



May 27, 2014

VIA ONLINE SUBMISSION

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Swap Data Reporting Requirements, RIN 3038-AE12

Dear Ms. Jurgens:

By this letter, the Natural Gas Supply Association (“NGSA”) respectfully submits these comments in response to the U.S. Commodity Futures Trading Commission’s (the “CFTC’s” or “Commission’s”) Request for Comment, Review of Swap Data Recordkeeping and Reporting Requirements, 79 Fed. Reg. 16689 (Mar. 26, 2014) (the “Request for Comment”). References herein to the Commodity Exchange Act (“CEA”) refer to that statute as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act” or “Act”). Correspondence regarding this submission should be directed to:

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Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 30 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.

Because of the potential for the Dodd-Frank Act to impede what is and has been a healthy, competitive, and resilient natural gas market, NGSA played an active role in the shaping of the Act during its passage and wishes to continue such a role in ensuring the Act’s successful implementation.

COMMENTS

In its Request for Comment, the CFTC requested comments on specific aspects of its swap data reporting rules, including its Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (2012) and related rules, to help determine how the rules are being applied and what clarifications, enhancements, or guidance may be appropriate. NGSAs members have reported hundreds of thousands of swaps over the past year and found several areas where they believe the rules could be clarified or streamlined or where additional guidance would be beneficial. NGSAs respectfully requests that the Commission consider the following recommendations regarding the swap data reporting rules.

I. Requested Changes and Guidance Regarding Swap Data Reporting Rules to Improve Efficiency and Effectiveness of Reporting

In its Request for Comment, the Commission has sought input on the swap data reporting rules to “ensure that the swap data reporting and [swap data repository (“SDR”)] rules are effective, efficient, and provide the necessary regulatory information.”¹ Along those lines NGSAs has identified several issues that should be addressed to improve the efficiency and effectiveness of the swap reporting process. By addressing these issues in a manner that recognizes market realities and accumulated experience of NGSAs members and others, the CFTC will provide a more efficient and effective data collection regime and foster a culture of compliance among participants.

A. Eliminate Swap Data Reporting Obligations That Do Not Provide Significant Incremental Benefits

The Commission has asked how swap data reporting can be enhanced to facilitate efficient aggregation of information by the Commission to understand positions across cleared and uncleared markets.² Similarly, the Commission has asked what challenges market participants have with respect to efficiencies in swap reporting.³

As a general matter, the swap reporting obligations impose significant compliance costs on NGSAs members as well as administrative costs on the Commission. In this regard, Section 15(a) of the CEA requires that the CFTC consider the costs and benefits of its actions in the context of market and public considerations, including both the “protection of market participants and the public” and the “efficiency, competitiveness, and financial integrity of [commodity] markets.”

Consistent with the above, reporting obligations that do not provide significant incremental benefit to the Commission—either because the Commission is unable to analyze the

¹ 79 Fed. Reg. at 16690.

² 79 Fed. Reg. at 16696 q. 61(b).

³ See *id.* at 16697 q. 69.

reported data,⁴ the Commission costs of reviewing and/or industry costs of preparing the data outweigh the regulatory benefits, or the data is simply duplicative—should be eliminated. In short, NGSAs agrees with Commissioner O’Malia’s recent comment that “the CFTC must require that all filings be submitted in a manner that is “cost-effective for the market.”⁵

1. Eliminate Requirements to Report Certain Data Fields, Including Confirmation Data that Duplicates PET Data

One reporting requirement that should be eliminated is the reporting of confirmation data in numerous fields that duplicate primary economic terms (“PET”) data fields already required to be reported. Confirmation data should be condensed to reflect only those data fields (*i.e.*, confirmation, confirmation timestamp, and confirmation method) that complement, rather than duplicate, PET data. Further, manual uploading of paper confirmations is required by some SDRs but not others. A consistent, non-duplicative standard among SDRs that requires reporting the method of confirmation (*i.e.*, electronic or paper) but not the actual document—except in the case of exotic or bespoke swaps, for which uploading a paper confirmation is likely appropriate—would better streamline reporting by market participants without eliminating the reporting of useful data available to the Commission.

The Commission should consider deleting certain PET data fields as well, including: collateralization, notional value, U.S. person status, and registration or categorization status under the CEA.⁶ Collecting, and in some cases analyzing, data with respect to each of these fields can impose significant incremental compliance costs, but, more fundamentally, NGSAs questions whether they provide any significant regulatory benefit. As noted below, there are wide variations in notional value calculations between the Commission’s rules. These differences call into question the usefulness of valuation data. Additionally, US person status and registration or categorization status are not transaction dependent, and reporting parties are generally not in position to have independent knowledge of, much less vouch for, the registration or categorization status of each of its counterparties. These data elements are not necessary to describe the “primary” economics of a transaction and should therefore be considered for omission from required reporting of primary economic terms, *i.e.* PET data, or, if needed at all, should be reported through some other mechanisms.

