December 2, 2014

VIA ONLINE SUBMISSION
Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AC97)

Dear Mr. Kirkpatrick:

By this letter, the National Corn Growers Association ("NCGA") and the Natural Gas Supply Association ("NGSA") respectfully submit these comments in response to the U.S. Commodity Futures Trading Commission's (the "CFTC's" or "Commission's") Proposed Rule, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 59898 (Oct. 3, 2014) (the "Proposed Rule"). References herein to the Commodity Exchange Act ("CEA") refer to that statute as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or "Act").

Founded in 1957, the NCGA represents more than 42,000 dues-paying corn farmers nationwide. NCGA and its 48 affiliated state organizations work together to create and increase opportunities for their members and their industry.

Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 30 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers.

Because of the potential for the Dodd-Frank Act to impede what are and have been healthy, competitive, and resilient corn and natural gas markets, NCGA and NGSA played an active role in the shaping of the Act during its passage and wish to continue such a role in ensuring the Act's successful implementation.

COMMENTS

I. NCGA and NGSA Supports the CFTC Proposal to Exempt Non-Financial End Users from Regulatory–Imposed Margin Requirements.

NCGA and NGSA support the Proposed Rule, which substantially adheres to Congressional intent by not threatening to unnecessarily tie up large amounts of capital of non-financial end users in margin deposits. In passing the Dodd-Frank Act, Congress was mindful of the need to not "unnecessarily divert working capital from our economy into margin accounts, in a way that would discourage hedging by end users or impair economic growth."[1] Consistent with this Congressional intent, the Proposed Rule does not require collection of initial or variation margin from nonfinancial end users. As such, nonfinancial end users and their counterparties can continue their practice of entering into customized credit support arrangements (which may and often do include margin requirements) based on the particulars of their transactions. NCGA and NGSA applaud the CFTC for preserving this flexibility and avoiding unnecessary layering of regulatory requirements on top of commercially negotiated credit support arrangements.

II. Provisions in the Proposed Rule Require Modification

Nonetheless, to ensure that the margin rule works as intended and does not unnecessarily divert capital or increase transaction costs for non-financial end users (and ultimately consumers), NCGA and NGSA believe that the following aspects of the Proposed Rule should be modified.

A. The Requirement to Calculate "Hypothetical Margin" With Respect to Non-Financial End Users Should Be Eliminated.

The requirement of covered swap entities ("CSEs") to calculate "hypothetical" initial and variation margin for non-financial end users with "material swaps exposure" under Sections 23.154(a)(6) and 23.155(a)(3) of the Proposed Rule should be eliminated. Because the margin calculated is truly "hypothetical," *i.e.*, not required to be collected, this requirement does not serve a practical purpose. Yet, it will impose a substantial burden on non-financial end users.

The primary problem with this requirement is that the underlying definition of "material swaps exposure" under Section 23.151 of the Proposed Rule requires non-financial end users to track and compute, across all of their affiliates, their average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties. CSEs will not have this data themselves, so the burden of this requirement will clearly fall on non-financial end user counterparties. Aggregating the required data across affiliates will be an administratively and technologically difficult and time-consuming task. In light of the lack of any discernible benefits from the ultimate calculation of a "hypothetical" margin number, the requirement to calculate such margin should be eliminated.

[1] Letter from Sen. Christopher Dodd and Sen. Blanche Lincoln to Rep. Barney Frank and Rep. Colin Peterson 1 (June 30, 2010) (the "Dodd-Lincoln Letter").

Alternatively, affiliates should not be included in the calculation of "material swaps exposure," to make such calculation by non-financial end users more administratively manageable.

B. The Final Rule Should Expressly Recognize the ISDA Master Agreement as an "Eligible Master Netting Agreement."

The final rule should expressly recognize that the International Swaps and Derivatives Association 1992 and 2002 Master Agreements and any related credit support annex (collectively, the "ISDA Master Agreement") each satisfy the definition of an "Eligible Master Netting Agreement" under Section 23.151 of the Proposed Rule. The ISDA Master Agreement is the most widely relied upon master netting agreement, and requiring review and modification of the countless ISDA Master Agreements that have been in place for years would be a substantial and unnecessary burden. The ISDA Master Agreement is widely recognized as providing the general protections identified in clauses (1)-(3) of the definition of "Eligible Master Netting Agreement," yet the detailed nature of those clauses and the substantial complexity of the ISDA Master Agreement would make the review called for in clause (4) of the definition an undue burden, with much of the costs likely passed on to the non-financial end users transacting with the CSEs that are required to perform the review.

In particular, the requirement in subclause 4(i)(B) of the definition that a legal review establish that "[i]n the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions" is highly impractical, if not impossible. Many counterparties to ISDA Master Agreements operate in multiple countries, making it extremely difficult to foresee all of the countries in which a counterparty may be at risk of declaring bankruptcy or being found in default in some other jurisdiction. In light of the ubiquitous use of the ISDA Master Agreement and recognition that it provides all of the general protections identified in the definition of Eligible Master Netting Agreement, the final rule should expressly recognize that the ISDA Master Agreement is an Eligible Master Netting Agreement.

In addition, physical delivery annexes to the ISDAs should explicitly be included in the ability to net for purposes of exposure calculations. The ability to net financial and physical exposures for purposes of determining credit support requirements is consistent with the Congressional intent that regulations avoid unnecessarily diverting capital from the economy.

C. The One-Business Day Turnaround Time for Posting and Collecting Initial and Variation Margin is Prohibitively Short and Must be Lengthened.

The one-business day (or "T+1") turn-around time for posting and collecting initial and variation margin under Sections 23.152(a) and (b) and 23.153(a) of the Proposed Rule is technically infeasible for compliance purposes and must be extended to allow at least two business days. This is especially important to ensure the feasibility of late day or afternoon transactions. The mark-to-market exposure on swaps, which is necessary to determine the variation margin amounts required to be posted or collected under the Proposed Rule, cannot be calculated by CSEs until the evening of each business day (*i.e.*, following the daily close of

markets). A CSE's credit department must review such calculations on the morning of the following business day and confirm the calculated exposures with applicable counterparties if any margin is to be paid or collected. Such confirmation can take significant time, particularly if counterparties have reached differing initial calculations.

Once the required transfer amounts are confirmed, CSEs and/or their counterparties need to request their treasury departments to wire funds. The treasury departments must then route such requests to the applicable banks, which typically cannot fulfill such requests until the following business day (unless the bank is notified prior to 9:00 A.M., which often is impossible given the steps outlined above). Similar difficulties arise with respect to the determination and transfer of initial margin with respect to swaps that are negotiated and finalized at the close of a business day. To avoid the practical and technical infeasibility outlined above, the turn-around time for posting and collecting initial and variation margin under the final rule must be extended to at least two-business days. Alternatively, at a minimum, the turn-around time for posting and collecting initial and variation margin for transactions executed in the afternoon must be extended to allow two business days.

CONCLUSION

NCGA and NGSA support the Proposed Rule but request that the Commission modify the rule as described above to address certain provisions that make the rule impractical or impossible to fully implement. Correspondence regarding this submission should be directed to:

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NCGA and NGSA welcome the opportunity to further discuss these comments with the Commission. If we can provide any additional information, please do not hesitate to contact us.

Respectfully submitted,

National Corn Growers Association
Natural Gas Supply Association