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VIA ONLINE SUBMISSION

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

Re: Comments on Proposed Rulemaking titled Amendments to the Swap Data Recordkeeping and Reporting Requirements, RIN 3038-AE31

At its open meeting held on February 20, 2020, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) approved a notice of proposed rulemaking entitled “Amendments to the Swap Data Recordkeeping and Reporting Requirements.”¹ The Recordkeeping & Reporting NOPR seeks to streamline swap reporting requirements, harmonize data elements with international technical guidance and reduce reporting burdens for reporting counterparties that are not swap dealers (“SD”) or major swap participants (“MSP”).²

The Coalition of Physical Energy Companies (“COPE”) supports the Commission’s intention to simplify and improve the accuracy of swap data reporting. The members of COPE are physical energy companies in the business of producing, processing, transporting, storing, and/or marketing energy commodities at retail and wholesale. COPE members generally use swaps, futures, and other derivatives in conjunction with their physical energy businesses, most typically for hedging.

In general, COPE members are largely non-reporting counterparties; however, depending on their counterparty, they can also perform the function of non-SD/MSP/derivatives clearing organization (“DCO”) reporting counterparties. Employees of COPE member companies who conduct reporting-related activities do not report significant numbers of swaps and, in fact, have many other functions and responsibilities. As such, COPE appreciates the Commission’s goal to reduce reporting burdens for entities like COPE’s member companies.

COPE supports the reporting-related elements of the Recordkeeping & Reporting NOPR. With respect to reporting, the NOPR, *inter alia*, includes better-defined terms and extends the time periods for non-SD/MSP reporting counterparties.³ Importantly, recognizing its burdensome impact, the Commission proposes to remove the current requirement for non-SD/MSP reporting

¹ *Swap Data Recordkeeping and Reporting Requirements*, Notice of Proposed Rulemaking, 85 Fed. Reg. 21,578, RIN 3038-AE31 (Apr. 17, 2020) (“Recordkeeping & Reporting NOPR”).

² *See id.*

³ *See generally id.*

counterparties to report valuation data⁴ and excludes such parties from requirements to report margin and collateral data.⁵ These are significant improvements over the status quo for those COPE member companies with reporting responsibilities.

With respect to recordkeeping, the Recordkeeping & Reporting NOPR only proposes technical amendments. COPE does not oppose these amendments. However, COPE believes clarification of non-SD/MSP/DCO recordkeeping requirements would be of value. Currently, the Commission's regulations require that swap counterparties maintain "full, complete, and systematic records, together with all pertinent data and memoranda" associated with swap transactions.⁶ That language, particularly *all pertinent data and memoranda*, may be clear for CFTC registrants, but it is ambiguous and overbroad for those who are not in a derivatives-focused business.

As it did in its comments on the Position Limits NOPR,⁷ COPE requests that the Commission confirm that the recordkeeping requirements for physical energy companies that use swaps for hedging purposes are limited to recordkeeping in the normal course of business, as is customary for the hedger's particular industry. Such records should be sufficient to address any regulatory concerns of the Commission. COPE understands that physical energy companies have kept business records in this manner since the inception of swap reporting and recordkeeping regulations and is not aware of any resulting CFTC regulatory issues. Confirmation of this understanding would be beneficial for non-CFTC regulated businesses, as their records are typically not kept in a manner that comports with the CFTC's focus on derivatives. Any contrary requirement would result in a significant burden on hedgers.

In sum, COPE supports the Recordkeeping & Reporting NOPR because it reduces burdens on COPE member companies and clarifies certain reporting requirements applicable to COPE member companies. COPE has identified a limited clarification to assure there is no increased burden on physical energy companies. Accordingly, COPE respectfully requests that the Commission incorporate the requested clarification described above when finalizing the Recordkeeping & Reporting NOPR.

⁴ See *id.* at 21,582, 21,587-91.

⁵ See *id.* at 21,591 ("The Commission preliminarily believes this would relieve [non-SD/MSP/DCO reporting] counterparties from unnecessary burdens without impacting the Commission's ability to monitor systemic risk.").

⁶ See 17 C.F.R. 45.2(b) ("All non-SD/MSP counterparties subject to the jurisdiction of the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty . . .").

⁷ *Position Limits for Derivatives*, Notice of Proposed Rulemaking, 85 Fed. Reg. 11,596, RIN 3038-AD99 (Feb. 27, 2020); see Comments of COPE, *Position Limits for Derivatives*, RIN 3038-AD99 (filed May 15, 2020), <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3074>.

Respectfully submitted,

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cc: COPE Members