⁴ As Commissioner O’Malia recently acknowledged:

Over a year has passed since swap data reporting began in the United States. Yet, the CFTC still cannot crunch the data in SDRs to identify and measure risk exposures in the market.

Commissioner Scott D. O’Malia, The Future of Financial Standards, keynote address at the SWIFT Institute, SWIFT’s Standards Forum, and the London School of Economics and Political Science, London, England (Mar. 25, 2014).

⁵*Id.*

⁶ 79 Fed. Reg. at 16693 q.28.

2. **Eliminate Duplicative Reporting by Swap Dealers and Major Swap Participants of Valuation Data for Cleared Swaps Already Reported by Derivatives Clearing Organizations**

Another swap data reporting obligation that should be eliminated is the requirement that swap dealers (“SDs”) and major swap participants (“MSPs”) report daily valuation data for cleared swaps. In its Request for Comment, the Commission asked:

How can valuation data most effectively be reported to SDRs . . . ?

a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?⁷

The requirement that SDs and MSPs report valuation data that is already reported by derivatives clearing organizations (“DCOs”) is a duplicative requirement. Such duplication is an unnecessary exception to the general streamlined approach that the CFTC adopted in the swap data reporting rules, under which the Commission sought to impose reporting obligations only on a single party best-positioned to report the relevant swap data.⁸ In the case of cleared swaps, the DCO, which must value swaps on a daily basis in order to administer margin requirements, is best-positioned to provide valuation data. In most cases, NGSAs members who are swap dealers rely on DCOs for valuation data for cleared swaps, since they have no better means of obtaining or providing such data. This makes the reporting of valuation data by the NGSAs member entirely duplicative. Moreover, it introduces some possibility of error due to errors in coding or transmission. The duplicative reporting does not provide additional utility, yet it represents a significant administrative burden.

Accordingly, the requirements that SDs and MSPs continue to report valuation data for cleared swaps should be eliminated. At the very least, the CFTC should clarify that SDs and MSPs will not be held liable for any errors in reported valuation data where such errors are attributable to the DCO from which such data was obtained. With respect to non-SD/MSP counterparties trading in cleared swaps, the Commission recognized that:

[A]llowing the clearing of a swap on a DCO to satisfy the continuation data reporting obligations of non-SD/MSP reporting counterparties represents a lowered overall cost. This approach eliminates duplication of the reporting requirement, capitalizes on the transmission pipeline from the DCO to the SDR, and will allow for more cost-effective reporting than a regime in which reporting parties entering into a cleared swap would always be responsible

⁷ 79 Fed. Reg. at 16691 q. 8.

⁸ See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2178, 2189 (2012).

for reporting regulatory data, as the DCO will likely realize economies of scale in the reporting process.⁹

The same cost-effective reasoning for imposing swap valuation requirements for cleared swaps on DCOs alone holds true for cleared swaps involving SD or MSP counterparties.

In addition, imposing valuation data reporting requirements on DCOs alone would alleviate unnecessary burdens on SDRs. As the Intercontinental Exchange (“ICE”) indicated in its comments on the swap data reporting rules, requiring both DCOs and counterparties to report valuation data drastically increases the number of messages transmitted to SDRs on a daily basis, besides unnecessarily burdening reporting counterparties.¹⁰ Further, centralizing the valuation calculation with DCOs eliminates the risk of reporting parties using different valuation methodologies and reporting inconsistent or inaccurate data. Therefore, the CFTC should eliminate the requirement that SDs and MSPs report daily valuation data for cleared swaps and require DCOs alone to report such data.

3. Eliminate Reporting by End-Users of Outdated Valuation Data for Uncleared Swaps

Additionally, the Commission requested comment on the challenges associated with unregistered swap counterparties reporting valuation data for uncleared swaps to SDRs on a quarterly basis.¹¹ Such counterparties are required under Section 45.4(c)(2)(ii) of the Commission’s rules to report to SDRs valuation data for uncleared swaps as of the last day of each fiscal quarter. Such reports are due thirty days after the end of each fiscal quarter. Accordingly, the data likely does not provide much value to the Commission, since it does not present a current or accurate portrayal of the market by the time it is reported. Therefore, NGSAs recommends that the quarterly reporting of valuation data for uncleared swaps by unregistered counterparties be eliminated.

B. Provide More Uniform Methodologies for Valuation of Swaps Across Rules and Reports

In its Request for Comment, the Commission asked market participants to “describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to . . . [n]otional value.”¹² It also requested commenters to “identify any Commission rules that impact reporting pursuant to part 45.”¹³

⁹*Id.* at 2188.

