



June 30, 2011

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Filed Electronically

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

Re: “Effective Date for Swap Regulation” 76 *Fed. Reg.* 35372 (June 17, 2011)

Dear Mr. Stawick:

Natural Gas Exchange Inc. (“NGX”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) Notice of Proposed Order relating to the effective dates for swap regulation.¹ The proposed Order sets forth the categories of rules which will become effective on July 16, 2011, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),² as well as those provisions of the Dodd Frank Act the implementation of which are delayed pending further rulemaking by the Commission. The Proposed Order states that in the Commission’s view, the amendments made by the Dodd-Frank Act to section 5b(c)(2) of the Commodity Exchange Act (the core principles for derivatives clearing organizations (“DCO”)) will become effective on July 16, 2011.

NGX

NGX operates a trading and clearing system for energy products that provides electronic trading, central counterparty clearing and data services to the North American natural gas, electricity and oil markets. On December 12, 2008, NGX was registered by the Commission as a DCO.³

¹ “Effective Date for Swap Regulation” 76 *Fed. Reg.* 35372 (June 17, 2011)

² Public Law No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”).

³ NGX also operates as an exempt commercial market (“ECM”). NGX notified the Commission on November 5, 2002, of its operation as an ECM and has requested an extension to operate as an ECM for a period of one year following the effective date of the Dodd-Frank Act.

Implementation of DCO Core Principles

The Commission proposed amendments to the rules governing the operation of DCOs in a total of eight separate Notices of Proposed Rulemaking beginning in October, 2010.⁴ The comment period on the final Notice of Proposed Rulemaking, which relates to segregation of customer funds, will remain open until August 8, 2011. Many of the proposed rules would specify particular means of complying with the DCO Core Principles. However, if under the Commission's interpretation, a DCO is required to make modifications to come into compliance with the amended Core Principles by July 16, 2011, it may be required to again make modifications once final rules are adopted. Despite the fact that the Core Principles themselves provide a degree of flexibility not provided in the proposed rules, in certain cases, requiring compliance now would nevertheless likely result in a DCO having to make significant changes multiple times.

For example, Core Principle (Q), section 5b(2)(Q) of the Commodity Exchange Act, 7 U.S.C. § 1 et seq. ("Act") requires that each DCO ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants. Under the Commission's Proposed Order, if a DCO currently does not so provide, it would be required to reorganize its governing board or form a committee of the DCO to include customer representatives. Either undertaking, each of which would comply with the terms of the Core Principle itself, would constitute a major structural change. Each would possibly require amendment of the DCO's governing documents or action of its Board, recruitment of new Board or committee members and other significant organizational changes. Nevertheless, if a DCO undertook such a change now, it would likely be necessary to reorganize again in order to be in compliance with the rules that the Commission eventually will adopt under that Core Principle.

In this regard, the Commission initially proposed a rule that would have required that customers be represented on a DCO's Risk Management Committee. Subsequently, however, the Commission proposed that customers instead be represented on the Board of Directors.⁵ NGX commented that both of these alternatives present inherent conflicts of interest for a non-intermediated clearing house, such as NGX, and suggested that the Commission in its final rule provide greater flexibility. As under the Core Principle itself, NGX recommends that the Commission's final rule permit a clearing house to include market participants in a committee of

⁴ "Financial Resources Requirements for Derivatives Clearing Organizations," 75 *Fed. Reg.* 63,113 (Oct. 14, 2010); "Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest," 75 *Fed. Reg.* 63,732 (Oct. 18, 2010); "General Regulations and Derivatives Clearing Organizations," 75 *Fed. Reg.* 77,576 (Dec. 13, 2010); "Information Management Requirements for Derivatives Clearing Organizations" 75 *Fed. Reg.* 78,185 (Dec. 15, 2010) "Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest," 76 *Fed. Reg.* 722 (Jan. 6, 2011); "Risk Management Requirements for Derivatives Clearing Organizations," 76 *Fed. Reg.* 3698 (Jan. 20, 2011); "Requirements for Processing, Clearing and Transfer of Customer Positions," 76 *Fed. Reg.* 13101 (March 10, 2011); and "Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions," 76 *Fed. Reg.* 33818 (June 9, 2011).

