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May 27, 2014

To: Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Attn: Melissa Jurgens, Secretary

RE: **Comments Regarding Review of Swap Data Recordkeeping and Reporting Requirements (RIN 3038—AE12)**

Dear Secretary Jurgens:

I. Introduction

This document is in response to the U.S. Commodities Futures Trading Commission's ("CFTC's") request for public comments made pursuant to the "Review of Swap Data Recordkeeping and Reporting Requirements" (RIN 3038-AE12) published at Page 16,689 of Volume 78 of the Federal Register (the "Part 45 Request for Comment"). EDF Trading North America LLC ("EDFTNA") commends the CFTC for providing interested persons with the opportunity to provide the CFTC with feedback on the swap data reporting rules set forth in Part 45 of the CFTC's regulations (17 C.F.R. Part 45) (the "swap data reporting rules") and hopes that its feedback will assist the CFTC's interdivisional staff working group in its efforts to determine how the swap data reporting rules are being applied and in its efforts to determine what further clarifications, enhancements or guidance, if any, may be appropriate.

EDFTNA is a wholly-owned indirect subsidiary of *Électricité de France, S.A.*, a global leader in energy production and supply with over 140.4 Gigawatts of generation capacity and approximately 39 million customers world-wide. In addition to being the fifth largest marketer of natural gas in North America,

EDFTNA is also a leading provider of energy management and risk management services and, directly and through its wholly owned subsidiaries, a provider of retail power and gas services to large-scale commercial and industrial customers.

As explained in greater detail below, EDFTNA has the following two observations in response to Question 28 and Question 29 of the Part 45 Request for Comment: (1) the identification of collateral for public dissemination does not accurately capture the different types of collateralization; and (2) any modification of data element fields specified in Appendix 1 to the swap data reporting rules will require reporting counterparties, swap data repositories (“SDRs”), and other affected entities to expend significant resources to implement system modifications necessary to comply with the modified fields and, to the extent such modification adds data fields, increases the risk for reporting counterparties to submit inaccurate swap transaction information.

In addition to the comments submitted with respect to Questions 28 and 29, EDFTNA wishes to express its support for the comments submitted by the International Energy Credit Association (“IECA”) in response to the Part 45 Request for Comment. In particular, EDFTNA supports (1) the suggestion that the CFTC provide market participants with the ability to provide comments on any revisions, interpretive guidance, amendment or other modification to the swap data reporting rules prior to the effectiveness thereof; (2) the suggestion that the CFTC evaluate its need for and use of the information that it currently receives pursuant to the swap data reporting rules prior to making any changes thereto and that any changes to the information requirements of the swap data reporting rules be implemented through a transparent process that allows market participants to provide comments to the CFTC; and (3) the establishment of a safe harbor for errors and omissions in swap data

submitted by a reporting counterparty that result from the failure of its counterparty to provide complete, timely and accurate information. EDFTNA believes that the suggestions made by the IECA are appropriate given the experience of market participants with the swap data reporting rules and will help alleviate many of the risks that reporting counterparties encounter in their good faith efforts to comply with the swap data reporting rules but which are outside of their control.

II. Comments

Question 28

Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to: a. Cleared status; (a) Cleared Status; (b) Collateralization; (c) Execution timestamp; (d) Notional value; (e) U.S. person status; and (f) Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

EDFTNA's Observation

EDFTNA appreciates that reporting counterparties are required to submit accurate and complete data with respect to swap transactions and that the receipt of accurate and complete information is important to the CFTC's ability to exercise regulatory oversight over the swaps markets. A concern that EDFTNA has, however, relates to the sufficiency of the explanations given by the CFTC with respect to the information actually required pursuant to the swap data reporting rules. To the extent that the CFTC's descriptions of required data do not provide sufficient guidance to reporting counterparties, EDFTNA believes that reporting counterparties may in good faith submit data that does not reflect the CFTC's intended objective in collecting the data. Likewise, to the extent that different entities interpret reporting data fields differently and submit data based on their own interpretations, the information received by the CFTC will be difficult to reconcile and interpret accurately.

