

April 11, 2024

**VIA ELECTRONIC SUBMISSION**

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

**Re: Proposed Revisions to Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements**

Dear Mr. Kirkpatrick:

**I. INTRODUCTION**

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter in response to the request for public comment on the Commodity Futures Trading Commission's (the "**CFTC**" or "**Commission**") Notice of Proposed Rulemaking, *Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements* (the "**Proposed Rule**").<sup>1</sup> The Working Group appreciates the opportunity to provide comments on the Proposed Rule and looks forward to working with the Commission while it continues the process of formalizing the Proposed Rule.

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> Notice of Proposed Rulemaking: Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, 88 Fed. Reg. 90046 (Dec. 28, 2023).

The CFTC also released a draft revised Parts 43 and 45 Technical Specifications (the "**Proposed 43/45 Technical Specifications**") that show changes from prior iterations of the technical specifications that correspond to the Proposed Rule.

## **II. COMMENTS OF THE WORKING GROUP**

### **A. After consideration of comments received to the Proposed Rule, the CFTC should re-issue another proposed rule that allows further review and comment by market participants.**

The Proposed Rule recommends changes that will fundamentally alter the reporting processes for commodity swaps, present numerous technical challenges in implementing such changes, and impose material costs on end users, all as discussed in this comment letter. Many of the changes will require modifications to the existing Parts 43 and 45 Technical Specifications, which specifications are themselves evidence that compliance with the CFTC swap reporting rules is a highly nuanced technological endeavor in which details matter. Also, as proposed in this comment letter, there likely are more efficient approaches available to the CFTC to achieve its regulatory objectives.

The Working Group is confident the CFTC will receive constructive ideas about this next foray into the reporting of commodity swaps. However, this evolution should be iterative. It is to both the CFTC and the market's benefit for the rulemaking processes to be a dialogue. Given the technical nature of the Proposed Rule, a full dialogue cannot be accomplished by a one-time call and response. Thus, we urge the CFTC to absorb and consider the comments about changes to the swap reporting rules, refine its proposal, and submit that proposal again for public notice, review, and comment.<sup>2</sup>

### **B. The CFTC could lessen the burden on end users by adopting a simpler approach for the use of UPIs in reporting for the commodities asset class when adhering to the geographic masking requirements.**

Many end users are reporting counterparties under CFTC Part 43 and CFTC Part 45 for the reporting of commodity swaps. The market for commodity swaps is more decentralized than markets for other swap asset classes, with transactions commonly executed between two end users. For many such trades, neither party is a swap dealer or an entity that engages in swap dealing. Thus, changes in the current swap reporting rules for commodity swaps has the potential to significantly burden end users. When proposing such changes, the CFTC should select changes that are material to the swaps reported and minimize adverse impacts to end users.

The Proposed Rule, if adopted, would impose significant burdens on end users, as they will have to adopt new processes and systems to comply with the rules. Moreover, end users would lose the benefits of streamlined reporting for commodity swaps that were obtained through the CFTC's 2020 rule amendments.<sup>3</sup> Given these burdens and associated costs, the CFTC should determine if a simpler paradigm might be put forth rather than the one currently proposed in the Proposed Rule. The Working Group submits that a simpler approach might be had, as outlined below.

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<sup>2</sup> The Working Group notes that, without better understanding how swap data repositories will modify their platforms to address the changes set out the Proposed Rule, it is impossible for commercial firms to submit comments to the CFTC in a fully informed fashion.

<sup>3</sup> Final Rule: *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503 (Nov. 25, 2020).

