AGA
American Gas Association

January 19, 2016

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

RE: *Swap Dealer De Minimis Exception Preliminary Report* (November 18, 2015).

Dear Mr. Kirkpatrick:

Pursuant to the Swap Dealer *De Minimis* Exception Preliminary Report ("Report" or "Preliminary Report") issued by the staff of the Commodity Futures Trading Commission ("CFTC" or "Commission") on November 18, 2015,[1] the American Gas Association ("AGA") submits for your consideration the following limited comments regarding the preliminary report.

The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the U.S., of which 91 percent — more than 64 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States' energy needs. For more information, please visit www.aga.org.

AGA member companies provide natural gas service to retail customers under rates, terms and conditions that are regulated at the local level by a state commission or other regulatory authority with jurisdiction. AGA's members engage in financial risk management transactions in markets regulated by the Commission. As such, AGA's members will be directly affected by Commission's regulations promulgated under the Dodd-Frank Act.

Regulation 1.3(ggg)(4) provides that a person shall not be deemed to be a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount threshold of $3 billion, measured over the prior 12-month period, subject to a phase-in level of $8

[1] *Swap Dealer De Minimis Exception Preliminary Report* (November 18, 2015).

billion that is currently in effect.[2] The phase-in period will terminate on December 31, 2017, and the *de minimis* threshold will fall to $3 billion, unless the Commission takes prior action to set a different termination date or to modify the *de minimis* exception.[3]

Pursuant to Regulation 1.3(ggg)(4)(ii)(B), CFTC staff completed and published for comment a preliminary report regarding the swap dealer *de minimis* exception.[4] The preliminary report notes that after considering the comments received, CFTC staff will complete and publish for public comment a final report.[5] Regulation 1.3(ggg)(4)(C) provides that nine months after the publication of a staff report and after giving due consideration to the report and any associated public comment, the Commission may either set a termination date for the phase-in period or issue a notice of proposed rulemaking to modify the *de minimis* exception.[6]

AGA appreciates CFTC staff's efforts in developing a preliminary report concerning the *de minimis* exception to the swap dealer definition. AGA understands that while there have been advances in the data being collected by the SDRs, the data is still relatively new, certain data is not available, and there is still a significant amount of ongoing work to improve the data in various ways.[7] Due to the limited information available in the SDR data, and the assumptions necessary to conduct an analysis of dealing activity, the preliminary report indicated that the findings should be viewed as estimates in assessing the current *de minimis* exception.[8]

Given the lack of robust data, AGA encourages the Commission to carefully consider the potential impacts of taking any action to reduce the *de minimis* threshold and instead would support retaining the current *de minimis* threshold unless and until better data is available and there is a good policy basis to justify any change. An important consideration that should play a role in any determination to change to the current threshold is whether doing so would reduce the number of swap market participants willing to engage in swap transactions in the energy commodity markets. Having counterparties that are available and willing to engage in swaps is very important to many LDCs that use commercial risk hedging activities to reduce natural gas price volatility for their end-use customers.

AGA is concerned that a reduction in the *de minimis* threshold may have the unfortunate and unintended result of reducing the availability of potential swap counterparties, result in a reduction in the level of swap activity of existing swap counterparties, and/or cause some current or potential swap counterparties to exit the space in the face of being required to register and comply with costly swap dealer regulations. At this time, without sufficient data justifying a valid policy basis for a reduction in the *de minimis* threshold, AGA believes that the Commission should avoid making any major change in the

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[2] *See* 17 C.F.R. § 1.3(ggg)(4) (2015).
[3] *See* Swap Dealer *De Minimis* Exception Preliminary Report at p. 2.
[4] *See* 17 C.F.R. § 1.3(ggg)(4) (2015).
[5] *See* Swap Dealer *De Minimis* Exception Preliminary Report at p. 3.
[6] *See* 17 C.F.R. § 1.3(ggg)(4)(C) (2015).
[7] *See* Swap Dealer *De Minimis* Exception Preliminary Report at p. 11.
[8] *Id.* at p. 12.

threshold. Instead, the Commission should pursue other alternatives to the automatic lowering of the threshold, particularly if such changes potentially could result in the loss of valuable swap market counterparties.

AGA reiterates its appreciation of the Commission staff for developing the preliminary report and looks forward to providing further comments on the final report once it is published.

Respectfully submitted,

/s/ Mike Murray

Mike Murray
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
(202) 824-7071
mmurray@aga.org

Michaela Burroughs
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
(202) 824-7311
mburroughs@aga.org