¹⁰*See id.* at 2187.

¹¹ 79 Fed. Reg. at 16691 q. 8(b).

¹² 79 Fed. Reg. at 16697 q. 28.

¹³ 79 Fed. Reg. at 16692 q. 14.

As a general matter, the CFTC should seek to implement a uniform methodology for valuing swaps across its rules. Various rules require significantly different approaches to valuation. The inconsistencies in the valuation approaches between CFTC rules become apparent when the rules are applied to a natural gas swing swap, which is a monthly vs. daily index swap:

- SDR Reporting: Valuation is calculated as delivery month volume times monthly average of the daily settlement price plus the mark to market for the unsettled portion of the month minus the deal price.
- Large Trader Reporting: Valuation is calculated as futures contract equivalent times mark for the rest of the month.
- Daily Mark Provided by Dealers to Customers¹⁴: Valuation is calculated as mark to market of the transaction, discounted.
- De Minimis Calculation for Swap Dealer Determination: Valuation is calculated as volume times the differential in the price of the two legs.

When applied to actual transactions, the difference in the reported values can be dramatic—sometimes more than ten times between the highest and lowest values. The valuations used for SDR reporting and in a dealer’s disclosure of the daily mark are generally similar in the case of contracts that settle on one date, but can diverge considerably when a contract includes multiple settlement dates. This occurs because SDR reporting captures the value of both the settled and unsettled portions of a transaction while the daily mark provided by dealers typically includes only the value of the unsettled part of the transaction.

Another example of where the CFTC has implemented different methodologies in different rules for calculating the same valuation measure is in calculating the notional value of locational basis swaps. In the CFTC Division of Market Oversight’s (“DMO’s”) *Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports* (May 31, 2012)¹⁵ (the “Swaps LTR Guidebook”), the DMO instructs market participants to calculate separately the notional value of each leg of a locational basis swap.¹⁶ However, this notional value methodology differs from the approach outlined in the Division of Swap Dealer and Intermediary Oversight’s (“DSIO’s”) October 12, 2012 “Frequently Asked Questions (FAQ)” document (the “Swap Entities FAQ”), which instructs market participants to determine the notional value of locational basis swaps by calculating the difference in fair market value of the physical commodity at the two locations, multiplied by the number of units reference in the swap.

¹⁴ 77 Fed. Reg. at 9824 (Rule 23.431(c)(2)).

¹⁵ Available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook053112.pdf>.

¹⁶ See Swaps LTR Guidebook at 34, 48.

Further inconsistencies in valuation requirements between reporting and other rules grow out of the CFTC’s *Further Definition of “Swap Dealer,” et al.*, 77 Fed. Reg. 30596 (2012) (the “Entity Definitions Rule”), which defines the term “swap dealer,” and includes a *de minimis* exception based on the “notional amount” of a person’s swaps in connection with swap dealing activities. Regarding how to determine “notional amount,” the Entity Definitions Rule “do[es] not prescribe any particular methodology . . . , but instead contemplate[s] the use of industry standard practices.”¹⁷

On September 20, 2012, NGSAs, as part of a coalition of energy and physical commodity industry organizations, submitted comments to the CFTC conveying predominant industry views regarding the appropriate methodology for calculating “notional amount” of commodity options and certain other types of swaps. Those comments expressed the common view among coalition members that the notional amount of a commodity swap is equal to the absolute value of the product that results from multiplying the quantity term of a swap by its nominal, *i.e.*, named or facial, price. With respect to commodity options in particular, the comments explained that notional amount should be based on the product of the notional quantity of the option (without adjustment for the option delta) multiplied by the transaction value for the option, *i.e.*, the premium.¹⁸ The CFTC has not issued a response to the coalition’s filing seeking clarity, or to a subsequent request from NGSAs and the Electric Power Supply Association seeking no-action relief,¹⁹ with respect to the calculation of notional value for commodity options and certain other transactions.²⁰ Therefore, significant uncertainty remains regarding use of the commonly accepted valuation approach for purposes of compliance.

Inconsistencies in valuation methodologies across the CFTC’s rules create confusion among market participants and prevent cross-checking various reports to ensure accuracy. The CFTC has not demonstrated any compelling reasons for these inconsistencies. One would expect that the valuations that SDs report to the CFTC in their large trader reports would be similar to those provided to customers and those reported to the SDRs. The differences call into question whether the inclusion of valuation data in Part 45 is useful to the CFTC at all. Accordingly, should the CFTC continue to require the reporting of valuation data, NGSAs requests that the CFTC provide uniform methodologies for calculating valuation data across its reporting (and other) rules.

