

May 17, 2024

Via Electronic Submission

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

Re: *Notice of Intent to Renew Collection 3038-0095; Large Trader Reporting for Physical Commodity Swaps*

Dear Secretary Kirkpatrick:

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Eversheds Sutherland (US) LLP submits this letter regarding the Commodity Futures Trading Commission's ("**CFTC**" or the "**Commission**") Notice of Intent to Renew Collection 3038-0095; Large Trader Reporting for Physical Commodity Swaps¹. The Working Group recommends that the Commission provide for the sunset of the Part 20 Large Trader Reporting obligations because such requirements have become duplicative of the reporting requirements set forth under Parts 43 and 45 of the CFTC's regulations.

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.

It is time to repeal the Part 20 Large Trader Reporting obligations. At its core, both the Part 20 and Parts 43 and 45 reporting requirements serve the same purpose. That is, all three reporting obligations are intended to help the CFTC ensure market transparency and price discovery, while ensuring that market participants are not allowed to carry out price manipulation or violate other market rules.² In short, all three reporting obligations serve a market surveillance function, and there is no need to have

¹ *Notice of Intent to Renew Collection 3038-0095; Large Trader Reporting for Physical Commodity Swaps*, 89 FR 19298 (Mar. 18, 2024).

² See Large Trader Reporting Requirements, 88 Fed. Reg. 41522 (June 27, 2023); 17 CFR §43.1(a).

overlapping sets of rules that achieve the same purpose. Among the core functions of Part 20 is to identify market participants that trade significant volumes of swaps. Given that each market participant must have a legal entity identifier and all of the swaps to which such entity is a party should be reported (assuming US regulations apply), then the Commission should be able to identify large traders and the transactions they conduct by queries to the swap data repositories. Therefore, the Working Group agrees that the requirements of 17 CFR §20.9(a) have been satisfied and there is no need to continue using government resources on ensuring compliance with the Part 20 requirements.

Accordingly, the Commission arguably should be unable to determine a favorable cost/benefit analysis that finds value in the almost entirely redundant process and procedure for Part 20. If the CFTC believes there is marginal functionality, then it should entirely redesign the Part 20 regime to piggy back on swaps reporting under Parts 43 and 45, adding only those elements it cannot obtain from such reporting.

Now is the time to sunset the Part 20 swaps reporting obligations in light of the changed regulatory landscape. The Working Group appreciates the opportunity to comment on this Notice of Intent and respectfully requests that the Commission consider the Working Group's comments when considering the next steps in addressing the Part 20 obligations.

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