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OFFICE OF THE SECRETARIAT

By Facsimile

Ms. Jean A. Webb,
Office of the Secretariat,
Commodity Futures Trading Commission,
Three Lafayette Centre,
1155 21st Street, N.W.,
Washington, D.C. 20581.

Re: New Regulatory Framework for Multilateral Transaction
Execution Facilities, Intermediaries and Clearing Organizations. 65
Fed. Reg. 38995 (June 22, 2000)

Dear Ms. Webb:

As counsel for the entities identified in Appendix A attached hereto (such entities collectively, the "Energy Group"), we are pleased to respond to the request of the Commodity Futures Trading Commission (the "Commission") for comments regarding the above referenced proposal. Our comments will focus on the Commission's proposal (the "DTF Proposal") of a new regulatory framework for derivative transaction facilities ("DTFs"). In particular, we have set forth below our suggestions for modifications to the DTF Proposal in order to provide a useful and attractive model for electronic platforms that are designed to facilitate transactions solely among commercial participants ("Commercial Platforms").

The Energy Group consists of major oil and gas producers, refiners, processors and marketers, as well as electric utilities and marketers of electricity. Members of the Energy Group are active participants in the principal domestic and international physical, futures and over-the-counter ("OTC") derivatives markets for energy products, including oil, natural gas and

electricity. Many members of the Energy Group have been active with respect to Commission reauthorizations and exemptive actions for more than a decade. Among other things, Energy Group members were actively involved during the period leading to the Commission's reauthorization in 1992. They were also strong supporters of granting the Commission broad exemptive authority under the Commodity Exchange Act (the "Act"). Following reauthorization, members of the Energy Group applied to the Commission for an exemption from the Act for certain contracts based on energy products. The energy exemption granted by the Commission in April 1993 has increased legal certainty for a large category of energy contracts critical to the risk management and other business needs of the energy industry.

The issue of legal certainty in connection with OTC derivatives transactions remains of paramount concern to the Energy Group. It has gained even greater significance as the result of recent technological changes and developments which have led to the emergence of numerous electronic platforms to facilitate transactions in OTC derivatives, including energy derivatives. The Energy Group therefore applauds the Commission's objective of developing a regulatory framework that enhances legal certainty, while distinguishing between traditional contract markets and other forms of multilateral transaction execution facilities.* By issuing the DTF Proposal, the Commission has demonstrated that it is open to explore new, innovative ways to approach the regulation of derivatives markets for which traditional regulatory schemes are not suitable. In our view, however, the DTF Proposal still relies too heavily on concepts and categories derived from the regulation of traditional exchanges, which are incompatible with the characteristics and needs of Commercial Platforms. The Energy Group believes that the DTF Proposal should be revised as described below in order to implement the Commission's objective of establishing a useful and attractive model for current and future Commercial Platforms that are seeking the legal certainty inherent in recognition as a DTF.

Characteristics of B2B Markets. In order for DTFs to become an acceptable format for Commercial Platforms and their participants, the regulatory framework must be structured to provide efficient regulatory oversight for business-to-business (B2B) markets. These markets currently operate in the OTC environment, either through direct bilateral trading or voice brokers, in a manner that is distinctly different from the operation of traditional futures exchanges. If participants in these markets establish electronic trading platforms, they typically do so with a view toward replicating the existing structure of the relevant OTC market. The Commission therefore should not apply the traditional regulatory scheme for futures exchanges to Commercial Platforms. Just as the Commission does not monitor or surveil OTC derivatives

* The Energy Group also endorses the separate Commission proposal, contained in a companion release to the proposal referenced above (65 Fed. Reg. 39033 (June 22, 2000)), to clarify the terms of the current Part 35 swaps exemption.

markets or voice brokers today, there is no need to apply, and no benefit in applying, traditional exchange surveillance to Commercial Platforms. Since B2B markets have little or no familiarity with exchange-style regulation, their participants will be discouraged by undue complexity or ambiguity in any regulatory framework offered, and are likely instead to avoid Commercial Platforms or opt for establishing their operations overseas. Rather than applying the existing regulatory scheme to Commercial Platforms and then creating exemptions, the Commission should create a broader exemption tailored to the needs and circumstances of these markets.

Global Nature of Markets. An important question that we believe the Commission should ask itself in this context is whether it would be prepared to allow domestic commercial entities to participate in Commercial Platforms established abroad. To deny this right would cause significant hardship, particularly for those entities that do not have affiliates offshore. To recognize that qualifying U.S. entities should be able to participate in Commercial Platforms outside the country effectively means that an overbearing regulatory framework applied to DTFs in the United States would contribute to driving business overseas. This cannot be the Commission's intention.

