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VIA ELECTRONIC MAIL

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: ***Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, RIN3038-AC97***

Dear Secretary Kirkpatrick:

I. INTRODUCTION.

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits these comments in response to the Commodity Futures Trading Commission's (the "**CFTC**" or "**Commission**") Proposed Rule on *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants* (the "**Proposed Rule**").[1] The Working Group appreciates the Commission's efforts to coordinate with the Board of Governors of the Federal Reserve System and other Prudential Regulators[2] to put forth proposed rules for uncleared swaps that properly reflect Congressional intent and do not impose margin requirements on non-financial end-users.[3] From the perspective of such end-users, the Proposed Rule is a workable framework for margin requirements on uncleared swaps. The Working Group's comments are largely technical in nature and designed to be incremental improvements on a promising proposal that will reduce direct or indirect costs for non-financial end-users.

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[1] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, Notice of Proposed Rulemaking, 79 Fed. Reg. 59,898 (Oct. 3, 2014), *available at*: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2014-22962a.pdf.

[2] In addition to the Board of Governors of the Federal Reserve System, the Prudential Regulators are the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency.

[3] *See Margin and Capital Requirements for Covered Swap Entities,* Proposed Joint Rule, 79 Fed. Reg. 57,347 (Sept. 24, 2014), *available at: http://www.gpo.gov/fdsys/pkg/FR-2014-09-24/pdf/2014-22001.pdf.*

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group considers and responds to requests for comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

The Working Group requests the Commission's consideration of these comments before it issues a final rule on margin requirements for uncleared swaps.

II. OVERVIEW OF POTENTIAL ISSUES FOR NON-FINANCIAL END-USERS.

The Working Group welcomes the Proposed Rule's recognition that Swap Dealers and Major Swap Participants ("**Covered Swap Entities**" or "**CSEs**") should not be required to exchange margin with non-financial end-users. As the Commission notes in its Proposed Rule, non-financial end-users pose less risk to CSEs than financial counterparties.[4] Nevertheless, there are several aspects of the Proposed Rule that could create issues for non-financial end-users.

A. The Definition of "Financial End-User."

The Proposed Rule makes an important change to the definition of "financial end-user" proposed in the Prudential Regulators'[5] and CFTC's [6] 2011 proposed margin rules, but the current proposed definition may require additional clarification to achieve its intended goal of excluding certain non-financial end-users from such definition. Specifically, the definition of "financial end-user" no longer captures entities engaged in activity that is considered financial in nature under Section 4(k) of the Bank Holding Company Act. As such, it is clear the proposed definition does not capture (i) central trading entities[7] and (ii) entities that may be "financial entities" under Section 2(h)(7)(C) of the Commodity Exchange Act ("**CEA**") because they engage in physical trading activity that is deemed "financial in nature."

While central trading entities are not captured by the list of types of entities that are expressly financial end-users, the presence of an exclusion likely intended to definitively remove them from the definition of "financial end-user," but does not actually do so, creates regulatory

4 *See* Proposed CFTC Rule at 59,906.

5 Proposed Joint Rule, *Margin and Capital Requirements for Covered Swap Entities*, 76 Fed. Reg. 27,564, 27,587 (May 11, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/pdf/2011-10432.pdf.

6 Proposed Rule, *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 76 Fed. Reg. 23,732 (April 28, 2011), *available at*: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-9598a.pdf.

7 Certain commercial end-users conduct derivatives trading for their overall enterprise through one (or a few) market facing entity(ies). Those entities, acting as principal, enters into swaps with third parties and then transfer the resulting risk to any number of affiliates through the use of inter-affiliate swaps.

confusion. The proposed definition of "financial end-user" has a list of excluded entities, which includes, entities that qualify for the exemption from clearing pursuant to Section 2(h)(7)(D) of the CEA.[8] That exclusion, however, is unlikely to satisfy the goal of making it clear that central trading entities are excluded from the definition of "financial end-user" because, in order to qualify for the exemption in Section 2(h)(7)(D), an entity must be acting as agent for an affiliate.

