

September 20, 2012

**VIA Electronic Submission**

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

**Re: RIN 3038-AC97: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants**

Dear Mr. Stawick:

Noble Energy, Inc. ("Noble Energy") respectfully submits the following comments with regard to the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed regulations relating to initial and variation margin requirements for uncleared swaps for swap dealers and major swap participants.<sup>1</sup> The CFTC extended the comment period for its proposed rule in light of the July 6, 2012 publication by the Basel Commission on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO") of a consultative paper prepared by a Working Group on Margin Requirements concerning margin requirements for non-centrally-cleared derivatives ("WGMR Paper").<sup>2</sup> Noble Energy appreciates the opportunity to comment.

Noble Energy fully supports the CFTC's effort to develop harmonized international margin standards for uncleared swaps. The WGMR Paper follows a path established by the CFTC in its proposed Margin Rule when the CFTC did not require the posting of margin by non-financial entities for uncleared swaps, as intended in the authorizing legislation, the Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"). Noble Energy strongly encourages the CFTC to re-affirm this position in its final version of the Margin Rule. In addition, Noble Energy urges the CFTC to work diligently with the prudential regulators to insure that comparable regulations written by the prudential regulators likewise do not result in non-financial entities having to post margin for their uncleared swaps.

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<sup>1</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23,732 ("Margin Rule" or "proposed rule").

<sup>2</sup> Margin requirements for non-centrally-cleared derivatives - consultative document (July 2012), available at <http://www.bis.org/publ/bcbs226.htm>.

## **I. Description of Noble Energy**

Noble Energy is an independent U.S. company engaged in worldwide oil and natural gas exploration and production. Noble Energy is neither a bank nor other type of financial entity; it is a commercial energy corporation. Noble Energy uses commodity swaps and other derivative contracts to hedge commodity price risks related to its physical positions and commercial activities. Noble Energy's commodity hedging program benefits its operations in many ways--enabling the company to reduce exposure to price volatility; ensuring predictability of cash flow and earnings; securing revenue to support acquisition and major project economics; and protecting its balance sheet and multi-year investment programs for oil and natural gas exploration and production. The company does not engage in speculative or proprietary trading and the nature and scale of its hedging activity do not pose any "systemic risks".

## **II. Broad Consensus Not To Impose Margin**

The WGMR Paper notes that there was a broad consensus within the BCBS and IOSCO that there is no need to impose margin requirements on "non-financial entities that are not systemically-important." The CFTC had come to a similar conclusion in its proposed Margin Rule, acknowledging that it was the intent of Congress that non-financial entities participating in uncleared swaps should not be required to post margin.<sup>3</sup>

We commend the CFTC's focus on harmonizing its Margin Rule with the WGMR Paper's framework for margin for non-centrally-cleared derivatives. In the Dodd-Frank Act, Congress explicitly sought to ensure this harmonization with international regulators.<sup>4</sup> Such harmonization with respect to the rules for margin for non-centrally-cleared derivatives would be a critical boost to the U.S. economic recovery, creating both a level playing field for American companies as well as certainty for non-financial entities which must turn federal regulations into operational reality.

We believe that the CFTC should state unequivocally in the final version of the Margin Rule that non-financial entities which are permitted to enter into uncleared swaps can do so without a requirement to post margin, in alignment with the proposal in the WGMR Paper and Congressional intent. The CFTC recently made similar clarifying remarks in its final rule regarding swap trading relationship documentation.<sup>5</sup>

## **III. Prudential Regulators Must Align with Broad Consensus**

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<sup>3</sup> 76 Fed. Reg. 23,736

<sup>4</sup> Dodd-Frank Act, § 752(a) directs the CFTC to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps [and] swap entities..."

<sup>5</sup> See Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55, 904 at 55, 910.

Mr. David A. Stawick  
September 14, 2012

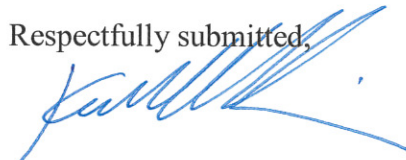
The CFTC recognizes in its Margin Rule that the prudential regulators have proposed rules that are not aligned with the consensus that non-financial entities which use uncleared swaps should not be required to post margin. If the proposed rules of the prudential regulators with respect to margin for uncleared swaps are not modified, however, non-financial entities like Noble Energy may be subject to margin requirements imposed by their counterparties. If that occurs, non-financial entities, although posing no systemic risk, nonetheless would then have to set aside large amounts of cash to meet margin requirements as well as incur additional substantial costs, for example, to build teams and procedures to manage margin flows and to develop IT systems and modeling analytics, thereby further limiting available liquidity. To avoid these significant drains of liquid resources, which otherwise could be invested in exploration and production activities to ensure affordable energy for U.S. consumers, Noble Energy urges the CFTC to consult with the prudential regulators to ensure that the comparable regulations written by the prudential regulators cannot be interpreted in any way as imposing margin requirements on non-financial entities for their uncleared swaps.

### **Conclusion**

Noble Energy commends the Commission for its commitment to harmonize its margin rules for uncleared swaps with international regulators and Congressional intent. Moreover, Noble Energy strongly urges the Commission to continue to seek common ground with the prudential regulators on margin requirements for non-financial entities to avoid imposing costs and obligations that are overly burdensome and unnecessary and contrary to Congressional intent that such entities which are allowed to participate in uncleared swaps not be required to post margin and that U.S. regulators should harmonize their regulations with rules adopted by international regulators.

Please contact the undersigned at (281) 872-3150, if you have any questions regarding these comments.

Respectfully submitted,



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