

July 23, 2012

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

VIA ELECTRONIC MAIL

Re: *Public Comment on Hedging Exclusion under the Swap Dealer Definition*

Dear Mr. Stawick:

I. INTRODUCTION.

On behalf of The Commercial Energy Working Group (the “Working Group”), Sutherland Asbill & Brennan LLP hereby submits these comments in response to the Commodity Futures Trading Commission’s (the “Commission’s”) request for public comment regarding the proposed hedging exclusion under the swap dealer definition set forth in the Joint Final Rule; Joint Interim Final Rule, *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”* (the “Interim Rule”).¹ The Working Group appreciates the opportunity to provide the comments set forth herein and respectfully requests the Commission’s consideration of such comments.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial and residential consumers. Members of the Working Group are energy producers, marketers and utilities. The Working Group considers and responds to requests for comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

II. COMMENTS OF THE WORKING GROUP.

The Working Group proposes that the Commission revise the proposed swap dealer hedging exclusion to more closely reflect the exclusion for hedges provided under the “major

¹ *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant.”* 77 Fed. Reg. 30,596 at 30,611–614 (May 23, 2012).

swap participant” (“MSP”)² definition. The statutory definition of “swap dealer” leaves the treatment of hedging swaps to the Commission’s discretion.³ Specifically, the Commission should amend the swap dealer hedging exclusion such that swaps used to hedge physical positions that qualify as *bona fide* hedges or for hedge accounting treatment should automatically be excluded from the swap dealer determination process. Swaps used to hedge financial risks should remain outside the scope of the swap dealer hedging exclusion as is currently proposed under the Interim Rule.

The Working Group’s proposal strikes an appropriate balance between the objectives promulgated under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) and the Commission’s Regulations to increase market stability and transparency and the needs of industry participants, particularly end-users, who rely on hedging practices to reduce commercial risks. Adopting the same definition of the hedging exclusion, with modified application under the swap dealer and MSP definitions, will positively impact the market by promoting greater clarity, consistency and understanding across Dodd-Frank rulemaking areas and making it more manageable for industry participants to internally apply the hedging exclusion.

III. CONCLUSION.

The Working Group supports appropriate regulation that brings transparency and stability to the swap markets worldwide. The Working Group appreciates this opportunity to provide comments on the Interim Rule and respectfully requests that the Commission consider the comments set forth herein as it develops its final rules regarding this matter.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe

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Working Group*

² See CEA § 1a(33)(A)(i)(1), 7 U.S.C. § 1a(33)(A)(i)(1).

³ Interim Rule, at 30,611.