In contrast, central trading entities typically enter into transactions as principal and then sleeve the economics to the relevant affiliate. As such, the exclusion from the definition of "financial end-user" for entities that are exempt from clearing pursuant to Section 2(h)(7)(D) would not cover central trading entities, which is likely contrary to the Commission's intent. In addition, under the Proposed Rule, the CFTC retains the right to determine that an entity should be treated as a "financial end-user."[9]

The Commission's intent to exclude (i) central trading entities and (ii) entities that may be "financial entities" under Section 2(h)(7)(C) of the CEA because they engage in physical trading activity that is deemed "financial in nature," from the definition of "financial end-user" is clear. The Working Group respectfully requests that the Commission ensures that such intent is reflected in the definition by expressly excluding such entities from the financial end-user definition through means other than a reference to Section 2(h)(7)(D). The Commission could, for example, exclude entities that meet the following definition of "eligible non-financial trading entity" from the definition of "financial end-user":

> Eligible non-financial trading entity means a person that meets each of the following qualifications:
>
> i. The person's ultimate parent is not a financial entity as defined in section 2(h)(7)(C)(i) of the CEA;
>
> ii. The person is a financial entity as defined in section 2(h)(7)(C)(i)(VIII) of the CEA as a result of acting as principal to commodity interests and/or forwards or providing other services that are financial in nature to related affiliates; and
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> iii. The person is not any of the following:
>
> a. A swap dealer;
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> b. A major swap participant;
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> c. A security-based swap dealer;
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> d. A major security-based swap participant;
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> e. A nonbank financial company that has been designated as systemically important by the Financial Stability Oversight Council;

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8 *See* Proposed CFTC Rule § 23.151.

9 *Id*.

f. A private fund as defined in section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. § 80-b-2(a));

g. A commodity pool;

h. An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002);

i. A bank holding company;

j. An insured depository institution;

k. A farm credit system institution;

l. A credit union; or

m. An entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

B. Issues with Respect to "Material Swaps Exposure."

i. The Use of the Term "Material Swaps Exposure" for Non-Financial Entities.

The Proposed Rule's general margin documentation requirements would require a CSE to calculate hypothetical margin amounts with non-financial entity counterparties that have "a material swaps exposure to the covered swap entity as if the counterparty were a covered swap entity and compare that amount to any variation margin required" under the parties' margin agreement.[10] It is unclear whether this hypothetical margin calculation and comparison would only apply where it is separately determined a non-financial end-user has "material swaps exposure" as defined under the Proposed Rule (*i.e.,* $3 billion notional) or whether a CSE must determine the counterparty's swaps exposure to the CSE is material before applying these requirements.

As an initial matter, it is unclear to the Working Group the benefit achieved by requiring CSEs to calculate hypothetical margin requirements with certain non-financial end-users. Under CFTC Regulation 23.600, CSEs are required to put in place a risk management program that, among other things, monitors and manages credit risk and counterparty credit limits. The proposed requirement for CSEs to calculate hypothetical margin requirements is redundant with CFTC Regulation 23.600. Because CSEs have the proper level of flexibility to monitor their credit exposure under Regulation 23.600, the proposed hypothetical margin calculation requirement is prescriptive and unnecessary.

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[10] *See* Proposed CFTC Rule §§ 23.155(a)(3) and 23.154(a)(6) (Requires hypothetical initial margin calculation).

To the extent the Commission retains the requirement for CSEs to calculate hypothetical margin requirements with certain non-financial end-users, additional clarity is required. Specifically, if the requirement applies to non-financial counterparties with "material swaps exposure" as defined in the Proposed Rule, then non-financial counterparties may be obligated to track whether they have met or surpassed the $3 billion notional material swaps exposure threshold. The Working Group respectfully requests that the Commission make clear that the phrase "material swaps exposure" in this context is intended to capture a non-financial entity counterparty that has a material swaps exposure to a CSE, where the materiality determination is made by the CSE based on the relevant facts and circumstances.

ii. Inter-Affiliate Swaps Should be Excluded from the Determination of "Material Swaps Exposure."