*Additional steps to reporting commodity swaps*

In the Proposed Rule, the CFTC introduces a process for reporting commodity swaps that (a) implements the use of Unique Product Identifiers (each, a “**UPI**”), and (b) complies with the geographic masking requirements under the existing swaps reporting regime. Simplified, a reporting counterparty would first determine if a particular swap is subject to the geographic masking requirements. Interestingly, this requirement shifts the masking obligation from the swap data repository (a “**SDR**”) to the reporting counterparty. If the geographic masking requirements apply, then the reporting counterparty must query the Derivatives Service Bureau (“**DSB**”) for (x) a UPI for such swap for real-time reporting purposes under CFTC Part 43, and (y) a separate UPI for regulatory reporting under CFTC Part 45. In addition, the reporting counterparty must provide certain additional information to the SDR when reporting under CFTC Part 45 about things such as delivery location or pricing indices, which information is meant to facilitate the CFTC’s market monitoring.

*Burdens borne by end users*

The Proposed Rule, if enacted, would impose additional processes and associated obligations on end users when reporting commodity swaps. As mentioned above, the suggested framework represents a retreat from the simplification and standardization introduced in the 2020 rule amendments for swaps reporting. Those amendments put in place a workable “straight through” model in which end users, when acting as a reporting counterparty, might easily populate reporting fields for commodity swaps reporting under both CFTC Part 43 and Part 45. The result has been a nearly one-step process by which the reporting party sent almost a single data package to the SDR. The Proposed Rule would substantially deteriorate this procedural efficiency.

The Proposed Rule envisions all market participants using the DSB as both a central registry for existing UPIs and a facility to create new UPIs. Given that commodity swaps often vary tremendously by location and pricing terms, it is readily foreseeable that the UPIs for commodity swaps could range in the millions. Thus, (a) searching for existing UPIs could be an involved process and, thus, susceptible to error and multiple duplications, (b) the creation of new UPIs adds additional reporting steps (and quality control around such steps), further increasing time pressures to accomplish timely reporting and, potentially, the transaction execution process, and (c) the market must bear the costs of new UPI generation (which would be double under the Proposed Rule if geographic masking applies and two UPIs must be obtained). The Working Group notes that DSB is not entirely a feeless utility. It is most likely the case that, given the significant number of UPIs that must be continually created for the commodity swap asset class, end users will bear the costs associated with DSB, either directly or indirectly through higher fees passed through by SDRs.<sup>4</sup>

The market for over-the-counter swaps in the commodity swaps markets is dominated by hedging transactions, as commercial firms use swaps to tailor risk mitigation that are more precise than might be achieved in the futures markets. It follows that increases in the cost of swap reporting for commodity swaps effectively increases the cost of hedging.

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<sup>4</sup> We note that the CFTC has designated only DSB as the provider for UPIs. As a logical consequence of the Proposed Rule, each market participant acting as a reporting counterparty must agree to DSB’s terms of use with no meaningful way to negotiate terms, as there is no alternative provider.

If enacted, market participants would have to spend considerable time and resources to implement the Proposed Rule. As stated above, the Proposed Rule introduces a significant procedural change into the commodities swaps market, a hallmark of which is many unique, bespoke trades. This procedural change will require significant design and system changes at both the reporting counterparty and SDR levels. Firms have already spent considerable resources building IT systems to address the current swap reporting rules and previous additions and amendments. It is not a given that obtaining UPIs or merely adding new fields are easy, low cost tasks. Rather, it is almost assuredly burdensome to require a material change in process in order to accommodate the new fields, many of which seem unnecessary or better handled within the UPI, such as location or oil grade.<sup>5</sup>

#### *A simplified approach*

The Working Group recommends that the CFTC adopt a simpler process to accomplish the dual goals of promoting the use of UPIs in connection with reporting commodity swaps and maintaining geographic masking, and at the same time, providing for CFTC monitoring of the commodity swaps market. The Working Group recommends that the CFTC leverage its existing regime for geographic masking and facilitate the generation of UPIs keyed to the masking categories (e.g., electricity, New England). Specifically, the Working Group suggests the following approach:

