

PROPOSED AGENDA

WORKING GROUP OF COMMERCIAL ENERGY FIRMS MEETING WITH COMMODITY FUTURES TRADING COMMISSION STAFF

August 25, 2010

The Working Group of Commercial Energy Firms (the “Working Group”) is a diverse, cross-industry group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial, and residential customers. The Working Group considers and responds to requests for public comment legislative and regulatory developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

The Working Group appreciates the opportunity to meet with staff from the Commodity Futures Trading Commission (the “Commission” or “CFTC”) to discuss the topics listed below regarding upcoming rulemakings implementing key provisions of Title VII, Subtitle A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”). In addition, the Working Group members would like to discuss the Commission’s proposed approach and timing for such rulemakings and use of resources in enforcing new regulations, if enacted.

MAJOR ISSUES LIST

A. DEFINITION OF “SWAP DEALER.”

The definition of “Swap Dealer” set forth in Dodd-Frank is overly broad, particularly the third prong of this definition. The Working Group is concerned that this prong, if read literally, will result in the unintended consequence of capturing commercial energy firms and end-users. Though commonly not viewed as “dealers,” many commercial energy firms and end-users engage in a significant volume of “Swap” transactions. Often, these trading activities are a significant part of the business of a commercial energy firm. Such firms are better characterized as “traders.”

B. DEFINITION OF “MAJOR SWAP PARTICIPANT.”

The definition of “Major Swap Participant,” as set forth in Dodd-Frank may cover a significant number of commercial energy firms and end-users that enter into swaps in connection with their businesses, but that do not buy and sell Swaps as a primary part of their business. The Commission should clarify that the definitions of “Substantial Position” and “Substantial Counterparty Exposure” capture only systemically risky firms.

C. DEFINITION OF “SWAP.”

Dodd-Frank contains a limited exclusion from the definition of “Swap” for transactions that are “intended to be physically-settled.” This exclusion introduces ambiguity and uncertainty as to what contracts fall under the definition of “Swap.” The Commission should set forth clear criteria to determine whether a Swap is intended to be physically-settled.

D. IMPLEMENTATION OF MANDATORY MARGIN REQUIREMENTS.

Under Dodd-Frank, the Commission will prudentially regulate non-bank Swap Dealers and non-bank Major Swap Participants. The Commission will be required to impose mandatory margin requirements on non-bank Swap Dealers and non-bank Major Swap Participant’s uncleared Swaps. The Commission’s margin requirements should ensure that, consistent with Congressional intent, the end user exemption is preserved in form and function. In addition, the margin requirements should

incorporate market best practices with regards to the negotiation of bilateral credit terms and the use of non-cash collateral.

E. IMPLEMENTATION OF MANDATORY CAPITAL REQUIREMENTS.

Under Dodd-Frank, the Commission will prudentially regulate non-bank Swap Dealers and non-bank Major Swap Participants. The Commission will be required to impose mandatory capital requirements on non-bank Swap Dealers and non-bank Major Swap Participants. Capital requirements adopted by the Commission should consider the assets of the entire entity and should properly account for the reduction in risk resulting from centrally clearing or otherwise posting margin on Swaps.

F. DOCUMENTATION STANDARDS.

The Commission must provide clear guidance as to the changes required to existing documentation of Swaps necessary to comply with the changes to existing law made by Dodd-Frank. Particularly, the Working Group is concerned with how required disclosures and representations are to be made. In addition, given the Commission's new, expanded jurisdiction over market participants, the Working Group believes that the Commission should formally publish general, industry-wide compliance guidance that may be used by such market participants as they develop and implement new business practices, procedures, and protocols that comply with the substantive requirements of Title VII of Dodd-Frank and the regulations implementing this provision. This may be accomplished in the form of a policy statement issued by the Commission.