

October 30, 2015

Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: *Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps*

Dear Secretary Kirkpatrick:

By this letter the Coalition of Physical Energy Companies (“COPE”) responds to the Commodity Futures Trading Commission (“CFTC” or the “Commission”) request for comments on its Notice of Proposed Rulemaking to amend its Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (the “NOPR”).¹

The members of COPE are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale.² COPE members utilize futures and swaps, mainly in order to hedge the risks arising due to commodity price fluctuations and other potential changes affecting their physical businesses. As a general matter, COPE members are affected by CFTC regulations on swaps recordkeeping and reporting.

The NOPR

In the NOPR, the Commission proposes to amend its Part 45 Swap Data Recording and Reporting regulations to do the following with respect to swaps cleared with a Commission-registered Derivatives Clearing Organization (“DCO”):

- separately defined “original swap” and “clearing swap” in order to clearly differentiate a swap that is accepted for clearing by a DCO (the “original swap”) and the a swap created either

¹ 80 Fed. Reg. 52544 (Aug. 31, 2015).

² The members are: Apache Corporation; EP Energy LLC; Iberdrola Renewables, LLC; Kinder Morgan, Inc.; MarkWest Energy Partners, L.P.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

pursuant to the rules of a DCO, or upon the extinguishing of the original swap when it is accepted for clearing with the DCO as the new counterparty (“clearing swap”);³

- make clear that it is the DCO who is responsible for reporting both creation and continuation data for clearing swaps, not the parties or an exchange that is different than the DCO;⁴

- require DCOs to report all data under Part 45 for clearing swaps to a single Swap Data Repository;⁵

- require DCOs to generate, assign and transmit to an SDR a unique swap identifier (USI) for all clearing swaps;⁶ and

- modify the list of primary economic terms data (PET data) to accommodate the proposed clarifications and changes for the reporting of cleared swaps.⁷

Comments

COPE is generally supportive of the NOPR, based on the guiding principal that entities including COPE members who utilize reportable swaps to hedge commercial risk should not be unduly burdened by the Commission’s regulations on swap data reporting.

As COPE understands the proposals in the NOPR, in circumstances in which a swap is entered into through a swap execution facility (“SEF”) as well as cleared through a registered DCO, an end-user that is a party to such swap will have no reporting obligation. As COPE has consistently stated in its comments to Commission rulemakings implementing the Dodd-Frank Act, the Commission should take whatever actions it can to limit regulatory burdens on end-users.⁸ In recent months, the Commission has taken steps to do just that in other proposals, including for example the Commission’s final interpretation regarding the scope of the “swap” definition with respect to Forward Contracts with Embedded Volumetric Optionality.⁹ To the degree that this proposal in the NOPR is another step down the road of meeting the Commission’s regulatory responsibilities without unduly burdening end-users, COPE supports it. COPE requests that the Commission explicitly make clear that this proposal does not result in any new or more complex

³ NOPR at 52547.

⁴ *Id.* at 52548.

⁵ *Id.* at 52555.

⁶ *Id.* a 52552.

⁷ *Id.* at 52558.

⁸ *See, e.g.*, COPE Comments to Swap Data Recordkeeping and Reporting Requirements NOPR filed Feb. 7, 2011 at P 2 (requesting that the Commission implement a reporting regime that is less burdensome and more realistic for end-users); *accord* COPE Comments to Review of Swap Data Recordkeeping and Reporting Requirements, filed May 27, 2014 at P 2.

⁹ 80 Fed. Reg. 28239 (May 18, 2015).

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reporting obligations for end-users who are not typically reporting counterparties to swaps that are subject to the rules of a SEF or DCO, but rather is neutral or reduces such burdens.

Respectfully Submitted,

/s/ David M. Perlman

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CC: COPE Members