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VIA ELECTRONIC SUBMISSION

September 29, 2017

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

Re: Project KISS (RIN 3038-AE55)

Dear Mr. Kirkpatrick:

Please accept these comments from BP Energy Company ("BPEC") and BP Products North America Inc. ("BPPNA", jointly "BP") in furtherance of the U.S. Commodity Futures Trading Commission's ("CFTC" or "Commission") request to industry to provide suggestions for simplification and modernization of existing Dodd Frank rules. [1] BP welcomes the opportunity provided by "Project KISS"[2] to provide input to the Commission on simplifying and modernizing the existing and proposed rules so that compliance with such rules is less burdensome and costly. BP strongly supports the Commission's effort to conduct a holistic review of its regulatory framework.

BP looks forward to working with the Commission and Staff on the issues and challenges addressed herein and commend the Commission for the hard work and progress it has already made in a number of these areas. BP appreciates the Commission's willingness to solicit and consider industry input on how it can more efficiently carry out its regulatory mandate, which is a critical component of the safe and effective global markets on which BP and other market participants depend.

I. Reporting

A. Large Trader Reporting

The Commission should allow Part 20 to sunset. The Part 20 large trader swaps reporting rule in 2011 was initially designed as a stop-gap mechanism to collect swap data before swap data repositories ("SDR") came online. As a result, Part 20 includes a provision that sunsets the rule upon a finding by the Commission. SDRs are now processing positional data. To that end, the Commission should focus its resources on improving data submitted to SDRs by market participants. In addition, BP understands that SDRs have been processing swap data for more than four years, thus, there is no longer a need for the temporary LTR requirement. Rather than continuing to invest resources in LTR, BP suggests that the Commission identify ways it can utilize existing SDR data for the benefit of the CFTC and the market.

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[1] BPEC, located in Houston, Texas, is a marketer of natural gas, electric power, and natural gas liquids with operations throughout the continental United States, and is a swap dealer provisionally registered with the CFTC. BPPNA, located in Chicago, Illinois, trades and markets physical crude oil and refined products. (BPEC and BPPNA collectively referred to as "BP").

[2] 82 Fed. Reg. 21494 (May 9, 2017), as corrected 82 Fed. Reg. 23765 (May 24, 2017).

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B. Swap Data Reporting

Swap Data Reporting should be simplified by removing data fields that are not part of core trade information and are unlikely to be used or aggregated for CFTC analysis, concentrating instead on accumulating a high-quality set of minimum data fields. Where possible, reporting requirements should be aligned with those of other jurisdictions, allowing global aggregation, and lowering costs for global SDRs. New data fields should be clearly defined, including format requirements allowing reporting counter parties to clearly understand expectations on how each data field is defined and reported. Data that is available outside of current reporting requirements should not be duplicated in SDR reporting.

In addition, the Swap Data Reporting Rules should expressly exclude all inter-affiliate swaps from SDR reporting requirements. These transactions are internal to a corporate group and are designed for capital efficiency purposes. As a result, the reporting of swap data associated with these transactions does not promote price transparency in the market. The same category of swaps that are excluded from the real-time reporting rule (*e.g.*, swaps that are between wholly-owned affiliates) also should be excluded from the SDR reporting rule.

Finally, BP urges the Commission to consider extending the reporting deadline from two hours after trade execution to end of the business day or one day after trade execution.

C. Form 204 Reporting

BP advocates changing the Form 204 reporting requirement from the last Friday of the month to the last day of the month. This change will align the Form 204 filing requirement with each entities' specific monthly financial reporting date and its month-end close-out process. The Form 204 process, which occurs on the last Friday of the month, could occur anywhere from the 22nd to the 31st day, depending on the month. Moving reporting to the last day of the month would align reporting with other month-end processes, reducing complexity and promoting consistent reports.

D. Novations

The Commission should allow extra time to report novation's of previously reported swaps. Currently, a novation must be reported by the end of the day on which it is executed. Depending on the number of transactions involved in a novation, end of day reporting can become challenging. Additionally, as the novation date will always be the first of the month, it should be permissible to enter the novation agreement and report a future effective novation date, *.ie.* the novation agreement is executed on the 20th of a month with an effective novation date of the 1st of the month. It should be permissible to report the novation on the 20th effective the 1st of the following month, and should also not create a valuation obligation until the effective date. By definition, novated transactions that must be reported have previously been reported. Consequently, no harm can be shown by taking extra time to report the novated transactions. BP advocates a 48-hour time line for reporting novated transactions.