⁵ "Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest," 76 *Fed. Reg.* at 729.

the DCO that is not the Risk Management Committee or the Board of Directors. In this way market participants could provide their views without having access to their competitors' confidential information.

In light of the current two alternatives proposed by the Commission and the range of comment, it is possible, if not probable, that the requirements of the final rule would require a DCO to make major structural changes beyond those that might be required under the Core Principle itself. Requiring a DCO to undertake such a series of major organizational changes in a short period of time will be confusing and will divert compliance resources and attention with little regulatory benefit.

Moreover, the Commission first published its guidance with respect to the effect of the July 16, 2011, effective date of the Dodd-Frank Act on June 17, 2011. This is an insufficient period in which to make significant structural changes, if needed. Although it might be said that entities have had a year to come into compliance with these provisions, until the Commission proposed its Order there was a great deal of speculation regarding which provisions of the Dodd-Frank Act would become effective on July 16.⁶ This is especially the case where the Commission proposed rules that provide further requirements or guidance on how the statutory provisions will be applied. Until the Commission issues a final Order, there will not be absolute certainty regarding these issues.

Based on the above, and to assure DCOs that they will only have to make significant, structural changes only once pursuant to clear rules of the road and guidance, NGX requests that the Commission or its staff adopt a policy that it will not take any enforcement action against any DCO or DCO member or participant with respect to compliance with section 5b(c)(2) of the Act, as amended by Dodd-Frank, until the implementation of final Commission rules governing operation of DCOs. Failing that, NGX requests that the Commission at a minimum provide for a 60 day period following July 16, 2011 before it takes any enforcement action regarding compliance with the Core Principles of section 5b(c)(2) of the Act to permit a reasonable period for DCOs to come into compliance.

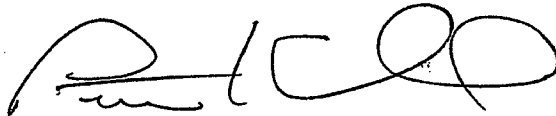
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NGX recognizes the importance of maintaining strong clearinghouses. However, the effectiveness of these provisions of the amended Act should be adjusted to avoid confusion, permit the better use of compliance resources, and to enable compliance efforts to proceed in a more orderly manner.

⁶ The Securities and Exchange Commission, for example, has taken a different view from the Commission, determining that the effectiveness of substantive provisions which involve agency rulemakings have been delayed. See "Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-based Swaps," 76 *Fed. Reg.* 36287 (June 22, 2011). Specifically, the Securities and Exchange Commission exercised its authority pursuant to section 36 of the Securities Exchange Act of 1934 ("Exchange Act") to grant temporary exemptions from sections 3C(j)(1) and (2) of the Exchange Act which requires that each registered clearing agency designate an individual to serve as chief compliance officer. Whereas, the Commission did not grant similar relief. Therefore, DCOs are required to designate a chief compliance officer who reports directly to the board or to the senior officers of the DCO to perform specified duties; see "Category 4: Self-Effectuating Title VII Provisions that are Not Subject to CFTC Proposed Temporary Relief Re. Effective Date," published on the Commission's website at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cat4requiredrulemakings061411.pdf>.

Please feel free to contact Cheryl Graden, NGX Chief Legal Counsel, at (416) 947-4359 or our outside counsel, Paul M. Architzel, of Wilmer Cutler Pickering Hale and Dorr, at (202) 663-6240 with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter Krenkel', with a stylized flourish at the end.

Peter Krenkel
President and CEO, NGX

Cc: Chairman Gensler
Commissioner Dunn
Commissioner Chilton
Commissioner Sommers
Commission Sommers
Sarah Josephson
Ananda Radhakrishnan
Robert Wasserman
Phyllis Dietz