

July 25, 2016

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

**Re: CFTC Request for Comment on DCO Swap Submissions**

Dear Mr. Kirkpatrick:

On behalf of The Commercial Energy Working Group (the “**Working Group**”), Sutherland Asbill & Brennan LLP is responding to the Commodity Futures Trading Commission’s (the “**CFTC**” or “**Commission**”) request for comment regarding various derivatives clearing organizations’ (each a “**DCO**”) swap submissions (the “**Request For Comment**”) and whether any of such swaps should be considered for mandatory central clearing.<sup>1</sup> Specifically, the Working Group offers comments with respect to certain energy-related swaps submissions included in the Request For Comment (the “**Energy-Related Swap Submissions**”).<sup>2</sup>

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 advocates regarding regulatory, legislative, and market developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

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<sup>1</sup> See <http://www.cftc.gov/PressRoom/PressReleases/pr7396-16>.

<sup>2</sup> The Energy-Related Swap Submissions are as follows: (i) CME 8-1-12 Commodity Index Submission; (ii) 11-6-13 CME Energy Submission; (iii) SGX-DC 2-28-14 Coal Swaps Submission; (iv) SGX-DC 2-28-14 Freight Submission; (v) SGX-DC 5-26-14 Coal Swap Submission; (vi) SGX-DC 9-23-14 Petrochemical Swaps Submission; (vii) SGX-DC 2-7-15 Oil Swap Submission; (viii) SGX-DC 8-3-15 Freight Swap Submission; and (ix) SGX-DC 10-1-15 Liquefied Natural Gas Submission.

Members of the Working Group are active in the cleared swaps and futures markets, including markets administered by the DCOs that made Energy-Related Swap Submissions. It is in the Working Group's member's individual and collective interest that such markets remain active and liquid. However, as discussed further below, a mandatory clearing determination with respect to any of the Energy-Related Swap Submissions would likely harm liquidity in not only the relevant cleared swap, but also any related over-the-counter ("OTC") market. Therefore, the Working Group urges the Commission to forgo issuing a proposed mandatory clearing determination in response to any of the Energy-Related Swap Submissions.

**I. THE SWAPS LISTED IN THE ENERGY-RELATED SWAP SUBMISSIONS DO NOT HAVE THE LEVEL OF LIQUIDITY NECESSARY TO SUPPORT MANDATORY CLEARING.**

One of the criteria the Commission must consider when determining if a swap or class of swaps should be subject to mandatory clearing is the "existence of significant outstanding notional exposures, trading liquidity, and adequate price data."<sup>3</sup> Satisfying this criterion is necessary for at least two reasons.

*First*, a baseline level of liquidity is necessary for DCOs to successfully risk manage a cleared product. Said another way, the absence of liquidity and adequate price data make it difficult and risky to clear a product. As such, a certain level of liquidity is necessary to support a mandatory clearing requirement. However, because of the second reason discussed below, that level of liquidity should be higher than the level of liquidity necessary to safely clear a product.

*Second*, a mandatory clearing determination should only be considered once a market has matured enough to be liquid and standardized. Even if there is enough liquidity to safely clear a product, such liquidity might not be enough to support a mandatory clearing requirement. If a mandatory clearing determination is made in the absence of a highly liquid, standardized cleared market for a product, that determination may actually cause liquidity to leave that market and any related OTC market.

Markets should be permitted to develop organically prior to an imposition of mandatory clearing. None of the swaps listed in the Energy-Related Swap Submissions have the necessary levels of liquidity and price data to support a consideration of mandatory clearing. For example, in its submission for the SGX FOB Singapore SLInG Swap Contract, the Singapore Exchange states "the existing swap products in ICE and CME that are based on the similar underlying physical market have not seen volume or open interest in the past 6-12 months. Therefore, there is insufficient data to determine the notional exposures and trading liquidity."<sup>4,5</sup> Further, the

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<sup>3</sup> Commodity Exchange Act at Section 2(h)(2)(D)(ii)(I).