The determination of whether a financial end-user has a "material swaps exposure" requires that entity to consider, among other things, the aggregate notional value of the uncleared swaps of both the entity and its affiliates.[11] As drafted, that determination would require corporate families to not only include, but to double count, their inter-affiliate swaps. As inter-affiliate swaps are internal risk transfers that do not result in a corporate family increasing its overall level of risk, those transactions should not be considered when determining whether an entity has a "material swaps exposure."

iii. CSEs Should be Permitted to Rely on Representations as to Whether a Counterparty has "Material Swaps Exposure."

For a CSE to determine whether initial margin requirements apply to a transaction with a financial end-user, the CSE must know whether that entity has "material swaps exposure." It would be quite difficult for a CSE to make that determination on its own. As such, the Working Group requests that the Commission confirm that a CSE may rely on representations from financial end-user counterparties as to whether they have "material swaps exposure."

C. The Treatment of Non-Swap Positions Subject to the Same Eligible Master Netting Agreement.

The Proposed Rule allows for the netting of variation margin requirements and the offset of initial margin requirements within broad asset classes with respect to swaps subject to the same eligible master netting agreement ("**EMNA**"). While the Working Group appreciates the ability to net exposures, under the Proposed Rule, the treatment of non-swap transactions subject to the same EMNA as swaps is unclear. It is common in energy markets for counterparties to enter into both physical and financial transactions under the same master netting agreement (*e.g.*, an ISDA Master Agreement with a Physical Power Annex). In such a relationship, the net exposure between the counterparties is determined by considering the entire universe of trades under the same master netting agreement. If the Commission were to only consider swaps in the determination of initial and variation margin amounts, it will, in certain circumstances, increase

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[11] *See* Proposed CFTC Rule § 23.151.

risk to the counterparties. Specifically, if only swaps are taken into account, non-swap transactions subject to the same EMNA that net and offset exposure under swaps, thereby reducing net risk between the counterparties, would be ignored and margin would be posted based on an inaccurate view of the actual risk raised by the swaps between the two counterparties. In short, the non-swap transactions that reduce exposure under an EMNA should be viewed as akin to collateral. As such, the Working Group requests that the Commission permit counterparties to consider non-swap transactions that would (i) reduce the net exposure between counterparties when calculating the variation margin amount and (ii) offset the initial margin requirements associated with swaps in the same broad asset class when calculating the amount of margin to be posted under an EMNA.

With respect to non-swap positions that would not reduce margin obligations under an EMNA, the Working Group requests that the Commission clearly state that such transactions do not factor into the determination of initial and variation margin amounts under the Proposed Rule. Those transactions are not swaps and, therefore, outside the universe of transactions upon which the Commission may impose margin requirements.

D. The Availability of Unsecured Initial Margin Thresholds.

While the Working Group appreciates the availability of the $65 million unsecured initial margin threshold amount, the Proposed Rule would measure and implement this threshold at the group level rather than on an entity-by-entity basis.[12] CSEs and financial end-users with material swaps exposure would have to not only monitor the use of the threshold but also allocate the threshold among individual trading relationships. The Working Group respectfully suggests that the Commission set a maximum unsecured threshold of $65 million between counterparties, not accounting for exposure across the respective corporate families, and rely on its anti-evasion authority to penalize any abuse of that paradigm.

In addition, it is unclear to the Working Group what set of transactions are to be included in the determination of credit exposure between counterparties and, therefore, the extent to which an unsecured credit threshold is being used. As noted above, it is common in energy markets for counterparties to enter into both physical and financial transactions under the same master netting agreement, where the net exposure between the counterparties is determined by considering the entire universe of trades under the same EMNA. The Working Group respectfully requests that the CFTC clarify that, consistent with the discussion in Section II.C. above, the Proposed Rule's determination of net exposure between counterparties should account for non-swap transactions that reduce exposure between the counterparties, but should exclude non-swap transactions that would not reduce exposure between the counterparties.