#### *UPI Creation*

- Each SEF or DCM that lists a swap would obtain a UPI for such swap, which UPI would (i) be listed in DSB and (ii) provided by the SEF or DCM to the trading counterparties.
- DSB, with respect to each underlier identified in CFTC Part 43, Appendix B ("**Appendix B**"), would create UPIs for swaps for which geographic masking is not required.
- The CFTC would expand CFTC Part 43, Appendix E ("**Appendix E**") to add (i) more granularity for underlying products and locations within the United States (e.g., electrical capacity, CAISO), and (ii) underlying products for locations outside of the United States (e.g., crude oil, Mexico).
- The CFTC would, based upon the expanded Appendix E, assign a designated UPI for each product/location pair (or have DSB create and assign such a standard UPI).<sup>6</sup>

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<sup>5</sup> The Working Group agrees with the comment of Commissioner Pham who recognized in her comments to the Proposed Rule: "Adding CFTC-specific data fields creates further obstacles and uncertainty for meaningful global aggregation and analysis of trade repository data, and unnecessarily increases compliance costs. As the GMAC heard, swap dealers have only just recovered from the significant effort to overhaul their reporting requirements and now are faced with the potential need to implement dozens of additional data fields." Proposed Rule at 90080.

<sup>6</sup> The designated UPI might have some portion that varies so as to identify the month and year in which the swap was traded. For example: AJKFEJ4452Z24, in which "Z24" indicates the swap was executed in December 2024.

*Reporting Process*

- Each reporting party would submit Part 43 and Part 45 information to the SDR, with the UPI field empty, but with all of the delivery location and pricing index information included.<sup>7</sup>
- The SDR would determine whether geographic masking is required, as it currently would.
- If geographic masking *is* required, the SDR would insert the designated UPI associated with the product/location pair for Appendix E for reports under both Part 43 and Part 45.
- If geographic masking *is not* required, the SDR would insert a UPI sourced as follows:
  - If the swap was traded on a facility, the UPI generated by the facility would be reported for both Part 43 and Part 45; or
  - If the swap was not traded on a facility, the applicable UPI generated by DSB.<sup>8</sup>

The approach outlined above properly achieves the existing balance of regulatory objectives for the reporting of commodity swaps. As mentioned in the CFTC's discussion in the Proposed Rules, swaps reporting, among other things, (a) provides information to the market which may assist in price formation, and (b) facilitates markets monitoring by the CFTC.<sup>9</sup> Geographic masking recognizes that dissemination of certain information might be detrimental to certain market participants, particularly for trading referencing particular locations for which there is low liquidity. With geographic masking, the market receives some generalized information, yet the CFTC, by access to swaps information reported under CFTC Part 45, maintains its ability to oversee the market. The above approach maintains the existing balance of regulatory objectives, but removes extra steps and costs, particularly for end users. Markets will still receive generalized information through standardized UPIs, and the CFTC will continue to receive information it needs to monitor swaps trading. For example, even if a reporting counterparty reports a swap using a designated UPI, the CFTC can readily determine related activity by searching by referenced delivery points.

*Related to Underlying*

CFTC Part 43.4(c)(4)(ii) places certain commodities swaps outside the category of commodity swaps for which geographic masking is required. Subclause (a) describes swaps that reference one of the contracts described in Appendix B, and subclause (b) identifies swaps that are "economically related" to the contracts described in Appendix B.

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<sup>7</sup> The Working Group offers separate comments regarding the new data elements for delivery location and pricing indices below.

<sup>8</sup> This approach assumes that "look-a-like" swaps and economically equivalent swaps would result in a UPI coming into existence quickly, which UPI could be used for other such off-exchange swaps not subject to geographic masking, effectively costing the creation of one UPI for the benefit of a wider market.

<sup>9</sup> Proposed Rule at 90054, 90063.

The Working Group recommends that these clauses be combined and stated as follows:

- (B) Any publicly reportable swap transaction that is an economically equivalent swap (as defined by Part 150) to one of the contracts described in appendix B of this part; or

These proposed changes would create conformity across various CFTC regulations. The Working Group understands that the existing clauses are loosely designed to capture the same category of transactions as the concept of “economically equivalent swaps” under the position limit rules.