¹⁷ 77 Fed Reg. at 30670 n. 902.

¹⁸ See attached letter from the American Petroleum Institute, Commodity Markets Council, Edison Electric Institute, Electric Power Supply Association, Independent Petroleum Association of America, and NGSAs to Mr. David Stawick, Secretary, CFTC (Sept. 20, 2012).

¹⁹ Letter from NGSAs and Electric Power Supply Association to Gary Barnett, Director, DSIO (Feb. 21, 2013).

²⁰ On October 12, 2012, the DSIO issued the Swap Entities FAQ, which addressed notional amount with respect to certain types of swaps but did not address commodity options.

C. Lengthen the Deadlines by Which Non-SD/MSPs Must Report PET Data and Confirmation Data.

In response to the Commission's general request for comments regarding challenges that non-financial entities face as reporting counterparties,²¹ NGSAs requests that the Commission lengthen the deadlines by which non-SD/MSPs must report PET data and confirmation data under Section 45.3(d) of the Commission's rules. That Section currently requires non-SD/MSPs trading in off-facility, uncleared swaps to report PET data and confirmation data for a swap within 36 business hours of execution and confirmation, respectively. This deadline will decrease to 24 business hours on April 10, 2015. Many end-user counterparties have found even the 36 business hour timeline to be very challenging. Although swaps provide an essential hedging tool to such counterparties, the level of trading they engage in often does not justify the information technology systems, processes, and personnel to accommodate rapid reporting. Often, they need to consult external parties to assist with their reporting obligations, which adds to the amount of time required to accurately report. Moreover, swap data reporting under Part 45 is designed to provide an archival and relatively comprehensive set of data regarding swaps, not real-time price and volume data, which is provided for by the Commission's real-time reporting rules under Part 43. For these reasons, NGSAs requests that the Commission lengthen the deadlines by which non-SD/MSPs must report PET data and confirmation data, to require such data to be reported within 5 business days after execution or confirmation, as applicable.

D. Consider Publishing a Swap Data Reporting Guidebook

NGSAs members that are subject to the Commission's Part 20 large trader reporting requirements appreciate the DMO's issuance of the Swaps LTR Guidebook. The large trader reporting rules include many technical concepts, and it is often unclear how such concepts should be applied in reporting actual transactions. Along those lines, the swap data reporting rules are often no less technical than the large trader reporting rules and, thus, present challenges for reporting counterparties. Moreover, the swap data reporting rules have much broader application, including to numerous end-users that often do not have the administrative or legal resources to parse the reporting regulations that those subject to the large trader reporting rules have. Accordingly, NGSAs respectfully requests that the CFTC consider providing a guidebook for swap data reporting similar to the Swaps LTR Guidebook that addresses the following specific issues, and other common issues facing reporting counterparties.

An area where a swap data reporting guidebook could lend helpful guidance is in providing a data dictionary that would provide explanations for the various data fields required to be reported and some examples of how actual swap terms correspond to such fields. In particular, many reporting parties currently experience significant difficulties allocating data from complex or exotic transactions into standardized data fields, for which guidance and a more uniform method to report these transactions would be helpful. For example, the Commission could consider allowing these transactions to be reported by component and include in the report of each component a link to the overall transaction.

²¹ 79 Fed. Reg. at 16697 q. 69(c).

Another area where a swap data reporting guidebook could provide guidance is the reporting of continuation data in a manner that ensures that a unique swap identifier (“USI”) accurately represents information with respect to a transaction and the relevant counterparties throughout the lifecycle of the transaction. In this regard, NGSAs recommends that the original USI for a transaction be linked to any resulting new transactions throughout the lifecycle of the new transactions and that the swap data for such new transactions include relevant event timestamps.

Finally, NGSAs recommends that the swap data reporting guidebook clarify that when a counterparty undergoes a status change that impacts reporting hierarchy, the legal entity undergoing the status change should have the obligation to explicitly inform its counterparties of the change.²² This will ensure the reporting responsibility remains correctly assigned. If the status change modifies reporting responsibilities, the Commission should require the changes be implemented prospectively, within a specified period of time, after the legal entity undergoing the status change informs its counterparties.