To illustrate EDFTNA’s concern, as part of the primary economic terms identified in the exhibits to the swap data reporting rules, reporting counterparties must provide information regarding the collateralization of each swap. The four collateralization options, which are “Uncollateralized”; “Partially Collateralized”; “One-way Collateralized”; and “Fully Collateralized”, and the associated explanations provided in the CFTC’s regulations at 17 C.F.R. Part 43 do not provide guidance to counterparties that may have collateralization structures that are not solely based on the exchange of initial and variation margin. Likewise, to the extent that a reporting counterparty provides an indication of collateralization, the indication may not accurately reflect the credit support associated with the more complex transaction. For example, the relatively common practice of transacting under a lien-based ISDA in which one counterparty looks to the value of certain assets of its counterparty¹ as security for the counterparty’s obligations gives rise to a collateralization structure that does not clearly fit within one of the four enumerated categories. Specifically, determining which indication of collateralization applies is difficult as the lien structure may provide for more nuanced or springing obligations with respect to the provision of initial or variation margin. Likewise, any indication of collateralization that ignores the lien structure does not provide the CFTC with an accurate depiction of collateral that supports the obligations of the counterparty to the secured counterparty.

By not providing sufficient guidance to market participants regarding the information that it expects to receive with respect to swaps, the CFTC increases the likelihood that the information it does receive will be of only limited value. As such, EDFTNA suggests that the CFTC, in collaboration with market participants,

¹ A lien-based ISDA may be desirable under conditions where the marked to market value of the transactions under the ISDA and the value of the assets that secure the transactions under the ISDA are positively correlated such that as the exposure of the secured party under the ISDA increases, the assets that secure the transaction also increase in value. This may be the case, for example, in ISDAs between a power marketer and the owner of a generating facility and between a provider of oil and gas hedges and an oil and gas production company.

provide guidance intended to clarify how the CFTC expects reporting counterparties to interpret data fields that market participants may find vague or otherwise incomplete.

Question 29, et al.

What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

EDFTNA's Observation

EDFTNA is concerned that the CFTC may take steps to modify the specific data fields required under the swap data reporting rules in response to the comments provided to the Part 45 Request for Comment by market participants. Although EDFTNA believes that the current required data elements under the swap data reporting rules are more than sufficient to ensure full, complete, and accurate representation of swaps when reporting to a SDR and, in some cases, may require the submission of data that are not necessary for the full, complete and accurate representations of swaps, EDFTNA also believes that the CFTC should, in advance of the implementation of any modification to the data elements, carefully evaluate both the costs and benefits to market participants associated with such changes. In particular, EDFTNA notes that many market participants invested significant resources in the development and deployment of automated systems intended to facilitate the operational requirements of the swap data reporting rules. Undoubtedly, any change to data required by the CFTC will necessitate further significant investment by market participants as they attempt to modify existing systems to accommodate any changes implemented by the CFTC.

EDFTNA's view is that the addition of new data elements to the CFTC's current requirements would essentially increase the risk and occurrence of reporting parties providing inaccurate or incomplete information to the CFTC. If the CFTC were to increase the types and volume of data required for each swap, the CFTC would in effect increase the burden imposed on reporting counterparties while increasing the risk of inaccurate and incomplete reporting of data.

Furthermore, the addition of data fields and modification of existing data elements (whether by redefinition, deletion or otherwise) will force reporting counterparties and other affected market participants undertake system development efforts in order to adjust existing systems to comply with the amended swap data elements. Significantly, in anticipation of the effectiveness of the swap data reporting rules many market participants developed, at significant expense, information technology systems designed to implement operational aspects of the swap data reporting requirements. These systems, which were built based on the current required swap data fields required pursuant to the swap data reporting rules, automate the process of reviewing trade data, preparing swap data submissions, and uploading data submissions to SDRs.

While any changes to such systems will entail a cost element, EDFTNA submits that this cost may fluctuate on a market participant by marketing participant basis and is difficult to estimate without specific information on the data elements the CFTC proposes to implement or modify. For example, it is less challenging for EDFTNA to provide additional data elements to the SDR if the additional data elements are already captured within the energy trading and risk management ("ETRM") system used by EDFTNA. The addition of data fields that are not captured within EDFTNA's ETRM system, however, would require EDFTNA to work with its ETRM vendor to build, test (through multiple testing iterations), and ultimately



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implement ETRM system updates to enable the capture and reporting of the relevant data within prior to the effective date of the updated requirements. The system modifications necessary to capture and report data fields that EDFTNA does not capture through its ETRM would require substantially more effort and expense than would be necessary to report data fields that EDFTNA currently captures but is not required to report or to remove data fields that EDFTNA current reports.

Given the additional expense necessary in connection with any modification to the swap data elements required under the swap data reporting rules, EDFTNA believes that the CFTC should provide prior notice of any proposed changes thereto and the CFTC's rational for why such modification is necessary and how it intends to use such data. In addition, prior to making any final determination with respect to such proposed change the CFTC should seek comments from market participants on the costs and benefits associated with implementation of the proposed modification.

If you have any questions regarding our response please do not hesitate to contact me.

Respectfully submitted,

/s/ Paige J. Lockett

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