The current criteria under CFTC Part 43.4(c) are ambiguous to a degree, often leading to uncertainty whether a particular swap sufficiently references or is “economically related” to a contract in Appendix B.<sup>10</sup> For example, many swaps have a floating price, perhaps with a differential, that refers a locational price, which location price is linked to the WTI contract. It is unclear if this swap would come within the enumerated criteria. Moreover, if such criteria are too expansive, the benefits of geographic masking would be limited to only the most unique, bespoke swaps.

**C. The new data field for USD Equivalent Regulatory Notional Amount (#42) requires significant clarifications from the CFTC about the conversion of commodity units into dollars to become meaningful.**

The Proposed Rule contemplates the introduction of a new data element: USD equivalent regulatory notional amount (the “**Regulatory Notional Amount**”) (No. 42). The CFTC states that the reporting of the Regulatory Notional Amount will allow Commission staff “to more efficiently monitor swap market activity, specifically for swap dealer de minimis monitoring, part 43 market transparency calculations, and for risk surveillance purposes.”<sup>11</sup>

As further defined in the proposed Appendix 1 to CFTC Part 45, the Regulatory Notional Amount should be “[f]or the entire swap transaction (not leg by leg), ... the USD equivalent notional amount that represents the entire overall transaction for tracking notional volume.” The Proposed 43/45 Technical Guidance instructs a reporting counterparty to determine the value for this field using USD equivalent notional amounts using methodologies described in the revised CDE Technical Guidance – version 3: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI), 2.70 Notional amount (the “**CDE Methodologies**”).

The Working Group submits that the CDE Methodologies are not sufficiently calibrated to convert swaps with notional quantities denominated in commodity units (e.g., barrels, MWHrs) into USD Amounts (monetary amounts). The CFTC’s suggested methodology leads to very large notional amounts in a manner that disadvantages trading activity in the

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<sup>10</sup> The CFTC has only provided this explanation of “economically related” from the final rule initially setting out CFTC Part 43: “For the purposes of part 43, swaps are economically related, as described in § 43.4(d)(4)(ii)(B), if such contract utilizes as its sole floating reference price the prices generated directly or indirectly from the price of a single contract described in appendix B to part 43.” *Final Rule, Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182, 1211 (Jan 9, 2012). The CFTC further defines “indirect” as follows: “An “indirect” price link to an Enumerated Physical Commodity Contract or an Other Contract described in appendix B to part 43 includes situations where the swap reference price is linked to prices of a cash-settled contract described in appendix B to part 43 that itself is cash-settled based on a physical-delivery settlement price to such contract.” *Id.*

<sup>11</sup> Proposed Rule at 90055.

commodity swaps markets when compared to other derivatives asset classes that use notional amounts stated in U.S. Dollars or other currency.

For example, if an interest rate swap has a notional amount of \$10 million that settles monthly for a year (with a one year term), the Regulatory Notional Amount in the Proposed Rule is \$10 million. If an interest rate swap term has a longer term, say 30 years, the Regulatory Notional Amount is the same \$10 million.<sup>12</sup> However, if a commodity swap has a notional quantity of 20,000 units, each with a fixed leg price of \$50 per unit, which swap also settles monthly for a year (with a one year term), the Regulatory Notional Amount as set forth in the Proposed Rule is \$120 million (20,000 units \* \$50 (fixed price) \* 12 months). For commodity swaps with a term that is longer than one year, the Regulatory Notional Amount would be massively larger the longer the swap term. Thus, for commodity swaps, the Regulatory Notional Amount is defined as a cumulative sum of all payment calculations across the entire term of the swap. For interest rate swaps, the Regulatory Notional Amount is the base amount used to determine the fixed and floating payments under the swap. Accordingly, there is an unequal playing field among the different swap asset classes. Yet, the CFTC has not provided an explanation as to why there are different notional calculations for different asset classes.