II. Requested Clarification on the Commission’s Seven-Part Guidance for Forward Contracts with Embedded Volumetric Optionality in Connection with Trade Option Reporting Requirements

In its Request for Comment, the Commission requested commenters to describe any challenges associated with the reporting of commodity trade options, whether reported to an SDR or on Form TO.²³ NGSAs members have not encountered significant reporting challenges with respect to the use of an SDR or Form TO for reporting trade options. However, NGSAs members continue to encounter substantial challenges and uncertainties in applying the seventh element of the Commission’s seven-element guidance for forward contracts with embedded volumetric optionality, to determine whether such contracts are excluded forward contracts or reportable trade options. NGSAs members appreciated the opportunity to participate in the Commission’s April 3, 2014 public roundtable to discuss this and other end-user issues and to submit detailed comments regarding the need for significant clarification on the seven-element guidance.²⁴

The need for clarification of the seven-element guidance remains pressing, as the following market inefficiencies, abnormalities, and uncertainties will persist as long as the ambiguities in the guidance remain:

1. Many end-users categorizing forward contracts with embedded volumetric optionality as “swaps,” even when they are not, in fact, swaps;

²² Some companies require their counterparts to monitor external sources (such as SEC filings) to capture various information about the company, including that related to potential status changes.

²³ 79 Fed. Reg. at 16693 q. 20.

²⁴ See Letter from the Commodity Markets Council, the National Corn Growers Association, and NGSAs to Melissa Jurgens, Secretary, CFTC (Apr. 17, 2014).

2. Parties to a transaction disagreeing on whether or not a transaction is a swap, resulting in inconsistent reporting of the transaction;
3. Parties being asked for vague representations in master agreements, or in relation to requests for proposals, that may be difficult to rely upon;
4. End-users with more than one supply choice choosing suppliers based on the suppliers' interpretations of whether or not a supply contract is consistent with the seven-element guidance;
5. Uncertainties in Form TO reporting caused by an inability to determine which transactions qualify for reporting; and
6. Parties walking away from deals due to regulatory uncertainty.

Market participants need to be able to clearly understand what is, and what is not, a trade option in order to comply with the CFTC's reporting rules. In this respect, clarifying the seven-element guidance will help to eliminate regulatory uncertainty and improve the quality of the data reported. Accordingly, NGSAs would like to underscore the urgency of its pending request for clarification of the seven-element guidance.

III. Requested Use of Notice and Comment Rulemaking Prior to Imposing Any Requirements to Collect Data Beyond What Is Already Required

In the event that the Commission imposes any requirements to collect data beyond what it already requires, whether through data harmonization efforts or otherwise,²⁵ NGSAs respectfully requests that the Commission adopt such requirements through an administrative rulemaking process that will provide notice to market participants an opportunity to comment and reasonable lead time to implement system changes required to accommodate new reporting requirements. A broad range of interested persons provided comments on the swap data reporting rules during the initial rulemaking, including existing trade repositories, DCOs, data service providers, banks, swap dealers, end-users, energy producers, non-profit associations, and others. Giving such persons notice and an opportunity to comment on any changes to the reporting requirements will maintain transparency in the rulemaking process and provide additional market-based information to the Commission for it to consider in finalizing its rules.

Market participants, *i.e.*, those who actually enter into swap transactions, must be a part of the stakeholder process for any changes to the reporting rules. This will ensure efficiency and effectiveness in market participants' compliance programs and the data they provide to the Commission. Using a rulemaking process consistent with these principles and ensuring adequate lead time for compliance purposes will best ensure that any changes to the reporting rules improve the efficiency and effectiveness of the rules ultimately adopted and the information being provided to and collected by the Commission.

²⁵See 79 Fed. Reg. at 16695 qq. 50-51.

CONCLUSION

NGSA welcomes the opportunity to further discuss this request with the Commission. If we can provide any additional information, please do not hesitate to contact us.

Respectfully submitted,

Natural Gas Supply Association

Attachment



September 20, 2012

VIA U.S. MAIL

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: “Notional Amount” Calculation Methodology under Swap Dealer *De Minimis* Determination (RIN 3235-AK65) and Other CFTC Swap Regulations

The American Petroleum Institute (“API”), Commodity Markets Council (“CMC”), Edison Electric Institute (“EEI”), Electric Power Supply Association (“EPSA”), Independent Petroleum Association of America (“IPAA”) and Natural Gas Supply Association (“NGSA”), (collectively, “the coalition”) submit the following comments regarding the appropriate methodology for calculating “notional amount” with respect to certain types of commodity swaps, as such term is used in the *de minimis* exception to the definition of “swap dealer” in the Final Rule, Further Definition of “Swap Dealer,” *et al.*, 77 Fed. Reg. 30596 (May 23, 2012) (the “Final Entity Definitions Rule”) and in other rules issued or currently proposed by the U.S. Commodity Futures Trading Commission (the “CFTC” or “Commission”). References made herein to the Commodity Exchange Act (the “CEA”) refer to that statute as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”).

The coalition’s members are committed to full compliance with the Commission’s swap regulations under the Dodd-Frank Act. The coalition submits these comments out of a desire for regulatory certainty regarding how to comply with the Commission’s swap regulations involving

determinations on the “notional amount” of swaps, particularly with respect to the *de minimis* exception to the definition of the term “swap dealer” under the Final Entity Definitions Rule.

