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September 14, 2012

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

Re: Proposed Regulations Concerning Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – CFTC RIN 3038-AC97

Dear Mr. Stawick:

Peabody Energy Corporation (“Peabody”) is pleased to submit the following comments on proposed Commission Regulations 23.150-23.158 (Part 23, Subpart E), which would establish margin requirements for uncleared swaps for swap dealers (“SD”) and major swap participants (“MSP”).¹ Peabody appreciates that the Commission extended the comment period in light of the publication of a Consultative Document on margin requirements for non-centrally-cleared derivatives by the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissions (“IOSCO”).² The Consultative Document is the product of the BCBS/IOSCO joint Working Group on Margining Requirements (“WGMR”).

Peabody supports the Commission’s proposal not to impose margin requirements on uncleared swaps entered into by non-financial end users to hedge or mitigate commercial risk. We believe such a proposal is critical to the ability of non-financial end users to efficiently hedge their commercial risks and, consequently, continue reinvesting in their core businesses. We, therefore, respectfully request that the proposed standard be adopted and applied as well by United States prudential regulators and international regulators.

A. Introduction

Peabody, which is headquartered in St. Louis, Missouri, is the world’s largest private-sector coal company, supplying the world’s thermal power and steel markets on six continents. Peabody uses swaps to hedge or mitigate the commercial risks related to its extensive global coal mining and marketing operations, which include, among others, commodity price and transportation cost risks and interest rate and currency exchange rate

¹ 76 Fed. Reg. 23732 (April 28, 2011) (the “Proposal”). The Proposal would impose requirements on SDs and MSPs for which there is no “prudential” regulator, *i.e.*, banking regulators, and the Proposal refers to such entities collectively as “covered swap entities” or “CSEs.”

² 77 Fed. Reg. 41109 (July 12, 2012). The Consultative Document is available on the website of the Bank for International Settlements, www.bis.org.

risks. Peabody is interested in the proposed rulemaking because its use of swaps to hedge and mitigate commercial risk is central to its ability to continue to conduct, grow and reinvest in its core business without incurring undue costs. Government-imposed margin requirements on such swaps would undermine the efficiency and utility of and therefore deter the use of swaps as hedging vehicles, which would be detrimental to both commercial and swap markets.

B. The Commission Should Adopt Its Proposed Determination Not to Require Margin for Uncleared Swaps of Non-Financial End Users

1. Peabody's Comments on the Commission's Proposal

The Proposal would require that CSEs have credit support arrangements in place with non-financial entities consistent with proposed Regulation 23.504,³ with the parties free to set initial margin and variation margin requirements in their discretion and with any agreed upon thresholds. The Proposal also would require that CSEs pay and collect initial margin and variation margin as set forth in their agreements with their counterparties. Peabody believes that this is the correct approach with respect to transactions between CSEs and non-financial entities, as well as for any other swap to which a non-financial entity is a party.⁴

The long and extensive use of swaps by myriads of non-financial end-users to hedge and mitigate commercial risks has never posed any risk to the United States or any other financial system. To the contrary, they have reduced commercial risks. Margin requirements on such instruments have been determined by the parties themselves based on their own credit analysis. In many instances, the counterparties have determined that margin will not be required with respect to swaps that hedge or mitigate commercial risk. The imposition of margin requirements by the United States or any international regulator on such swap transactions could significantly increase the cost of using such swaps, destroying their usefulness as hedging vehicles.

Congress clearly intended in enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to minimize any regulatory impact to the use of swaps by non-financial end-users to hedge and mitigate commercial risk. Hence, it expressly exempted such transactions from the clearing requirement and, as the Commission's proposal

³ *Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 6715, at 6725-26 (February 8, 2011).

⁴ The Proposal also would require each CSE to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial entities, to serve as risk management tools for the CSE and as a likely component in computing applicable capital requirements. Peabody expresses no opinion on this aspect of the Proposal.

correctly explains, it did not intend for the Commission or other regulators to impose margin requirements on such transactions.