Using the Regulatory Notional Amount calculation as proposed, a commercial market participant would do a substantially smaller number of transactions to become a swap dealer compared to a party trading other types of swaps. This disparity is particularly perilous given the lower de minimis level when transacting with special entities, which is common given that special entities often seek to hedge exposures like the cost of heating oil for schools in the Northeast. Accordingly, the Working Group urges the CFTC to clarify that the Regulatory Notional Amount for commodity swaps be calculated using the notional quantity from the settlement period with the greatest notional quantity.<sup>13</sup>

The CFTC should provide the market with some additional clarity regarding the derivation of notional amounts expressed in USD for swaps with payments determined by reference to commodity units. It would be extremely informative if the CFTC could provide

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<sup>12</sup> This result would be the same if the interest rate swap had a term of 3, 5, 10, 15, or even 30 years. The “notional amount” is a constant and is the notional amount that is the basis for periodic payment calculations.

<sup>13</sup> For example, if two parties entered into the swap outlined above, but the notional quantity remained the same throughout the term of the swap or stepped down each month, then the notional quantity would be greatest for the first settlement period. Thus, the regulatory notional amount would be \$10 million (20,000 units \* \$50/unit).

both model notional calculations and how notional quantities and notional amounts are to be reported. This clarification would be particularly beneficial for float/float swaps.<sup>14 15</sup>

To the extent that firms use straight-through execution to swap reporting methods (such as how ICE eConfirm will report into ICE Trade Vault), it is uncertain whether such platform providers will calculate the Regulatory Notional Amount, particularly if it might affect a user's potential profile as a swap dealer. The Working Group anticipates that such data element must be calculated by the reporting counterparty, adding an additional step into the process as well as the possibility of discrepancies in how such amounts are calculated, especially without explicit calculation guidance for notional amounts for purpose of the swap dealer de minimis calculation. For instance, parties may calculate by comparing swaps of the same kind or by recalculating the amount using other information in the reporting.

The Working Group also submits that the Regulatory Notional Amount should not be used to monitor swap dealer de minimis levels. What is missing from the reporting of the Regulatory Notional Amount is that it does not identify the nature of business activity by a market participant. Moreover, this field might capture information about swaps that would not be in the de minimis calculation definitionally, such as swaps between certain majority owned affiliates or swaps that constitute hedging transactions. The swap dealer de minimis analysis calculates the aggregate notional amount for swaps executed by a market participant as a swap dealer. Execution of a large aggregate notional amount of swaps does not make a firm a swap dealer, nor does trading with several counterparties or trading many swaps. This is a particular concern for energy companies as the notional conversion methodology for commodity swaps can generate extremely large notional amounts measured in USD, due in part to the inclusion of prices. Thus, it is readily foreseeable that the CFTC might mistake trading of swaps by a non-swap dealer commercial firm as indicia of swap dealing activity.

#### **D. Additional field for bespoke pricing structures.**

Implicit in the CFTC's reporting rule is an assumption that OTC swaps are relatively straight forward in structure, such as fixed/float interest rate swaps, with perhaps limited optionality, such as an early termination right. There are fields for certain common complex transactions, like credit default swaps based upon a basket of underlying reference obligations. In the commodity space, there often are OTC swaps with very complex pricing

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<sup>14</sup> The Working Group notes that the Parts 43 and 45 Technical Specifications use the terms "basis swaps" and "spreads". We understand that "basis swaps" are generally float/float swap, as one might classify such trades for the interest rate class. However, "basis" has a unique meaning in commodity derivative, meaning roughly the pricing elements added to or subtracted from a referenced futures price to account for differences in delivery locations, among other things. We recommend the CFTC use a term other than "basis swap" to define a float/float swap. Moreover, the Technical Specifications suggest a spread transaction, definitionally, has one leg that has no added or subtracted differential. The Working Group is not certain that all spreads are structured in that fashion, perhaps when each leg references a futures price for which traditional basis must be added or subtracted.