BP also advocates that the Commission consider that a novation will often involve "mirror transactions" that are transactions entered into between the transferee and remaining party. These are a result of the novation that correspond to the previously reported transactions that were between the transferor and transferee. The Commission should make clear that these mirror transactions are subject to the

same reporting timeline as the novation to which they are a part and not the real-time reporting window.

E. Data Validations

BP encourages the Commission to consider that any discussions regarding increased data validation or standardization should include both SDRs and market participants. Trade repositories should be required to implement validations consistently (*e.g.* field formats must be the same), and allow reporting parties adequate time to implement changes.

F. Inter-affiliate Swaps

BP advocates for the Commission to establish a permanent exemption for inter-affiliate swaps from the trade execution requirement under CEA Section 2(h)(8), irrespective of whether such swaps are cleared or traded bilaterally. These swaps should also be exempted from the mandatory clearing and margining requirements. The SDR reporting rules should expressly exclude all inter-affiliate swaps from SDR reporting requirements. These transactions are internal to a corporate group and are designed for capital efficiency purposes. As a result, the reporting of swap data associated with these transactions does not promote price transparency in the market. The same category of swaps that are excluded from the real-time reporting rule (*e.g.*, swaps that are between wholly-owned affiliates) also should be excluded from the SDR reporting rule.

BP, as well as many other corporate commercial firms that transact in underlying physical commodities, utilizes centralized 'specialists' who execute derivatives that are used to hedge activity across its business. Inter-affiliate transactions are the internal, risk management transactions between that centralized unit and affiliated counterparties. Inter-affiliate transactions do not raise the systemic risk concerns that Dodd Frank is intended to address because they do not create additional counterparty exposure outside of the corporate group, and do not increase interconnectedness between third parties. Instead, inter-affiliate transactions help promote safety and soundness by permitting centralized risk management and limiting the extent of credit exposure to third parties.

G. Ownership and Control Reporting

The scope of data required and the timeframes to report under the Commission's 2013 Ownership and Control Reporting ("OCR") rule are unworkable. The OCR rule obligates certain reporting firms (*i.e.*, FCMs, clearing members, and swap dealers) to report ownership and control information about their customers and counterparties. The CFTC, in turn, can directly contact the customer or counterparty to obtain additional data about the customer or counterparty using Forms 40 or 40S.

It is appropriate for reporting firms to provide the Commission and the exchanges with information about their customers and counterparties necessary for the agency to carry out its market oversight responsibilities. Unfortunately, the Commission's 2013 OCR rule obligates reporting firms to report very extensive and detailed data involving internal detailed information of their customers and counterparties that the reporting firms do not have in their possession. For example, the new Form 102A requires clearing members to report all "Natural Person Controller(s)" of reportable accounts even though that data is in the sole possession of the customer. Absent no-action relief, the OCR rule would require reporting firms to report this data within one business day of an account being reportable and to update the data within one business day if it changes. These requirements force reporting firms to

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engage in extensive, costly, and repeated outreach to customers to request, attempt to collect and keep up-to-date OCR data.

II. Credit/Capital/Margin

A. Portfolio management

BP recommends that the CFTC eliminate the portfolio compression and portfolio reconciliation obligations for commodity firms. These obligations add unnecessary costs and administrative burden to facilitate. Both effectively require the use of a third-party vendor, which accounts for much of the unnecessary cost and burden. It would be rare for any commodity swap dealer to determine it would terminate a trade under the portfolio compression exercise, particularly BP, which manages exposure on a portfolio basis. Portfolio reconciliation is an unnecessary obligation for such swap dealers as the margin rule effectively addresses the same concerns. Allowing swap dealers to rely on daily variation margining in lieu of portfolio reconciliation achieves the same result. Other end-users could continue to request a reconciliation, as desired, without imposing obligations on swap dealers to get its customers consent.

In addition, the requirement for intraday credit and value at risk ("VaR") monitoring should be eliminated. This obligation adds costs and stress on a system already designed to provide daily monitoring and rigor around both processes.

B. Affiliate margining

Because inter-affiliate transactions are not market-facing, they do not create the same risk to the financial system. Thus, they should not be subject to variation or initial margin requirements. Many companies utilize swaps between affiliates to shift financial risk within a group of corporate entities. The purpose of these inter-affiliate swaps is to manage the financial risk of the overall corporate group more efficiently and, often times, to centralize the management of risk within the corporate group.