2. Peabody's Comments on the WMGR's Positions

a. Margin for uncleared swaps of non-financial end users. The WMGR's Consultative Document, as relevant here, explained that: "There was a broad consensus within the BCBS and IOSCO that the margin requirements *need not apply* to non-centrally-cleared derivatives to which non-financial entities that are not systemically important are a party."⁵ The WMGR also recognized that "Given the global nature of these markets, . . . the effectiveness of margin requirements could be undermined if the requirements were not consistent internationally."⁶ Thus, the WMGR denominated a "key principle" of its work is that: "Regulatory regimes should interact so as to result in sufficiently consistent and non-duplicative regulatory margin requirements for non-centrally-cleared derivatives across jurisdictions."⁷

Peabody supports the establishment of consistent, compatible and reasonable global standards. Peabody encourages the Commission and the WMGR to adopt a final standard that margin requirements "should not and will not apply" to swaps of non-financial end users that hedge or mitigate commercial risk. However, the Commission should adopt its current proposal even if international regulators ultimately impose a different standard. Such would preserve a rational policy within one of the major swaps jurisdictions and we believe honor Congress' legislative intent.

b. Margin requirements relating to foreign exchange swaps and forwards. WMGR's Consultative Paper states that the BCBS and IOSCO did not reach any conclusions with respect to the U.S. proposal to exempt foreign exchange swaps and forwards from the U.S. mandatory central clearing regime.⁸ The WMGR instead sought comment on the following questions: "Should foreign exchange swaps and forwards with a maturity of less than a specified tenor such as one month or one year be exempted from margining requirements

⁵ *Id.* at 9 (emphasis added).

⁶ *Id.* at 28.

⁷ *Id.* at 29.

⁸ On April 29, 2011, the United States Department of the Treasury issued a proposed determination that would exempt foreign exchange swaps and forwards from the definition of "swap" for most Dodd-Frank purposes and hence exempt them from central clearing requirements. 76 Fed. Reg. 25774 (May 5, 2011).

due to their risk profile, market infrastructure, or other factors? Are there any other arguments to support an exemption for foreign exchange swaps and forwards?”⁹

Foreign exchange swaps and forwards and currency swaps and forwards are critical to the ability of companies like Peabody that have substantial global operations to hedge and mitigate the currency rate risks in cross-border commerce. To impose margin requirements on such transactions could particularly adversely effect their ability to fully hedge their exchange rate and interest rate risks. Moreover, inconsistent global standards could disrupt and adversely affect currency markets, which are vitally important to Peabody and many other companies that operate internationally. Accordingly, margin requirements should not be imposed on foreign exchange forwards and foreign exchange swaps or currency swaps and forwards.

c. Inter-affiliate swaps. The WMGR adopted as a “key principle” that inter-affiliate swaps should be subject to variation margin, stating: “Transactions between a firm and its affiliates should be subject to appropriate variation margin arrangements to prevent the accumulation of significant current exposure to any affiliated entity arising out of non-centrally-cleared derivatives.”¹⁰ Peabody strongly disagrees with this recommendation. Inter-affiliate swaps should not be subject to initial or variation margin. It is important for non-financial entities such as Peabody to be able to manage their derivatives activities on a global basis in the most efficient and cost-effective manner available. Their inter-affiliate swaps pose no systemic risk or any other reason to impose margin requirements.¹¹ Peabody believes that the Commission should advocate to its international colleagues to clarify that transactions between a non-financial entity and its affiliates should not be subject to margin requirements.

C. Conclusion

Peabody believes the Commission should adopt its Proposal for positions involving non-financial entities, and we recommend that the Commission advocate within the WGMR and in its other consultations with domestic and international regulators that they adopt the same policy. Peabody would be pleased to discuss its comments in further detail with any of

⁹ Consultative Document at 8.

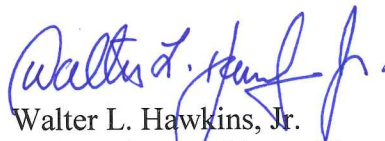
¹⁰ *Id.* at 27. BCBS and IOSCO made their recommendation even though they recognized that its adoption “may constrain a consolidated firm’s discretion to hold existing liquidity resources at one affiliate rather than another.” *Id.*

¹¹ The Commission previously has determined that inter-affiliate swaps of non-financial end users entered into to hedge or mitigate commercial risk are not required to be cleared. 77 Fed. Reg. 42560, 42564 (July 19, 2012). It also has proposed a rule that would exempt inter-affiliate swaps that are entered into to hedge or mitigate commercial risk from original and variation margin requirements. 77 Fed. Reg. 50425 (Aug. 21, 2012).

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the Commissioners or their staffs. Please feel free to contact the undersigned or Robert Brandenburg ((314) 342-7758) if you have any questions or we can be of assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Walter L. Hawkins, Jr.", written in a cursive style.

Walter L. Hawkins, Jr.
Senior Vice President - Finance