<sup>4</sup> See SGX-DC 10-1-15 Liquefied Natural Gas Submission at 2 (Oct. 1, 2015), available at <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/swapsubmissionsgx10-1-15.pdf>.

CME Group, in its submission for the Transco Zone 6 Natural Gas (Platts IFERC) Fixed Price Swap, states that “due to the lack of data on OTC derivatives transactions involving Transco Zone 6, CME Clearing is not able to estimate OTC derivatives notional exposure.”<sup>6,7</sup>

Given the nascent nature of the products underlying the Energy-Related Swap Submissions, the Working Group respectfully suggests that the Commission conclude that there is insufficient liquidity and price data to consider proposing any of the swaps listed in the Energy-Related Swap Submissions for mandatory clearing.

## **II. SUBJECTING THE SWAPS LISTED IN THE ENERGY-RELATED SWAP SUBMISSIONS TO MANDATORY CLEARING WOULD NOT MITIGATE SYSTEMIC RISK.**

One of the other factors the Commission must consider when determining whether a swap or group of swaps should be subjected to mandatory clearing is “the effect on the mitigation of systemic risk, taking into account the size of the market for such contract...”<sup>8</sup> While there is no public data available on the OTC markets related to the swaps listed in the Energy-Related Swap Submissions, there is no indication that any of those markets come close to being systemically important.

In fact, not only are the markets for any particular energy-related swap market not systemically important, but markets for energy or commodity-related swaps are not systemically important in the aggregate. According to the Bank for International Settlements, commodity-related derivatives comprise just 0.2% of global derivatives markets.<sup>9</sup> Therefore, subjecting any of the products underlying the Energy-Related Swap Submissions to mandatory clearing would not be appropriate, and the Commission should not issue a proposal contemplating doing so.

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<sup>5</sup> The Working Group notes that on July 19, 2016, the Singapore Exchange’s related SGX FOB Singapore SLInG LNG Futures contract had an open interest of only 15 contracts. *See* SGX Market Information for Futures (Commodities), SGX.com, [http://www.sgx.com/wps/portal/sgxweb/home/marketinfo/derivatives/delayed\\_prices/futures](http://www.sgx.com/wps/portal/sgxweb/home/marketinfo/derivatives/delayed_prices/futures) (last visited July 19, 2016).

<sup>6</sup> *See* 11-6-13 CME Energy Submission at 3 (Nov. 6, 2013), *available at* <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/swapsubmissioncmegas11-6-13.pdf>.

<sup>7</sup> The Working Group notes that on July 19, 2016, the CME Group’s related Transco Zone 6 Natural Gas (Platts IFERC) Fixed Price Futures did not have any open interest. *See* CME Group Energy Trading (Natural Gas), CMEGroup.com, [http://www.cmegroup.com/trading/energy/natural-gas/transco-zone-6-natural-gas-platts-iferc-fixed-price\\_quotes\\_settlements\\_futures.html](http://www.cmegroup.com/trading/energy/natural-gas/transco-zone-6-natural-gas-platts-iferc-fixed-price_quotes_settlements_futures.html) (last visited July 19, 2016).

<sup>8</sup> Commodity Exchange Act at Section 2(h)(2)(D)(ii)(III).

<sup>9</sup> The notional value of global derivatives markets at the end of 2015 was \$493 trillion and commodity-related derivatives comprised just \$1.3 trillion of that market. *See* Bank for International Settlements, Statistical Release, OTC Derivatives Statistics at End-December 2015 at 2-6 (May 2016), *available at* [http://www.bis.org/publ/otc\\_hy1605.pdf](http://www.bis.org/publ/otc_hy1605.pdf).

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**III. CONCLUSION.**

The Working Group appreciates this opportunity to respond to the Request For Comment and respectfully requests that the Commission not consider moving with a proposed mandatory clearing determination with respect to any of the Energy-Related Swap Submissions.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe

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