

August 19, 2011

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

VIA ELECTRONIC MAIL

Re: *Proposed Rule on Adaptation of Regulations to Incorporate Swaps, RIN 3038-AD53*

Dear Secretary Stawick:

The American Gas Association (“AGA”), the Commodity Markets Council (“CMC”), the Natural Gas Supply Association (“NGSA”) and The Fertilizer Institute (“TFI”) respectfully submit these comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) Notice of Proposed Rulemaking on Adaptation of Regulations to Incorporate Swaps (“Proposed Rule”) as published in the Federal Register on June 7, 2011. The Proposed Rule is intended to conform the Commission’s existing regulations to the many new rulemakings promulgated pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).\*

AGA, CMC, NGSA and TFI appreciate the CFTC’s diligence in its implementation of the Dodd-Frank Act. The number of pending rulemakings illustrates the complexity of sound Dodd-Frank Act implementation. Because a number of critical implementation issues remain unresolved and risk the creation of unintended consequences, the Proposed Rule is premature. However, even without finalization of the bulk of the related Dodd-Frank Act regulations, it is clear that one provision in the proposal must be addressed before the proposal is finalized. **Electronic record keeping requirements must not be expanded to include end-users or other market participants that do not serve as intermediaries.**

Implicit in the Proposed Rule amendment to Regulation 1.35, entities trading on an electronic platform would be subject to communications-recording obligations as a “member” of swap execution facilities (“SEFs”) or designated contract markets (“DCMs”). The recordkeeping requirement would apply even when the entity is an end user trading on its own behalf to hedge commercial risk in a cleared or uncleared transaction. While suitable for reconstructing the audit trail for market participants

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\* See Adaptation of Regulations to Incorporate Swaps, *Notice of Proposed Rulemaking*, 76 Fed. Reg. 33,066 (June 7, 2011).

interacting with customers, AGA, CMC, NGSa and TFI respectfully request that the Commission not impose the record creation duties on end-users that do not interact with customers in an intermediary capacity.

The requirements for the communications recording obligations would be expensive for market participants to implement, and would unnecessarily impose a significant compliance obligation on the end user community. Extending the record creation obligation to entities that merely have trading privileges on an exchange or SEF would create a disincentive for direct trading (i.e., trading on one's own behalf on an electronic platform) and instead create an *incentive* for trading with an intermediary, ultimately raising the consumer cost of energy and agricultural commodities. Lower liquidity makes efficient hedging more difficult and costly for end users, which is contrary to the intent of the Dodd-Frank Act.

Likewise, *the proposed recordkeeping amendment will damage existing market transparency*, another primary objective of the Dodd-Frank Act. In addition to increasing consumer commodity costs, extending the communications recording obligations to end users will result in less direct trading by end users, reducing liquidity. It is the growth in the use of electronic trading platforms that has facilitated the high level of transparency present in many U.S. commodity markets today.<sup>†</sup> The direct, electronic platform trading by end users links the financial market electronic platform to underlying physical supply and demand fundamentals. The higher costs and greater compliance burdens that reduce liquidity will weaken this linkage.

Conforming regulations must not circumvent the congressional intent of Dodd-Frank. Instead, regulations must enhance existing market transparency and the ability of commodity producers, distributors and consumers to cost-effectively hedge risk. A regulation that burdens the commodity industry with an onerous records obligation and added compliance risk will frustrate the industry's ability to trade efficiently and directly on its own behalf. The Commission should not use a rule related to conforming amendments to impose a substantial new requirement on companies that are merely participants in a DCM or SEF. At a minimum, the **Commission must clarify in the final rule that the conforming amendment to Regulation 1.35 does not extend the electronic communications recording requirement to non-financial end users.**

The American Gas Association, the Commodity Markets Council, the Natural Gas Supply Association and The Fertilizer Institute support cost-effective regulations that facilitate transparency and stability in swap markets. We look forward to continuing the dialogue with the Commission. Communications regarding this

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<sup>†</sup> See "Price Transparency in the U.S. Natural Gas Market" by former CFTC Commissioner William P. Albrecht, July 14, 2009, page 8. Prepared for the Natural Gas Supply Association and available at <http://www.ngsa.org/assets/Docs/Issues/19a%20-%20US%20Natural%20Gas%20Market%20Transparency%20Study%20by%20Albrecht.pdf>.

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Respectfully submitted,

American Gas Association  
Commodity Markets Council  
Natural Gas Supply Association  
The Fertilizer Institute