API is a national trade association representing more than 500 oil and natural gas companies. API’s members transact in physical and financial, exchange-traded, and over-the-counter markets primarily to hedge or mitigate commercial risks associated with their core business of delivering energy to wholesale and retail consumers. API members enter into futures, options, and swaps to hedge price risk and facilitate physical transactions. API members range from the largest major oil company to the smallest of independents. They are producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry.

CMC represents a group of non-bank, commercial participants, each of whom operates in the physical and financial commodities markets and each of whom faces the prospect of potentially having to register its business or a portion of its business as a swap dealer.

EEI is the association of U.S. shareholder-owned electric companies. EEI’s members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members. EEI’s members are not financial entities. Rather, the typical EEI member is a medium-sized electric utility with relatively low leverage and a conservative capital structure.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

IPAA represents the companies that drill 95 percent of America’s onshore and offshore oil and natural gas wells. America’s independents produce 54 percent of American oil and produce 85 percent of American natural gas.

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.

COMMENTS

Multiple swap regulations issued or currently proposed by the CFTC require the calculation of “notional amounts” of swaps.¹ Nonetheless, as the Commission has recognized,

¹ The swap dealer *de minimis* thresholds are based on “aggregate gross notional amount” and are of the most immediate concern to coalition members, given the substantial difference in regulatory requirements applicable to swap dealers as compared to non-swap dealers. See Final Entity Definitions Rule, 17 C.F.R. § 1.3(gg)(4). Other

the Commission's rules "do not prescribe any particular methodology for calculating the notional amount or effective notional amount."² Instead, the Commission "contemplate[s] the use of industry standard practices" to calculate notional amounts.³

The Attachment to this letter conveys the predominant view among coalition members regarding the most logical and appropriate methodology for calculating "notional amount" with respect to certain types of commodity swaps in which coalition members regularly trade, *i.e.*, fixed-for-float swaps, float-for-float swaps, and options. Based on the CFTC's stated reliance on industry standards, the coalition understands that most of its members plan to continue calculating the notional amounts of their swaps based on the methodology represented in the Attachment unless they receive contrary instructions or guidance from the CFTC. The coalition would also welcome the opportunity to participate in an industry technical conference if the Commission desires further discussion of the notional amount calculation.

The consensus methodology for calculating "notional amount" in the Attachment is based on three simple concepts:

- (1) a straightforward interpretation based on common definitions of the term "notional value" and "notional;"
- (2) consistency across functionally equivalent transactions; and
- (3) consistency across the Commission's various swap market regulations.

Regarding a straightforward interpretation of the term, Investopedia defines "notional value" as "the total value of a leveraged position's assets."⁴ Merriam-Webster defines "notional" as "conceptual,"⁵ and others use the term "nominal" or "face" interchangeably with "notional."⁶ Accordingly, coalition members believe it is plain that the notional amount of a commodity swap should be the absolute value that results from multiplying the quantity term of a swap by its nominal, *i.e.*, named or facial, price (taking into effect any multipliers, as the Commission has identified).⁷ As an example, the notional amount of a basis swap, for which payments are based on the price differential between two locations, should equal the absolute value of the product of the contract quantity times such price differential.

This approach would be consistent with the Commission's usage of the term "notional amount" across its multiple swap rulemakings. The Commission's definition of the term "major swap participant" and its proposed capital requirements rule (and potentially its margin requirements rule, if it follows the approach of the Prudential Regulators Proposed Margin and

significant regulations dependent on determinations of "notional amount" include: the definition of major swap participant, *id.* § 1.3(hhh)(6)(i)-(ii), (jjj)(3)(ii)(A)(1)-(2); capital requirements applicable to swap dealers and major swap participants, Capital Requirements of Swap Dealers and Major Swap Participants, 17 C.F.R. § 23.104(d)(6), (h)(1); and, potentially, margin requirements applicable to swap dealers and major swap participants. *See* Margin and Capital Requirements for Covered Swap Entities; Proposed Rule, 76 Fed. Reg. 27564 at 27568, 27572-73, 27592 Appendix A (May 11, 2011) (the "Prudential Regulators Proposed Margin and Capital Rule").

² Final Entity Definitions Rule, 77 Fed. Reg. at 30670 n. 902.

³ *Id.*

⁴ <http://www.investopedia.com/terms/n/notionalvalue.asp#axzz208YD1ywN>.

⁵ <http://www.merriam-webster.com/dictionary/notional>.

⁶ *See, e.g.*, http://www.proz.com/kudoz/English/investment_securities/1962912-notional.html;
<http://stats.oecd.org/glossary/detail.asp?ID=5984>.