<sup>15</sup> Data element 42 references the USD notional amount "[f]or the entire swap transaction (not leg by leg)". By the reference to "(not leg by leg)", the Working Group understands that item 1.3.3 of the Introduction to the Proposed 43/45 Technical Specifications would inform reporting parties that they need not provide the notional amount for one leg of a commodity swap if this information is already reported for the other leg. So, if a reporting counterparty reported the notional amount (including notional quantity (no.52), quantify frequency multiplier (no.54), etc.) with respect to the fixed leg, that party need not report such information again for the corresponding floating leg. The Working Group recommends that the CFTC affirm (a) this understanding of item 1.3.3, and (b) that even if the reporting party did provide the same information for both legs, only the information for one leg would count towards the USD equivalent regulatory notional amount.



provisions. For example, it is possible to have a swap under which parties trade the differences in prices based upon a hub price for electricity and a specific node price for electricity. However, (a) the hub price might be subject to a volume-based trigger that, if activated for a particular settlement period, switches the price reference to another location and (b) the node price might have a floor and a different notional reference amount if curtailment occurs. Current CFTC guidance is not entirely sufficient on how to address such complexity.

The Working Group recommends that the CFTC add one or more fields to allow firms to report commodity swaps that have highly bespoke pricing terms. The first field would simply be a flag for the reporting counterparty to identify the transaction as having bespoke pricing terms.<sup>16</sup> The second field would be an open field for the reporting counterparty to summarize the pricing structure. The CFTC also should offer some assurance that the description must only convey enough information to inform the CFTC of basic terms, but need not be granularly specific. Otherwise, the reporting counterparty might be best served by simply writing in the pricing formula, which itself might take three or four pages in the confirmation.<sup>17</sup> Lastly, the CFTC should clarify that the reporting counterparty must still report the core swap transaction, for example, as provided above, a swap referencing two pricing locations.

This approach would be regulatorily efficient and would be far superior to merely adding more fields or another approach for separately reporting each of the pricing components. The CFTC would have the basic information to perform its market oversight functions. Moreover, the information would be presented in a more Plain-English fashion as it would be presented in a narrative fashion, as compared with the piecing together of different fields under the design of the current reporting regime. If the CFTC needed additional information, counterparties might provide such information upon inquiry from the CFTC. Also, the need for additional fields could be the subject of future rule makings. This recommended approach would also save time and resources for the counterparties. Instead of navigating a labyrinth of reporting fields, the reporting counterparty could have greater confidence that it has sufficiently reported the swap transaction with bespoke pricing terms.

#### **E. Designation of the characterization of market participants is unnecessary.**

Proposed new data elements 28 and 29 require the reporting counterparty to identify each counterparty as potentially a swap dealer or major swap participant. In addition, proposed new data element 30 would identify a counterparty as a special entity. This information is unnecessary. The CFTC should be able to identify any registered firm or a special entity by reference to the LEIs already provided in other data elements. Moreover, firms will require further documentation, process changes and system modifications to assure these data elements are captured and reported accurately, further increasing the cost of reporting for uncertain regulatory benefit. In addition, introducing a data element for identification of a special entity would necessarily require an instruction to not identify as a "special entity" if that is a "utility special entity", as defined in CFTC Part 1.3.

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<sup>16</sup> This current field for "Non-Standardized Term Indicator" (#92) might serve this function.

<sup>17</sup> An alternative path might be to allow reporting counterparties to upload a copy of the trade confirmation or perhaps a summary of the pricing provisions agreed between the parties.

**F. Additional comments regarding explanations and new data elements.**

The Working Group submits the following comments and observation regarding other proposed data elements:

