



October 30, 2015

Via Electronic Submission

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, RIN 3038-AE12

Dear Mr. Kirkpatrick:

I. INTRODUCTION

The Edison Electric Institute (“EEI”) and Electric Power Supply Association (“EPSA”) (collectively “Joint Associations”) appreciate the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) continued evaluation of its recordkeeping and reporting rules and willingness to solicit comments in an open and transparent process. Joint Associations respectfully submit these comments in response to the August 31, 2015, *Federal Register* notice requesting comment on proposed Amendments to the Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (“NOPR”).¹

EEI is the association that represents the U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly employ more than 500,000 workers. With more than \$85 billion in annual capital expenditures, the electric power industry is responsible for millions of additional jobs. Reliable, affordable, and sustainable electricity powers the economy and enhances the lives of all Americans. EEI members are non-financial, commercial end-users that use swaps to hedge and mitigate commercial risk and as such are subject to the reporting and recordkeeping obligations under the Commission’s rules and regulations.

EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers that are active participants in physical commodity markets with related commercial hedging activities. These suppliers account for nearly 40 percent of the

¹ 80 *Fed. Reg.* 52544 (August 31, 2015) (“NOPR”).

installed generating capacity in the United States and provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

Joint Associations' members have spent significant time and money understanding the Commission's rules and regulations and making the system upgrades and changes necessary to be in compliance. As such, Joint Associations' members have a vested interest in this NOPR and appreciate the opportunity to submit comments to help ensure that any changes to the reporting requirements satisfies the Commission's goals of having transparent usable data while minimizing the costs imposed on market participants, especially non-financial commercial end-users, such as Joint Association's members.

The Joint Associations have filed comments on the reporting and recordkeeping obligations for cleared and uncleared swap transactions and have urged the Commission to do an evaluation of its recordkeeping and reporting requirements to evaluate the data being received, to clarify inconsistent obligations and to clarify and limit the regulatory recordkeeping burdens on commercial end-users.² The Joint Associations appreciate that the Commission is evaluating its rules and regulations to improve the quality of its data and looks forward to being engaged in the process. The proposed revisions in the NOPR are consistent with EEI's previous comments that the Commission should put all obligations for reporting cleared swaps on the derivative clearing organization ("DCO").³ As such, the Joint Associations are supportive of the proposed revisions and offer additional clarifications for the Commission's consideration as discussed below.

II. COMMENTS

The Joint Associations appreciate the opportunity to submit comments on this NOPR and encourage the Commission to continue to identify issues and propose revisions as needed and identified by market participants to streamline and improve the recordkeeping and reporting requirements for cleared and uncleared swaps. The Joint Associations support the broad goals articulated in the Commodity Exchange Act ("CEA") of enhancing transparency and reducing systemic risk. It is important that the Commission also balance the needs of market participants while meeting the goals articulated in the CEA. The proposed revisions to sections 45.1, 45.3, 45.4, 45.5, 45.8, 45.10 and Appendix I of the Commission's rules and regulations appropriately balance these goals. The NOPR clearly places the reporting obligation on the DCO which improves the process for reporting cleared swap transactions without imposing extra costs on end users or requiring them to change their business practices. *First*, the proposed revisions clarify the reporting process and appropriately place the reporting obligation on the entity in the best

² See e.g. EEI Comments in response to Request for Comment – Review of Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE12)(May 27, 2014); EEI Comments in response to the Notice of Proposed Rulemaking on Records of Commodity Interest and Related Cash or Forward Transactions (RIN 3038-AE23) (January 15, 2015); Electric Association Comments in response to Notice of Proposed Rulemaking re Trade Options (RIN 3038-AE26 at 10-13 (June 19, 2015).

³ See e.g. EEI Comments in response to Request for Comment – Review of Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE12) at 3 (May 27, 2014)

position to report as the DCO is the only entity that has access to all relevant information to trace a cleared swap for its entire existence. *Second*, the DCO is also the only entity that can provide the Commission with position information for individual market participants with respect to cleared swaps. *Third*, choosing the DCO as the only party responsible for reporting information about cleared swaps ensures that there will not be concerns about duplicative or redundant reporting. As such, the Joint Associations support the proposed revisions in the NOPR.

Consistent with the Commission's stated intent to simplify the reporting rules for end users, Joint Associations request that the Commission further clarify section 45.3. The Commission proposes to amend section 45.3 of its rules and regulations to clarify that SEF/DCMs and reporting counterparties would not be required to report confirmation data for swaps that at the time of execution are intended to be submitted to a DCO for clearing.⁴ The Joint Associations support this proposed revision and request that the Commission affirmatively state that for swaps that are intended to be cleared at execution, counterparties do not need to report PET confirmation data or creation data for the original/alpha swap. Since the original/alpha swap is terminated almost immediately after execution, Joint Associations assert that there is nominal to no benefit to requiring that this data be reported.

Joint Associations would also assert that all swaps that are cleared be treated consistently. As such, the Commission should also address the issue of off-facility swaps that are submitted for clearing, then rejected and then resubmitted and cleared as well as swaps that are not intended to be cleared when executed but then later are submitted for clearing and cleared. First, off-facility swaps that are submitted for clearing and rejected, then resubmitted and accepted for clearing should fall under the proposed definition of clearing swap in the NOPR as it was intended to be cleared at the time of execution and should be treated the same as any other swap that is intended to be cleared at the time of execution.

Second, if a swap is not intended to be cleared when executed, and the parties later decide to clear the swap, the reporting party should report a termination of the swap to the relevant SDR and the DCO should take over all reporting obligations for the two new swaps as if they were clearing swaps. The reporting party would provide the DCO the USI for the original swap so that origin of the original swap can be traced to the original bilateral swap. This clarification would also be consistent with the Commission's goals under section 45.10 that all swap data be reported to a single SDR as the SEF/DCO would then continue reporting to the same SDR. These additional clarifications would help ensure that the entity in the best position to report cleared swaps – the DCO - has the obligation to report and that duplicative reporting is minimized.

The Joint Associations also offer the following minor revisions to the language in the NOPR to make the NOPR more clear and consistent:

⁴ NOPR at 52550.

1. Section 45.8(d)(1) and 45.8(f)(1) – the NOPR deleted language requiring the SEF/DCM to notify the counterparties to a SEF/DCM traded swap that an agreement needs to be reached as to the reporting party. However, no language was inserted in its place to set out how the reporting party will be determined. We suggest reinstating the original language.
2. Section 45.8(f) – At the end of the first paragraph, the language “or is cleared by a derivatives clearing organization” should be deleted as new paragraph 45.8(i) discusses the reporting hierarchy for clearing swaps and the introductory paragraph to 45.8 states that this clause (f) applies to non-clearing swaps.

III. CONCLUSION

The Joint Associations appreciate the opportunity to provide comments on the proposed amendments and look forward to working with the Commission going forward as it continues its review of the recordkeeping and reporting rules for both cleared and uncleared swap transactions.

Thank you for the opportunity to provide comments. Please contact the undersigned if you have any questions.

Respectfully Submitted,



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