

November 4, 2011

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

**Via Online Submission**

Re: **COMMENTS OF COALITION OF PHYSICAL ENERGY COMPANIES**  
Swap Transaction Compliance and Implementation Schedule: Trading  
Documentation and Margining Requirements Under Section 4s of the CEA, RIN  
No. 3038-AC96, 3038-AC97, and Clearing and Trade Execution Requirements  
Under Section 2(h) of the CEA, RIN No. 3038-AD60

Dear Mr. Stawick:

By two Notices of Proposed Rulemaking published September 20, 2011 in the Federal Register, the Commodity Futures Trading Commission ("CFTC" or "the Commission") proposed regulations to establish a schedule to phase in compliance with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").<sup>1</sup> The phase-in process relates to two categories of activities under Dodd-Frank. Those categories are: (i) clearing and trade execution requirements under Section 2(h) of the Commodity Exchange Act ("CEA")<sup>2</sup> ("Clearing Implementation NOPR");<sup>3</sup> and (ii) trading documentation and margining requirements under Sections 4s(i)(2) and 4s(e) of the CEA ("Documentation and Margin NOPR").<sup>4</sup>

In the Clearing Implementation NOPR, the Commission proposes a systematic process following the finalization of certain outstanding proposed rules. Specifically, the proposal establishes three categories of affected entities and sets forth compliance deadlines for each category. According

---

<sup>1</sup> Public Law No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 1 *et seq.*

<sup>3</sup> *Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA*, 76 Fed. Reg. 58186 (Sep. 20, 2011).

<sup>4</sup> *Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4(s) of the CEA*, 76 Fed. Reg. 58176 (Sep. 20, 2011).

to the Clearing Implementation NOPR, swap transactions of entities that are not designated Category 1 or Category 2 and which are not eligible to claim the exemption to mandatory clearing set forth in Section 2(h)(7) of the CEA ("All Other Traders") will not be required to comply with Section 2(h)(1)(A) of the CEA until two hundred seventy (270) days after the effective date of rules established by the Commission for the mandatory clearing of swaps.<sup>5</sup>

In the Documentation and Margin NOPR, the Commission proposes a similar process in which entities designated Category 3 or Category 4 will not be affected by counterparty compliance with 4s(i)(2) and 4s(e) of the CEA until two hundred seventy (270) days after the effective date of rules established by the Commission concerning documentation and margin requirements.<sup>6</sup>

The Coalition of Physical Energy Companies ("COPE")<sup>7</sup> hereby provides comments concerning the Clearing Implementation and Documentation and Margin NOPRs. COPE members are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. COPE members utilize swaps to hedge the commercial risk of their physical businesses. COPE members often transact swaps on exchanges and with entities that will likely be Swap Dealers and Major Swap Participants under Dodd-Frank. As COPE members understand it, they will be in the All Other Traders and Category 4 categories, respectively, under the Clearing Implementation and Documentation and Margin NOPRs.

COPE supports the Commission's proposals in the Clearing Implementation and Documentation and Margin NOPRs with one caveat. COPE members are physical energy companies that possess resources and systems needed to support their business needs. They are not financial companies and generally do not have significant information technology ("IT") development capabilities. Their transaction tracking systems are typically generic platforms purchased from software vendors and are used by COPE members to track their positions and manage their risk in the context of their commercial business needs. COPE members intend to comply with Dodd-Frank by the purchase of updates of modules designed for meeting the regulatory requirements of All Other Trader and Category 4 entities.

It is COPE's experience that IT work typically takes longer than anticipated and often needs some "shakedown" period to debug new software. As a result, COPE urges the Commission to afford adequate time after the finalization of relevant regulations for commercial software vendors to assimilate relevant final rules and offer viable off-the-shelf products designed to permit those in the All Other Traders category and Categories 3 & 4 to confidently comply with the CFTC's rules without having to perform bespoke one-off programing.

---

<sup>5</sup> Clearing Implementation NOPR at 58195 (proposed § 39.5(e)(2)(iii)).

<sup>6</sup> Documentation and Margin NOPR at 58185 (proposed §§ 23.175(b)(3), 23.575(b)(3)).

<sup>7</sup> The members of the Coalition of Physical Energy Companies are: Apache Corporation; El Paso Corporation; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

Mr. David A. Stawick

November 4, 2011

Page 3

It is COPE's understanding from its software vendors that they are awaiting final action by the Commission on relevant rules. COPE understands many software vendors use a process when new functionality is released to not only develop the software but also put the new software through a development cycle protocol to ensure proper functionality and adequate testing which is released through updates (which are typically released quarterly). From its understanding at this time, it is simply unknown whether and when entities in the position of COPE members will have access to adequate software updates needed to comply with Dodd-Frank.

Therefore, COPE requests that the Commission affirmatively seek input from software vendors that provide position and trade capture software to ensure that there is adequate time to obtain and implement any necessary software modifications to permit Dodd-Frank compliance by COPE members and similarly situated entities. While such software modifications will certainly have a cost, generally available off-the shelf products will be the most cost-effective and, likely, most compliant tools that entities such as COPE members will be able to obtain for Dodd-Frank compliance. If such tools are available and capable of integration into existing software within the two hundred seventy (270) day window proposed by the Commission, COPE has no objection to the timing set forth in the Clearing Implementation and Documentation and Margin NOPRs. If these tools are not available within this timeframe, the Commission should extend it until they are.

In conclusion, COPE generally supports the implementation processes proposed in the Clearing Implementation and Documentation and Margin NOPRs assuming that COPE members have available to them software upgrades necessary to support their compliance. COPE requests that the Commission obtain input from vendors of trade capture and position tracking software to ensure that such software can be developed and made available in accordance with the schedule proposed by the Commission.

Respectfully submitted,

/s/ David M. Perlman

David M. Perlman  
Bracewell & Giuliani LLP  
2000 K St. NW, Suite 500  
Washington, D.C. 20006  
T: (202) 828-5804  
david.perlman@bglp.com

Counsel to  
**Coalition of Physical Energy Companies**