Finally, to the extent the Commission retains a definition of "initial margin threshold amount" that aggregates the credit exposure of an entity and its affiliates, the definition of "affiliate" should be amended. Currently, the proposed definition of affiliate captures "any

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[12] *Id.*

company that controls, is controlled by, or is under common control with another company."[13] Where control is defined as "(1) ownership, control, or power to vote 25 percent or more of a class of voting securities of the company, directly or indirectly or acting through one or more other persons; (2) ownership or control of 25 percent or more of the total equity of the company, directly or indirectly or acting through one or more other persons; or (3) control in any manner of the election of a majority of the directors or trustees of the company."[14]

A standard that requires an entity to share its initial margin threshold amount with a minority-owned affiliate raises several concerns. For example, the entities would have to coordinate their trading and share information to monitor their initial margin thresholds. Moreover, an entity's minority-owned affiliate may be subject to a separate initial margin threshold with its majority-owned affiliates. As such, the Working Group requests that the definition of "affiliate" be amended to cover only majority-owned affiliates.

III. Harmonization with International Proposals for Margin on Uncleared Swaps.

The Working Group appreciates the Commission's efforts to coordinate with international regulatory authorities to set forth a rule that is generally consistent with recommended international standards for margin requirements. In particular, the Working Group appreciates the Commission's consideration of the Basel Committee on Banking Supervision ("**BCBS**" or "**Basel**") and the International Organization of Securities Commissions' ("**IOSCO**") framework for margin requirements for uncleared swaps. While the Proposed Rule, Basel/IOSCO and even European Supervisory Authorities' ("**ESA**") proposals are generally consistent, certain differences between the proposals may lead to competitive imbalances in swap markets.

For example, the IOSCO and ESA margin frameworks require higher levels of swaps exposure than the Proposed Rule before entities are subject to initial margin requirements. Under the IOSCO and ESA frameworks, financial entities that belong to a corporate group with a notional amount of uncleared swaps above €8 billion will be subject to the proposed initial margin requirements.[15] In contrast, the Proposed Rule would subject financial end-users with a "Material Swaps Exposure" of $3 billion to initial margin requirements. The Working Group respectfully requests that the Commission adopt the equivalent of the €8 billion threshold to harmonize the thresholds across jurisdictions to avoid any regulatory arbitrage.

Finally, the CFTC, the Prudential Regulators, and relevant foreign regulators should harmonize the timing of the implementation of their respective margin requirements to avoid potential regulatory arbitrage. In addition, the CFTC, the Prudential Regulators, and relevant

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[13] *Id.*

[14] *Id.*

[15] Margin Requirements for Uncleared Derivatives, Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions (Sept. 2013) *available at*: http://www.bis.org/publ/bcbs261.pdf.

foreign regulators should also build in a mechanism through which they could amend the implementation schedule and the relevant thresholds subjecting market participants to margin requirements in the event that the new margin rules cause material disruption in financial markets as they are phased in.

IV. The Definition of "Eligible Master Netting Agreement."

A. Cross-Border Resolution Issues.

As noted above, the Working Group welcomes the Proposed Rule's provision to allow counterparties to net and offset margin requirements if there is an EMNA between the parties. The Working Group, however, is concerned that the EMNA concept, in particular its definition in the Prudential Regulators' proposal, is being used to implement the Financial Stability Board's ("**FSB**") cross border resolution efforts and facilitate the International Swaps and Derivatives Association ("**ISDA**") Resolution Stay Protocol (the "**Protocol**"). Any attempt to implement those undertakings should be done as a standalone rulemaking and not obliquely through the Proposed Rule and the Prudential Regulators' Proposed Rule.