Expeditious Approval. In order for the DTF model to be attractive for B2B markets, the Commission's initial approval process must be simple and fast. If Commercial Platforms are required to prepare and submit extensive information, or respond to numerous additional requests or inquiries prior to being approved, they will likely be discouraged from applying. The Commission should therefore not engage in detailed substantive review, but recognize Commercial Platforms as DTFs as soon as possible after the relevant documents and other information have been submitted. Since the speed with which a Commercial Platform can get to the market will be essential to its success, it should be able to receive recognition as a DTF even before its development phase is finished. Commercial Platforms should be able to seek recognition even if some details of the contractual relationships between the Commercial Platform and its participants are still being developed.

No Contract Approval. New contracts to be traded on a Commercial Platform should not be required to be subject to an approval process. Most Commercial Platforms will not "list" products in the traditional sense used in the context of futures markets. In general, participants will post prices for the products they wish to trade, subject only to certain limitations established by the Commercial Platform itself. At most, Commercial Platforms will post certain product descriptions and specifications to ensure that participants are posting prices for the same products. In addition, some markets will have a "request for quotation" function allowing participants to decide which products or transactions they would like to bring to the platform. The requirements for contract approval under the DTF Proposal would make the DTF model an inefficient method for conducting the types of transactions for which Commercial Platforms are designed. Instead, Commercial Platforms should only be obligated to make the terms and

conditions of contracts traded through such platforms available to the Commission at the same time and in the same manner as such terms and conditions are provided to participants.

“Rules”. Unlike traditional futures exchanges, Commercial Platforms are not likely to have any “rules” or “rulebooks” as those terms are commonly understood in the context of contract markets. Instead, the relationship between a Commercial Platform and its participants will typically be of a contractual nature. The relevant agreements will likely incorporate terms of trading, product descriptions and other matters, but will not involve “rules” in the traditional sense. The references throughout the DTF Proposal to the “rules” of a DTF are therefore confusing and cause uncertainty. As a substantive matter, given the commercial nature of B2B markets, there should not be a required procedure for the approval of rules of Commercial Platforms by the Commission. Again, Commercial Platforms should only be obligated to make pertinent documents and information available to the Commission at the same time they are provided to participants. Such documents and information may include participant agreements, trading proposals, user help guides, product descriptions and information regarding the trading protocols or algorithms to be used.

Core Principles. We agree that all DTFs, including Commercial Platforms, should comply with a clearly defined set of core principles that include fitness, enforcement of terms and conditions of trading and recordkeeping. These requirements should be consistent with the practices that a prudent, responsible business would be expected to establish in the absence of any regulatory requirements. At the same time, the Commission should not burden DTFs with core principles that merely reflect legal obligations (e.g. antitrust) already imposed on Commercial Platforms.

No Participant Oversight. The imposition of any additional obligations or jurisdiction on participants (as opposed to DTFs themselves) is inappropriate and likely to drive potential participants away from using Commercial Platforms. Unlike members of a traditional exchange, participants are not regulated by the Commercial Platforms used by them, and DTFs should not be required to impose exchange-style self-regulatory schemes. In addition, if the Commission were to gain jurisdiction over persons or entities participating in a Commercial Platform that would not exist if the relevant persons or entities participated in a traditional OTC transaction, DTFs would become an unattractive model, particularly from the perspective of foreign participants. Participants in the OTC markets will be looking for assurance from Commercial Platforms that using these platforms will not increase or otherwise change their exposure to regulation by the Commission. Unlike in the case of traditional forms of OTC trading, the Commission will have access to comprehensive records of all trading conducted through Commercial Platforms. Additional informational requirements with respect to participants, whether through special calls or otherwise, should therefore not be imposed.

Equally, where the Commission does not otherwise have the authority to do so, it should not be able to sanction a participant merely because it executed transactions through a DTF. Any sanctions against participants should be imposed directly by the Commercial Platform, which can preclude participants from trading on the platform, if appropriate.

Stand-Alone Rule Package. All rules applicable to DTFs should be contained in one part of the proposed new regulations. Cross-referencing other Commission regulations is confusing and may import interpretations that have no application to DTFs in general, or Commercial Platforms in particular. It is recognized that the regulatory framework for DTFs will need to reference certain statutory provisions in order to provide the Commission with legal authority to issue and enforce core principles applicable to DTFs. However, the Commission should clarify that it reserves the relevant statutory provisions solely for that purpose. Specifically, statutory provisions relating to wash sales, accommodation trades and cross trades, large trader reporting, the requirement that transactions not be contrary to the public interest and other statutory sections have no applicability to Commercial Platforms.

* * * *

The Energy Group appreciates the opportunity to comment on the DTF Proposal. We stand ready to provide any further assistance which may be helpful to the Commission in its consideration of these matters.

Sincerely,



Kenneth M. Raisler

Ms. Jean A. Webb

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Appendix A

BP Amoco
Enron North America, Inc.
Goldman, Sachs & Co.
Koch Industries, Inc.
Morgan Stanley Dean Witter
Phibro Inc.
Sempra Energy Trading Corp.