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July 11, 2011

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

Re: “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” 76 *Fed. Reg.* 23732, RIN 3038-AC97 (April 28, 2011); and “Capital Requirements of Swap Dealers and Major Swap Participants,” 76 *Fed. Reg.* 27802; RIN 3038-AD54 (May 12, 2011).

Dear Mr. Stawick:

The Petroleum Marketers Association of America (“PMAA”) and the New England Fuel Institute (“NEFI”) appreciate the opportunity to submit this letter to the Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the Notice of Proposed Rulemaking on “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants” and “Capital Requirements for Covered Swap Entities” (“proposed rules”). PMAA and NEFI further appreciate the Commission’s decision to extend the deadline for submission of public comments on these proposed rules.

The proposed rules aim to implement margin and capital requirements as mandated by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010¹ (“Dodd-Frank Act”), Section 731. We also understand that the Commission is required to finalize rules in consultation with other financial regulators.² In implementing the margin rule, the Commission proposes imposing initial and variation margin and record keeping requirements on all uncleared swaps by covered Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”). Under the capital rule, the Commission proposes mandatory capital requirements and related reporting and recordkeeping requirements on covered SDs and MSPs (“covered entities”).

We are filing a single comment for both rules given their relative similarities and the need to highlight respective differences, especially the treatment of “non-financial” entities (i.e., *bona fide* hedgers of commodities).

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub.L.111-203, 124 Stat. 1376 (2010), herein referred to as the “Dodd-Frank Act” or the “Act.”

² Sec. 731 of the Dodd-Frank Act modified the Commodity Exchange Act (7 U.S.C. 1, *et. seq.*), adding new Section 4s which requires the CFTC to both independently and jointly with other agencies including the Federal Deposit Insurance Corporation, Federal Reserve, Office of the Comptroller of the Currency, Federal Housing Finance Agency and the Farm Credit Administration promulgate rules for margin and capital requirements for swap dealers and major swap participants.

I. Introduction

PMAA is a national federation of 48 state and regional trade associations representing over 8,000 independent petroleum marketing companies. These companies own 60,000 convenience store/gasoline stations and supply motor fuels, including gasoline and diesel fuel, to an additional 40,000 stores. PMAA member companies also sell at retail 90 percent of the home heating oil consumed in the United States.

Joining PMAA in these comments is the New England Fuel Institute (“NEFI”). NEFI is a member of PMAA and an independent trade association representing approximately 1,200 home heating businesses including heating oil, kerosene and propane dealers and related services companies, most of which are small, multi-generational family owned- and operated-businesses. Many PMAA and NEFI members also market lubricants, jet fuels and racing fuels, as well as renewable fuels such as biofuels and other alternative energy products.

Many PMAA and NEFI member companies are reliant on derivatives markets as both a price discovery and hedging tool. This is especially true for heating fuel dealers. Many directly or indirectly through a third-party hedging firm engage in exchange-traded or over-the-counter (“OTC”) energy derivatives as an essential part of their businesses’ risk management strategies in order to protect customers from market volatility and unanticipated price spikes.

Therefore, it is in the interest of our member companies and their consumers that the energy derivatives markets are as functional as possible. We believe that comprehensive transparency requirements and the vigorous enforcement of prohibitions on manipulation and fraud, disruptive trading practices and excessive speculation will bring greater stability, competition and confidence to these markets. For this reason, PMAA and NEFI representatives have frequently testified before the Commission and the Congress in support of these goals and are pleased to comment on matters relating to the regulation of energy commodities markets.

We feel it is important for the Commission to mandate appropriate margin and capital requirements on systemically-significant market participants and market participants that have a purely financial interest in derivatives (i.e., commodity speculators) while minimizing unnecessary cash flow or cost burdens on non-financial entities (i.e., *bona fide* hedgers) who rely on these markets for risk mitigation. Such an approach is consistent with Congressional intent and has the strong support of our organizations and member companies.

II. PMAA and NEFI Support the Proposed Margin Rule

PMAA and NEFI strongly support the Commission’s proposed rule for margin requirements because, in keeping with the intent of the law and its authors in the Congress, it exempts non-financial market participants.³ The proposal exempts “non-financial entities” from

³ See letter to Department of Treasury, Federal Reserve, Commodity Futures Trading Commission, Securities and Exchange Commission from Senators Stabenow and Johnson and Representatives Lucas and Bachus, April 6, 2011, wherein it is noted Congressional intent that “regulators should exempt end-users from margin requirements and seek to limit other regulatory burdens that could have the unintended effect of driving up costs for end-users and increasing systemic risk for our economy.”

the mandate on initial or variation margin requirements on uncleared swaps, except as required when a non-financial counterparty enters into a contract or agreement with a covered entity.⁴ This preserves the status-quo for physical hedgers who utilize such swaps, as they will remain free to negotiate the terms of their agreements as appropriate to their particular business and risk management needs.