The Proposed Rule's definition of an EMNA requires that the EMNA provide a CSE with:

> "the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act or under any similar insolvency law applicable to U.S. Government-sponsored enterprises."[16]

The Prudential Regulators' proposal further adds, "similar laws of foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions" to the list of regimes eligible to allow for stays of close out or termination rights.[17] In addition, the Prudential Regulators' proposal allows stays to be imposed by "a contractual agreement subject by its terms to any of the laws referenced."[18] The differences in the definitions could produce materially different results.

The allowance for foreign jurisdictions and contractual provisions in the Prudential Regulator's proposal could limit important bankruptcy protections for end-users. The reference to "contractual agreement" in the Prudential Regulators' proposal is likely intended to address the Protocol regarding termination rights under an ISDA Master Agreement. Thus far, eighteen

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[16] *See* Proposed CFTC Rule § 23.151 and Proposed Prudential Regulators Rule § __ .2.

[17] *See* Proposed Prudential Regulators Rule § __ .2.

[18] *Id.*

major global banks, which are all provisionally registered swap dealers with the CFTC,[19] have agreed to sign the Protocol. The Working Group understands that regulators may require all counterparties of systemically important swaps dealers to adhere to the Protocol or a similar document.[20]

The Protocol will limit the close-out rights of market participants not only when their direct counterparties become insolvent, but may also limit close out rights in the event of a cross-default triggered by the default of a counterparty's affiliate in a foreign jurisdiction. The Protocol's limitations on close-out rights effectively remove a credit risk mitigant that market participants rely on when negotiating their current swaps. Requiring market participants other than systemically important swap dealers to adhere to the Protocol in order for their trading agreements to qualify as EMNAs effectively renegotiates those existing deals. In addition, market participants in the energy and commodity markets frequently use the EMNAs to trade swaps and physical commodities. Constraints on close-out rights in physical supply agreements would have a deleterious effect on the energy supply chain and on the markets generally.

As such, the Working Group requests that the Commission act as a voice for end-users and clearly state that market participants' rights to avoid stays and other limitations of their close-out rights should be protected. At the very least, the Commission should advocate that global regulators not limit market participants' close-out rights until the relevant legislative and regulatory processes within the G-20 nations have been adhered to. With respect to the Proposed Rule, the Commission should make clear that EMNAs need not provide for the efficacy of the Protocol or similar undertakings or foreign special resolution paradigms.

B. OTHER ISSUES WITH RESPECT TO EMNAS.

The Proposed Rule requires that a CSE conduct a sufficient legal review to conclude that it has a well-founded basis to believe that, in the event of a legal challenge, the relevant authority "would find the agreement [an EMNA] to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions."[21] This raises a number of issues. *First,* a "would" standard could be difficult to satisfy as bankruptcy courts are courts of equity, making it very difficult to state with certainty that a particular agreement would be enforceable in an insolvency context. A "should" standard would be more appropriate and be in line with common industry practice. As such, the definition of "eligible master netting agreement" should be amended to incorporate the

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[19] The 18 banks that have signed on to the ISDA Stay Protocol are the following: Bank of America Merrill Lynch, Bank of Tokyo-Mitsubishi UFJ, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Mizuho Financial Group, Morgan Stanley, Nomura, Royal Bank of Scotland, Société Générale, Sumitomo Mitsui Financial Group and UBS. All these banks are provisionally registered as Swap Dealers with the CFTC. Provisionally Registered Swap Dealers list *available at*: http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.

[20] Regulators may accomplish this by prohibiting the relevant swaps dealers from trading with counterparties that have not adhered to the protocol, even if such counterparties are not subject to the respective regulator's jurisdiction.

[21] *See* Proposed CFTC Rule § 23.151.

"should" standard and the phrase "legal, valid, binding, and enforceable" should be replaced with "duly executed agreement" to accommodate the "should" standard.