No.	Explanation / Field	Comment
1.1.3	Repeating data elements or leg-based products	<p>The CFTC should reverse the following new language:</p> <p>“For products having two legs where one leg references a fixed value and the other leg references a floating value, Leg 1 elements should refer to the leg that references a fixed value and Leg 2 elements should refer to the leg that references a floating value. For products having two legs where each leg references a floating value respectively, the legs should be ordered based on the alphabetical ordering of the names of the respective underliers. In cases where the names of the respective underliers are the same, but they are differentiated by a tenor, Leg 1 elements should refer to the leg referencing the underlier with the shorter tenor.”</p> <p>This convention adds no value and might unnecessarily require the modification of existing data capture and reporting system and processes.</p>
124/125	Physical delivery location / Pricing index location	<p>The data elements should include a “floating rate” field, ending one of the curiosities of the CFTC’s reporting regime of not having an obvious field to report such information.</p> <p>Regardless, when a reporting counterparty identifies an index or reference prices for the floating rate (e.g., Platts American Gulf Coast Select), that information will inform both the referenced physical delivery location or the pricing index location. Thus, reporting data elements 124 or 125 is redundant.<sup>18</sup></p> <p>The Working Group notes that certain swaps may reference different indices or pricing locations, perhaps taking the highest price of three locations, or averaging such prices. However, in lieu of adding more reporting fields to capture such subtleties, the CFTC should implement a “floating rate” field and, if more than one index might factor into the floating rate, allow a response of “compound”.</p>
128/129	Underlying asset price source / Underlying asset trading platform identifier	<p>Please provide a definition for “platform”. Please clarify where such identifier might be located.</p> <p>These data elements are identified as “optional” in the Proposed 43/45 Technical Specifications. Are these fields truly optional or are they contingent on responses</p>

<sup>18</sup> With exception of certain options, there no commodity swaps that that result in physical delivery. A physical settling forward is not a “swap” as defined under the CEA and the CFTC’s regulation.

		to other fields? <sup>19</sup> The CFTC should provide an example of a transaction in which these fields would be reported.
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**G. If enacted, the Proposed Rules should have a phased-in compliance period that requires end user compliance at least two years after the effective date.**

If the CFTC were to enact the Proposed Rule as final, market participants in the commodity swaps market would need a significant period of time to come into compliance with the final rules. As mentioned above, firms would have to spend considerable time and resources to alter systems and processes to meet the requirements of the rules. In addition, market participant may require additional guidance from the CFTC in connection with making such changes. To speak vernacularly, there is a lot of “pipe fitting” required for the compliance with the Proposed Rule.

To that end, the Working Group recommends the CFTC (a) implement a phased-in compliance regime where SDRs can come into compliance before reporting counterparties, and (b) for end users particularly, identify a compliance date for any final rule that is at least nine months after the compliance date for SDRs and at least two years after the effective date of such rule. The phased-in compliance period allows market intermediaries, particularly the SDRs, to normalize related technologies and process before larger segments of the markets have compliance obligations. This approach affords the CFTC and the market the opportunity to identify and remedy compliance issues, and perhaps make rule refinement, without the pressure of the full commodity swaps markets needing immediate compliance solutions. This approach might also avoid, or at least lessen, the need for interim no-action letters while problems are identified and remedied.<sup>20</sup>

The Working Group believes the implementation of the reporting changes as set out in the Proposed Rules will take a long time. The intermediaries alone, like SDRs, will need at least a year to work out the technology changes and processes to implement the changes, as well as communicate and respond to their customers, including members of the Working Group, about such changes. In many cases, these discussions will involve very granular aspects of the rule, and it is foreseeable that end users and the SDRs may need further guidance from the CFTC. In addition, this extended period would afford end users the ability to test whether their systems are sufficiently calibrated to report with the SDRs regarding the new data elements. Accordingly, to minimize any costs associated with changes such as those under the Proposed Rule, end users should have a compliance date that is at least two years after the effective date of the final rule.

### **III. CONCLUSION**

The Working Group appreciates this opportunity to comment on the Proposed Rule and respectfully requests that the Commission consider the Working Group’s comments when finalizing the Proposed Rule.

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<sup>19</sup> We note that the definition of “optional” from the Parts 43 and 45 Technical Specification is oxymoronic: “Optional: The data element shall be reported if applicable for the transaction.” Nothing is optional if fulfillment is compulsory.

<sup>20</sup> The Working Group believes the phased-in approach was effective for the implementation of the CFTC’s initial margin rules.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe

David T. McIndoe

***Counsel to  
The Commercial Energy Working Group***