

February 15, 2013

VIA ONLINE SUBMISSION

Ms. Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**Re: Comments in Response to Form TO, Annual Notice Filing for Counterparties
to Unreported Trade Options**

The Natural Gas Supply Association (“NGSA”)¹ submits the following comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the Commission’s request for comment regarding Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options. Correspondence regarding this submission should be directed to:

Jennifer Fordham
Vice President, Markets
Natural Gas Supply Association
1620 Eye Street, NW, Suite 700
Washington, DC 20006
Direct: 202-326-9317
Email: jfordham@ngsa.org

The CFTC has invited comment on the reporting of trade options, and in particular whether there are ways to minimize the compliance burden for respondents. In its interim final rule on trade options, the CFTC stipulated that options meeting specific criteria are exempt from designation as swaps but remain subject to recordkeeping and reporting requirements.² The reporting obligations for exempted trade options vary according to the counterparties executing the transactions. For trade options executed between parties that are not already reporting parties under the Part 45 Swap Data Recordkeeping and Reporting Requirements, trade option data is not required to be reported daily as normally required by Part 45. Rather, these parties can report trade option data annually via Form TO.

¹ Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 40 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers.

² Commodity Option Rule, 77 FR 25320, April 27, 2012.

The ability to report trade options annually on Form TO should be afforded to all entities reporting trade options, regardless of their status as a reporting party. The physical nature of trade options makes them incompatible with the daily reporting meant for swaps under the Part 45 reporting rules, especially if trade options include forward contracts that allow a degree of volume flexibility on final delivery terms.

There are many issues related to how parties would actually report trade option data under Part 45, in part because physical transactions have bespoke attributes, like delivery point, that financial instruments lack. Energy products pose reporting complications because they are “continuous flow” commodities that are delivered through extended transportation networks that are generally not under the control of the parties to a transaction. For example, delivered natural gas volumes are often not measured in real time or even measured within a 24 hour period. The actual volumes delivered may not be known for days or weeks depending on the measurement and billing cycle. Reporting under Part 45 would require a significant investment in metering and telemetry to measure daily fluctuations in physical delivery volumes that would have no useful business purpose. Even with greater clarity on how to report trade options pursuant to Part 45, it is likely that manual entry of relevant information would be necessary to report data on trade options and would impose a significant burden on reporting parties.

That burden is especially acute because many physical forward natural gas contracts with embedded volumetric optionality may not meet the seven part test within the CFTC’s Swap definition and thus could be defined as trade options. The result would be a large number of standard physical natural gas contracts falling within the Part 45 reporting requirements, despite the fact that they do not resemble the swaps and financial options that Part 45 was crafted to address.³

As a cornerstone of the Dodd-Frank Wall Street Reform and Consumer Protection Act, reporting requirements must work for all parties involved. Regulations should be implemented in a way that provides regulators with data needed for market oversight while ensuring that market participants can comply in a timely and cost-efficient manner. Allowing all parties to report trade options annually with Form TO is a better approach since Form TO accurately captures the data from these transactions. This flexibility will allow greater oversight of the trade options market while avoiding the unnecessary burden from ill-fitting Part 45 reporting requirements.

NGSA thanks the Commission for hearing this request. Please feel free to contact NGSA with any questions.

Sincerely,

Natural Gas Supply Association

³ In its request for comment, the CFTC estimated that 100 annual respondents will use Form TO when reporting trade options. The actual number is likely to be many times larger if certain physical natural gas forwards with volumetric optionality fail the seven part test and are classified as trade options. Such contracts are commonly used in the natural gas industry.