⁷ Final Entity Definitions Rule, 17 C.F.R. §§ 1.3(ggg)(4), (jjj)(3)(iii)(A)(2).

Capital Rule) are based on “notional amount” as a measure of risk or exposure. Taking basis swaps as an example again, the relevant price for determining *exposure* with respect to a basis swap must be the price differential between the two legs, since payments are entirely based on that differential. Similarly, the CFTC’s use of “notional amount” as a measure of market size, *see, e.g.*, the core principles rules for designated contract markets,⁸ would make little sense with respect to basis swaps if it was based on any price other than the price differential between the two legs of such swaps.

Finally, the coalition understands that the total notional amount for a market participant should be determined for purposes of the swap dealer *de minimis* determination as the aggregate value of long and short future equivalent positions “grossed up” at the deal level, without any netting. For Major Swap Participant, however, the coalition understands the rules to allow for netting as provided for under the applicable individual master agreements.

CONCLUSION

The methodology outlined in the Attachment provides an industry-consensus view of what “notional amount” means with respect to commodity swaps commonly traded by coalition members. Accordingly, given the Commission’s stated intention of relying on “the use of industry standard practices” in determining notional amounts, the coalition invites comment from the Commission should the Commission have a different view on any particular aspects of this methodology. If we can provide any additional information or should the Commission desire further discussion, please do not hesitate to contact us. Correspondence regarding this submission should be directed to:

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⁸ Core Principles and Other Requirements for Designated Contract Markets; Final Rule, 77 Fed. Reg. 36612, 17 C.F.R. § 16.01(a)(2)(iv)(A).

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ATTACHMENT

Notional Amount Methodology

General Principles

Notional amount is calculated in US dollars (USD). For purposes of the swap dealer *de minimis* test, the notional amount is the absolute value of the product of the notional quantity of the swap multiplied by the nominal price of the swap at the time of the transaction. These calculations are done per transaction for the swap dealer *de minimis* test, and the notional amount for a portfolio is the sum of the absolute value of the notional amounts of all transactions across the portfolio. For the Major Swap Participant calculations, netting may be applied within a master agreement as provided for in the master agreement, so the absolute value is taken after any such netting.

1. Fixed-for-Float Swaps

Notional amount of a fixed-for-float swap is the absolute value of the product of the notional quantity of the swap multiplied by the transaction price of the swap. Example:

Example Transaction(s)	Transaction Volume	Transaction Price	Notional Amount (\$)
#1: First of Month index for transaction price of \$2.50/MMBtu	10,000 MMBtu	\$2.50/MMBtu	\$25,000
#2: Monthly on-peak electricity swap; day-ahead locational marginal price for transaction price of \$50.00 per MWh	100 MWh	\$50.00/MWh	\$5,000

2. Float-for-Float Swaps

Float-for-float swaps involve exchanging the value of two floating indices. Common examples are an index spread, a basis spread, a time spread and a spark spread. The notional amount is the absolute value of the product of the notional quantity multiplied by the transaction price, which is the differential or price spread between the two floating instruments. This approach presumes that the spread position is created through a single transaction that is executed at this differential (even if the confirmation of the transaction may refer to two legs). Note that a position of equal risk can be created by executing two fixed-for-float transactions. In that case, however, the notional amount should be calculated for each fixed-for-float transaction according to the procedures discussed above for fixed-for-float transactions. As a result, portfolios of equal risk may have very different notional amounts because notional amount is intended to measure activity, not risk.

a. Index spread

A gas index spread is where one party exchanges the variability of one index for another. For instance, one counterparty might pay First of the Month Index price and receive *Gas Daily* price in exchange. Often, the notional amount of an index spread swap is small given the similarity in the market price of both indices in the forward months. The notional amount is the absolute value of the product of the notional quantity times the transaction price, which is the spread or difference between the two indices.

Example Transaction(s)	Transaction Volume	Transaction Price ¹	Notional Amount (\$)
#1: First of Month index in exchange for <i>Gas Daily</i> index	10,000 MMBtu	\$0.02/MMBtu	\$200
#2: <i>Gas Daily</i> index in exchange for First of Month index	10,000 MMBtu	(\$0.02)/MMBtu	\$200

An electric index trade is typically used to manage the price risk difference between the day-ahead and real-time markets. For example, a counterparty might pay the RTO Day Ahead LMP price and receive the RTO Real Time LMP price in exchange. The notional amount is the absolute value of the product of the notional quantity times the transaction price, which is the spread or difference between the two indices.

Example Transaction(s)	Transaction Volume	Transaction Price	Notional Amount (\$)
#3: Monthly on-peak DA/RT swap; day-ahead locational marginal price in exchange for real-time locational marginal price	100 MWh	\$0.50 per MWh	\$50

b. Basis Spread

With a gas basis spread swap, payments are based on the value of the price spread between two locations (for natural gas it is typically the price spread between the Henry Hub and another location).