Second, the requirement to conduct a sufficient legal review could be quite burdensome for CSEs. It is common market practice for market participants to rely on enforceability opinions with respect to enforceability of their master trading agreements. For example, ISDA provides its members access to enforceability opinions with respect to the ISDA Master Agreement for a number of jurisdictions.[22] Given the potentially large number of U.S. and foreign jurisdictions where a CSE's counterparties may potentially be subject to an insolvency proceeding, requiring extensive legal reviews of the enforceability EMNAs could be quite burdensome. As such, CSEs should be able to satisfy their legal diligence obligations by periodically confirming the existence of an ISDA opinion or other legal opinion with respect to the jurisdiction applicable to an EMNA.

V. SEGREGATION.

Under the Proposed Rule, CSEs are required to segregate any initial margin they post to a counterparty with an independent third party custodian.[23] However, similar treatment is not provided to all initial margin posted to a CSE. Specifically, any initial margin posted to a CSE outside the scope of the Proposed Rule, such as initial margin posted by a non-financial end-user, is not subject to the Proposed Rule's segregation requirements. This asymmetric structure makes it very unlikely that a CSE would ever post initial margin to a non-financial end-user counterparty as the cost and burden associated with putting in place and maintaining a custodial arrangement can be significant. As such, the Proposed Rule should be amended to make segregation requirements symmetrical. In the case of a CSE and non-financial end-user counterparty, neither counterparty should be required to have their initial margin segregated with an independent, third party custodian.

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[22] While ISDA's members are not recipients of the actual opinions, the opinions serve as evidence of the enforceability of the ISDA Master Agreement.

[23] *See* Proposed CFTC Rule § 23.157.

VI. SWAP DOCUMENTATION REQUIREMENTS AND OTHER TECHNICAL ISSUES.

The Working Group has a number of other comments with respect to the drafting of the Proposed Rule that are more technical in nature. *First,* proposed CFTC Regulation 23.158 would require that, "for uncleared swaps between a covered swap entity and a non-financial entity, the documentation shall specify whether initial and/or variation margin will be exchanged." This requirement is unnecessary. If the documentation is silent as to whether margin should be exchanged, it is highly likely that the counterparties did not and do not intend to exchange margin as the documentation does not provide for a framework to do so. Requiring an express statement to that effect would require CSEs to amend existing swap documentation that is silent on that point and did not contemplate the exchange of margin. The cost to non-financial end-users associated with amending the documentation to include such express statement outweighs the marginal benefit of documenting that understanding between the counterparties.

The Working Group suggests that the Proposed Rule be amended to require CSEs' documentation with non-financial end-users to specify that margin will be exchanged where the counterparties contemplate doing so, but permit documentation to remain silent as to the exchange of margin when the counterparties do not contemplate doing so.

Second, the Proposed Rule refers to obligations for CSEs to make "necessary efforts" [24] and "appropriate efforts"[25] to collect margin. Both a "necessary efforts" and an "appropriate efforts" standard are nebulous and may, in theory, not perfectly overlap. The Working Group suggests that the Proposed Rule be amended to include a "reasonable efforts" standard, as "reasonable efforts" is a commonly used standard in commercial and trading relationships.

Third, the Proposed Rule defines "minimum transfer amount" as "an initial margin or variation margin amount under which no actual transfer of funds is required. The minimum transfer amount shall be $650,000 or such other amount as the Commission may establish by order."[26] As defined, CSEs would be obligated to put in place a $650,000 minimum transfer amount. CSEs and their counterparties should be permitted to determine whether lower minimum transfer amounts are appropriate for their trading relationships. Therefore, the Working Group requests that the definition of "minimum transfer amount" be amended to allow minimum transfer amounts up to $650,000.

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[24] *See* Proposed CFTC Rule § 23.152 (c)(2)(i). The Working Group suggests that the Commission require a rulemaking or public comment before amending the definition of "minimum transfer amount."

[25] *Id.*

[26] *Id.*

VII. CONCLUSION.

The Working Group appreciates this opportunity to provide comments on the proposed margin requirements for uncleared swaps and respectfully requests the Commission's consideration of these comments as it develops any final rulemaking in this proceeding.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe
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