



July 11, 2011

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

RE: *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 23,732 (April 28, 2011).
RIN 3038-AC97

Dear Mr. Stawick:

Pursuant to the Notice of Proposed Rulemaking issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) on April 28, 2011,¹ the American Gas Association (“AGA”) submits for your consideration the following comments regarding margin requirements for uncleared swaps for swap dealers and major swap participants.²

The AGA, founded in 1918, represents 201 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 64 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States’ energy needs. For more information, please visit www.aga.org.

AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. Many gas utilities use a variety of financial tools, such as futures contracts traded on CFTC-regulated exchanges and over-the-counter

¹ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, Notice of Proposed Rulemaking, 76 Fed. Reg. 23,732 (April 28, 2011); *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, Extension of Comment Period, 76 Fed. Reg. 27,621 (May 12, 2011).

² In addition, AGA joins the comments of the Joint Associations (including the Edison Electric Institute, the Electric Power Supply Association, the National Rural Electric Cooperative Association, the American Public Power Association, and the Large Public Power Council) filed this date in this proceeding.

energy derivatives, to hedge the commercial risks associated with providing natural gas service, including volatility in natural gas commodity costs.

In the Notice in this proceeding, the Commission proposed to establish margin requirements for swap dealers and major swap participants that are not regulated by the Office of the Comptroller of the Currency, U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the “Prudential Regulators”).

Under the Commission’s proposal, margin requirements would not be imposed on transactions between non-financial swaps entities and non-financial counterparties because non-financial counterparties that are using swaps to hedge commercial risk pose less risk to non-financial swaps entities than financial counterparties.³ The Commission proposed to require that non-financial swaps entities have credit support arrangements in place providing that the entity may accept as margin from non-financial entities only assets for which the value is reasonably ascertainable on a periodic basis in a manner agreed to by the parties in the credit support arrangements.⁴ In addition, the Commission proposed that if a non-financial swaps entity and a non-financial counterparty have agreed that the non-financial counterparty will post initial and variation margin, any asset may be used to provide the margin as long as the value of the asset may be reasonably ascertainable on a periodic basis.⁵ In particular, the Commission would permit the use of non-cash collateral if consistent with preserving the financial integrity of the markets and preserving the stability of the U.S. financial system.⁶

The Prudential Regulators have proposed separate rules regarding capital and margin requirements for the swap dealers and major swap participants that are financial institutions which they regulate.⁷ Significantly, the Prudential Regulators would impose margin requirements on all non-cleared swaps, including swaps where one of the counterparties is a commercial end user.⁸ The Prudential Regulators stated, however, that given the lower risk of commercial end-users, the proposed rules permit regulated swap entities to adopt, where appropriate, initial and variation margin thresholds below which a regulated swap entity is not required to collect initial and variation margin from counterparties that are end users.⁹ Under the proposed rules, a regulated swap entity would not be required to collect initial or variation margin from a non-financial end-user counterparty as long as the regulated swap entity’s exposure was below the credit exposure limits that the regulated swap entity has established under appropriate credit

³ Notice, 76 Fed. Reg. at p. 23,736.

⁴ *Id.*

⁵ *Id.* at p. 23,739.

⁶ *Id.*

⁷ See *Margin and Capital Requirements for Covered Swap Entities*, 76 Fed. Reg. 27,564 (May 11, 2011).

⁸ *Id.* at p. 27,569.

⁹ *Id.*

processes and standards.¹⁰ Under the Prudential Regulators’ proposal, collateral is generally limited to immediately available cash funds; high-quality, highly liquid U.S. government and agency obligations; and certain government-sponsored enterprise obligations subject to specified minimum “haircuts” for purposes of determining their value for margin purposes.¹¹

AGA is concerned that differences in the rules applicable to swap dealers and major swap participants that are regulated by the CFTC from those applicable to entities regulated by the Prudential Regulators may ultimately have a disruptive influence on the financial markets. Differences in regulation may lead market participants to engage in regulatory arbitrage in order to take advantage of such differences. Indeed, the differences in regulation may place one group of swap dealers and major swap participants at a competitive disadvantage in being able to offer financial hedging instruments to commercial end users potentially affecting liquidity and raising prices to consumers. Moreover, requiring counterparties to keep track of different sets of rules for swap dealers and major swap participants depending on which agency has regulatory jurisdiction may lead to unnecessary confusion and unduly complex contracting and compliance practices.

AGA, therefore, urges the CFTC to work with the Prudential Regulators to develop a common approach to capital and margin requirements for all swap dealers and major swap participants, particularly as they apply to non-financial end-user counterparties. In that regard, AGA urges all of the regulatory agencies to adopt rules reflecting that non-financial, commercial end users have lower risk profiles such that swap dealers and major swap participants should be permitted to enter into credit-based financial arrangements whereby initial and variation margin would not be required for counterparties that are non-financial, commercial end users, similar to that proposed by the CFTC.

Respectfully submitted,

/s/ Andrew K. Soto

Andrew K. Soto
Senior Managing Counsel
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
202.824.7215
asoto@aga.org

¹⁰ *Id.* at p. 27,570.

¹¹ *Id.* at p. 27,568.