C. Forms of Margin and Capital

BP urges the Commission to accept more flexible forms of collateral for posting margin, including the use of letters of credits ("LCs"). The current mandate of cash only for variation margining is inconsistent with standard industry practice, and reduces the amount of capital available for commercial firms to invest in the market, as it is tied up in a margin account.

BP has provided comprehensive comments in response to the Commission's request for comments on its proposed Capital Rule.

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Scope / Definitions

A. Regulation Automated Trading

The Commission should reconsider its approach under the Regulation Automated Trading ("Regulation AT") proposal and supplemental proposal (collectively "Proposed Reg AT"). The proposal casts too wide of a swath that captures, by definition, transactions and trading activity that in normal market parlance, is not considered "automatic trading." In addition, volume on its own is not detrimental, and therefore a volumetric threshold should not be considered indicative of automatic trading, as some activity, such as hedging can bring balance to the market. However, should the Commission move forward with a federally-mandated rulemaking to regulate automated trading practices, it should adopt a principles-based rule with policies and procedures reasonably designed to achieve the Commission's purpose, without mandating overly prescriptive requirements as to how the underlying principles are satisfied. For example, the expansion of the Direct Electronic Access ("DEA") definition is overly broad, therefore the scope of the DEA definition should only include pre-programmed algorithmic orders that do not require human involvement and that are transmitted directly to the DCM without passing through the risk controls, such as message throttles, which are administered by a futures commission merchant ("FCM") or clearing member.

BP advocates that rather than attempting to alter and finalize select pieces of the proposal or re-proposal, the Commission should withdraw its proposal and reconsider the risks of proposed Regulation AT and existing industry safeguards.

BP also notes that Regulation AT also places additional burdens on swap dealers, including annual certification regarding compliance with Reg AT to a DCM. Allowing this to be streamlined into the annual report for swap dealers would eliminate unnecessary additional certification requirements.

A registration framework for regulating automated trading or large traders would not provide any significant regulatory benefit, as industry practices already provide the required regulatory tools that registration would address. Registration typically is designed to provide the Commission with certain market participant identification information or to require market participants to comply with requirements to which they are not already subject. The information required to be reported to the exchanges with the unique identification requirements included in each order message, along with the Form 40 and other reporting requirements, should meet the Commission's goals underlying its proposed registration paradigm. Any type of registration of firms or individuals contemplated under the proposed rule should focus on activity that creates identifiable systemic market risks.

B. *De minimis* threshold

BP respectfully urges the Commission to draft an interim final rule that makes clear that the swap dealer *de minimis* exception threshold shall remain at the $8 billion gross notional level or be raised. Until the Commission has further information based on comprehensive and clear data to suggest the threshold is incorrect, it should formalize the status quo. It is estimated that the current threshold captures 90 percent of potential market participants. As a result, the danger of leaving a significant number of market participants unregulated is small. If the Commission collects reliable data suggesting the $8 billion threshold is inappropriate, then it should publish for public comment any proposal to change the threshold.

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In addition, BP is concerned that any decrease below the $8 billion level could reduce liquidity and the availability of counterparties for end-users, thereby concentrating risk in fewer counterparties and negatively impacting end-users' ability to hedge. This is because many companies have previously indicated they would discontinue their risk-management services if it subjected them to registration and additional Dodd-Frank compliance obligations.

III. Other

A. External business conduct requirements

The Commission should allow end-users to waive provisions of the external business conduct rules, simplifying the amount of documentation and work effort required by swap dealers while continuing to meet the needs of end-users. In the alternative, the Commission could consider providing flexible frequency arrangements (*i.e.* daily, weekly, monthly, quarterly, annually or on demand) surrounding making a daily mark available for end-users, which must be the mid-mark of the un-cleared swap. For example, less than 50 percent of the swap customers that BPEC transacts with have looked at the daily mark report that BPEC prepares for them. Preparing a daily mark for all customers is a significant burden for swap dealers. However, upon request, BPEC can provide such information to its customers and tailor such requests to meet its customer's needs. Customers (both producers and end-users) are sophisticated and skilled negotiators regarding the services and terms of their agreements.

B. Position Limits

The implementation of federal position limits as proposed, could significantly harm market liquidity and reduce the ability of commercial market participants to engage in hedging and risk management, without any commensurate market protection or benefits.

BP remains supportive of the Commission's efforts that have resulted in incremental revisions and changes to the position limits proposal during the past few years, and we encourage the Commission to continue to be thoughtful in reviewing and responding to the comments provided prior to moving to finalize a position limits rules.