Example Transaction(s)	Transaction Volume	Transaction Price ²	Notional Amount (\$)
#1: Henry Hub to Transco Z6 NY basis swap	10,000 MMBtu	\$0.235/MMBtu	\$2,350
#2: Henry Hub to El Paso, San Juan	10,000 MMBtu	(\$0.07)/MMBtu	\$700

For electric basis trades, the payments are based on the price differential between two locations. It is typically used in the electricity market to manage the price risk between two locations. For example, a counterparty might pay the fixed price for the difference between AEP Dayton Hub (ADHUB) and Northern Illinois Hub (NIHUB) and receive

¹For the index spread float-for-float swap, the transaction price example is the difference between First of the Month index \$2.32/MMBtu and *Gas Daily* index \$2.30/MMBtu.

²For the basis spread float-for-float swap, the transaction price is, in the first example, the difference between Henry Hub \$2.990/MMBtu and Transco Z6 NY \$3.225/MMBtu and, in the second example, the difference between Henry Hub \$2.990/MMBtu and El Paso, San Juan \$2.920/MMBtu.

the floating price difference between those two locations. The notional amount is the absolute value of the product of the notional quantity times the transaction price, which is the spread or difference between the two price locations.

Example Transaction(s)	Transaction Volume	Transaction Price	Notional Amount (\$)
#3: Monthly on-peak basis swap; PJM AD Hub to PJM NiHub	100 MWh	\$5.00/MWh	\$500

c. Time Spread

In this type of swap, the payments are based on the spread value between two different delivery periods or points in time (such as natural gas or agricultural seasonal winter/summer spreads). For instance, a market participant could buy a summer month while simultaneously selling a winter month, hedging or locking in the value of the summer-winter spread. For time spread swaps, the notional amount is the absolute value of the product of the notional quantity of the swap multiplied by the transaction price, which is based on the difference between the price for two different delivery months.

Example Transaction(s)	Transaction Volume	Transaction Price ³	Notional Amount (\$)
#1: December to April time spread swap	10,000 MMBtu	\$0.40/MMBtu	\$4,000

d. Spark Spread

An electric heat rate trade is typically used to manage price risk by using two commodities: electricity and natural gas. For example, a counterparty would pay the heat rate multiplied by NYMEX Gas and receive the power index. The notional amount is the absolute value of the product of the notional quantity times the transaction price, which is the spark spread.

Product	Location	Term	Fixed Heat rate (BTU/KWH)	NYMEX Gas (MMBTU)	ERCOT North (\$/MWH)	Spark Spread Abs (\$/MW)	Side 1 Notional Abs Volume (MWH)	Notional Amount(\$)
Electricity Peak	ERCOT North Hub	Sept 12	9.50	3.00	30.00	1.50	100	\$150

Note: Fixed Heat Rate [9.50 BTU/KWH]*NYMEX Gas [3.00\$/MMBTU]=28.50 \$/MWH
 >Spark Spread ERCOT North [30.00 \$/MWH]-[28.50 \$/MWH]=1.50 \$/MWH

³For the time spread float-for-float swap, the transaction price is the difference between the December contract price of \$2.70/MMBtu and the April contract price of \$2.30/MMBtu.

3. Options

The notional amount for options should be based on the absolute value of the product of the notional quantity of the option (without adjustment for the option delta) multiplied by the transaction value for the option (*i.e.*, the premium) making the calculation consistent with the calculation for notional amount for swaps. Example:

Example Transaction(s)	Transaction Volume	Option Premium	Notional Amount (\$)
#1: Call Option with \$2.09/MMBtu strike price at a \$0.05/MMBtu premium	10,000 MMBtu	\$0.05/MMBtu	\$500
#2: Monthly on-peak call option on day-ahead locational marginal price with \$50.00 per MWh strike price at a \$5.00 per MWh premium	100 MWh	\$5.00/MWh	\$500

It is important to note that this approach is inconsistent with the calculation of notional amount set forth in the Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (the "LTR Guidebook") for swaptions. However, the LTR Guidebook is internally inconsistent in that its guidelines for calculating notional amounts for options are inconsistent with its guidelines for calculating the notional amounts for other deal types, such as swaps.⁴

⁴ The LTR Guidebook calculates notional amount for options as follows: Notional Volume x Option Delta x Price Underlying Swap (Page 41 LTR Guidebook - <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook120711.pdf>). Using the example above, the LTR Guidebook notional value methodology would result in a notional amount of \$10, 450 instead of \$500 which is notional amount that would result from the common practice.