amount to be added to index or amount by which index will be multiplied or divided
<b>Reporting Party Function</b>	N/A, Add, Multiply, Divide, etc.
<b>Counterparty Pay Index</b>	“Fixed Price” or name of specified index (underlying index, as applicable, for options)
<b>Counterparty Factor</b>	Fixed price or amount to be added to index or amount by which index will be multiplied or divided
<b>Counterparty Function</b>	N/A, Add, Multiply, Divide, etc.
<b>Payment Frequency</b>	Monthly, Quarterly, Annual, etc.
<b>Structured Transaction Indicator</b>	“Check-the-Box” Indicator that transaction is a non-standard, structured transaction that does not contain all or some of the required minimum primary economic terms
<b>Additional Primary Economic Terms for Options</b>	
<b>Option Buyer</b>	Reporting Party
	Counterparty

<b>Option Seller</b>	Reporting Party
	Counterparty
<b>Option Style</b>	American
	Asian
	European
	Other
<b>Option Type</b>	Put
	Call
<b>Exercise Frequency</b>	One-Time, Hourly, Daily, Weekly, Monthly, etc.
<b>Exercise Date</b>	One-Time exercise date, first exercise date, or last day of first exercise period, as applicable
<b>Strike Price Per Unit</b>	Strike price per unit
<b>Premium Per Unit</b>	Premium per unit
<b>Total Premium</b>	Total premium
<b>Option Structure Comments</b>	Brief description of terms providing optionality to be included on structured transactions that are options