We believe that it is wholly appropriate for the Commission to require the imposition of initial and variation margin requirements on transactions between covered entities, especially financial entities. As the Commission rightly points out, financial entities “are not using swaps to hedge or mitigate commercial risk [and] potentially pose greater risk” to market integrity and stability than non-financial market participants. Further, we believe that the Commission should require the imposition of adequate margin requirements on financial entities (in addition to other means such as the imposition of meaningful speculative position limits) for the purposes of limiting extreme volatility and excessive speculation.

We also commend the Commission for including language in the proposed rule that will allow non-financial entities the flexibility to use of non-cash collateral in meeting the requirements of their swaps transactions.⁵ Non-financial entities may on occasion choose to post non-cash property, including tangible physical property such as real estate, to meet collateral or credit requirements associated with a swap transaction. This is especially true during challenging economic times.

Given the strength of the Commission’s proposed rule for margin requirements for uncleared swaps, its keeping with Congressional intent and its concern for the welfare of *bona fide* hedgers, not only do we support the proposal but we also hope that it will serve as a model for a final rule that the commission will promulgate jointly with prudential regulators as required by the Dodd-Frank Act.

II. Modifications are Needed to the Proposed Capital Rule to Protect Hedgers

While the proposed rule for margin requirements exempts non-financial entities, NEFI and PMAA share concerns expressed by other trade groups representing non-financial industries and businesses that the proposed rule for capital requirements may result in unintended cost burdens from increased cash flow requirements on *bona fide* physical hedgers. This may result in an increase in the cost of products and services for businesses and consumers.

Unlike the margin rule, the proposed capital rule will require covered entities to comply with capital requirements (and in the case of covered entities that do not have to comply with margin requirements, even higher capital requirements) irrespective of whether or not the counterparty is a non-financial market participant. It is not unreasonable to assume that a

⁴ See “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,” 76 *Fed. Reg.* 23736, “parties will be free to set initial margin and variation margin requirements in their discretion and any thresholds agreed upon by the parties will be permitted.”

⁵ *Ibid.*, 23739

covered entity may simply “pass-it-through” as an added cost on their non-financial counterparties resulting from increased cash flow requirements. Therefore, the rule may result in new financial burdens on *bona fide* hedgers that the Congress sought to avoid.⁶

The Commission independently and in working with prudential regulators in joint promulgation of a final rule on capital requirements should make modifications as necessary to prevent or prohibit covered entities from passing on to *bona fide* hedgers the burdens of the mandatory capital requirements while also preventing systemically significant or purely financial entities from evading this important rule.

III. Conclusion

PMAA and NEFI support the Commission’s efforts in promulgating these rules as crucial steps toward effective oversight of the commodity markets and implementation of new rules and regulations under the Dodd-Frank Act. We fully support the Commission’s proposed rules on margin requirements. While we are generally supportive of the Commission’s efforts to implement capital requirements for uncleared swaps transactions, we believe that *bona fide* hedgers must be afforded further protections in order to prevent unwarranted financial burdens.

We would be happy to discuss the above comments in detail or answer any questions the Commissioners or their staff may have. Please feel free to contact PMAA Vice President Sherri Stone at (703) 351-8000 or NEFI Vice President for Government Affairs Jim Collura at (202) 584-0160. Thank you in advance for your consideration and for the opportunity to comment on the proposed rules.

Respectfully submitted,



Dan Gilligan
President, PMAA



Michael C. Trunzo
President & CEO, NEFI

cc: The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission
The Honorable Michael Dunn, Commissioner, Commodity Futures Trading Commission
The Honorable Jill Sommers, Commissioner, Commodity Futures Trading Commission
The Honorable Bart Chilton, Commissioner, Commodity Futures Trading Commission
The Honorable Scott O’Malia, Commissioner, Commodity Futures Trading Commission
The Honorable Frank Lucas, Chairman and Collin Peterson, Ranking Member,
U.S. House of Representatives Committee on Agriculture
The Honorable Debbie Stabenow, Chairman and Pat Roberts, Ranking Member,
U.S. Senate Committee on Agriculture, Nutrition & Forestry

⁶ Dear Colleague letter from Senators Dodd and Lincoln to Representatives Frank and Peterson, June 30, 2010.