A few of BP's specific concerns include a need for a broader definition of *bona fide* hedging that reflects the broad commercial business practices of many commercial firms that transact physical commodities. In addition, other jurisdictions have already adopted a broader definition of *bona fide* hedging that provides them a competitive advantage in the global marketplace. For these reasons, BP requests that in addition to making the general definition of *bona fide* hedging broader, that the Commission specifically allow anticipatory merchandising hedges to be recognized as a *bona fide* hedge because merchandising plays a critical role in the physical supply chain in every commodity market, linking producers to processors and processors to wholesalers and consumers. The Commission should define a storage hedge as a *bona fide* hedge because such hedges reduce commercial market participants' risk on the value of the asset it holds, the storage lease. The Commission should also allow commercial market participants to hold hedges involving physical delivery contracts into the spot month period, especially for the energy markets, given their unique operating characteristic. BP also ask the Commission to consider including in any final rule a risk management exemption.

BP suggests the Commission consider aligning federal spot month limits with those of the DCM. Further, BP request that the Commission consider not imposing hard limits outside of the spot month, but rather adopt an accountability level framework similar to that of the DCMs

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BP request the Commission to reconsider the process provided in the proposed rule introducing a plethora of hedging and position forms that market participants must file in a short timeframe with the Commission. In total, these filing requirements are extensive and impose tremendous compliance burdens and expense on market participants when simpler, less burdensome alternatives exist.

Finally, BP is concerned with the requirement of Regulation 1.48, which in essence provides for an additional approval process by the Commission of a DCM approved hedge. The Commission, if it retains this right, should provide a definite period of time for it to review a DCM approved hedge. If the Commission makes the decision to invalidate a hedge, then the Commission should provide a process for orderly liquidation.

C. Harmonization across jurisdictions

Several formats exist to meet trading requirements under Dodd-Frank, EMIR, and MiFID II, among other regulatory programs. BP proposes the CFTC include a review of inconsistent reporting requirements/formats across jurisdictions. Alignment of data fields in reporting formats across jurisdictions would be cost effective for both RCP and SDRs. Today many reporting parties create and SDRs receive trade data in several formats to meet requirements under Dodd-Frank, EMIR and MiFID II, as well as other programs, which is both costly and inefficient. In addition, this alignment would allow a consistent view of data across jurisdictions allowing a fuller picture of trading in regard to global reporting parties.

D. Inadvertent violations of technical rules

There should be a distinction in the CFTC's enforcement policies with regard to inadvertent violations of technical rules. The CFTC has recognized the importance of various factors in choosing whether to bring an enforcement action or impose penalties (*e.g.*, whether there was intent, harm to markets, lack of compliance controls, etc). In its recent enforcement advisory, the CFTC speaks of "misconduct" and "wrongdoing" both of which involve some notion of intent. These types of regulatory violations include manipulation, spoofing, fraud, and financial harm to consumers. Focusing time and resources on enforcement actions for these intent-type violations is deeply aligned with the CFTC's mission to facilitate the health, robustness and resiliency of its markets. The laws and rules that govern swaps are complex, burdensome and inefficient -- making perfect compliance impossible. Inadvertent technical violations of these rules are not the types of misconduct that when punished deters future misconduct. If a company has appropriate policies and procedures in place that are reasonably designed to comply with regulations and there are unintentional violations due to systems issues, design issues, etc., it feels like a game of "gotcha" when market participants get heavily penalized for those mistakes. Project Kiss recognizes that this complexity makes these rules hard to understand and costly to follow and even costlier when there is an inadvertent failure to follow them.
Thus, recognizing that policing inadvertent technical violations of market rules is not a cost-effective way to meet the goals of the CFTC. If every rule is a priority, then no rule is a priority.[3]

It would be helpful to the industry if the CFTC takes its enforcement advisory further to include a policy of dealing with inadvertent technical violations through the examination process (including with

[3] https://www.sec.gov/news/speech/2014-spch101414msp

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deficiency letters where necessary) as opposed to through the enforcement division. Not only is there a cost/benefit argument to be made, but also an argument that the examination process is more effective in building a relationship between companies and the regulator, more constructive in terms of implementing complex, technical rules and more likely to deter intentional misconduct.

Respectfully submitted,

Carey Mendes
Chief Executive of BP Integrated Supply and Trading for the Americas
BP Products North America, Inc.