

April 2, 2013

Via Electronic Mail: dmoletters@cftc.gov

Mr. Richard Shilts, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: *Comments in Support of Request of FIA Request for Relief for Contingent EFS/EOO Trades*

Dear Mr. Shilts,

The Edison Electric Institute (“EEI”)¹, the Electric Power Supply Association (“EPSA”)², and the American Gas Association (“AGA”)³ (collectively “Joint Associations”) respectfully submit these comments in support of the March 26, 2013, letter submitted by the Futures Industry Association (“FIA”) requesting that the Division of Market Oversight (“Division”) grant no-action relief to market participants from Part 46 historic swap reporting requirements as they apply to a defined group of “contingent” swaps involving energy and metals commodities. The Joint Associations believe that granting the requested relief is consistent with the Commission’s authority under regulation 140.99⁴ and is in the public interest.

¹ EEI is the association of U.S. shareholder-owned electric companies. EEI’s members serve 95 percent of the ultimate customers in the shareholder-owned segment of the U.S. electricity industry, and represent approximately 70 percent of the U.S. electric power industry.

² EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

³ AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 65 million customers — receive their gas from AGA members. Today, natural gas meets almost one-fourth of the United States’ energy needs.

⁴ 17 C.F.R. § 140.99 (2012).

Members of the Joint Associations are not financial entities. Rather, they are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate the commercial risk that they incur in operating their businesses. As part of these risk management activities Joint Associations' members have entered into EFS/EOO trades between July 2010 and the present.

With the April 10 reporting deadline for end-users fast approaching, Joint Associations' members have been working to identify their historical transactions and to contact counterparties in order to meet their obligations under Part 46. On March 8 Joint Association filed a request for an extension of time to meet these obligations.⁵ Due to their transitory nature, EFS/EOO trades will be particularly burdensome for Joint Associations' members to report. As such Joint Associations support the FIA request in addition to the March 8 request. Joint Association's members executed swaps that were contingent upon being converted into cleared positions in futures or options on futures in CME Group ClearPort and ICE contracts⁶ and to energy swaps executed contingent upon being promptly submitted to and accepted for clearing by ICE Clear Europe as cleared swaps. As indicated in the FIA request, these swaps are transitory in nature and as such the swap was terminated, often moments after execution, once the swap is exchanged for a future position. Since the ultimate transaction takes place on an exchange, such as the New York Mercantile Exchange, the exchange transaction contains all the vital economic information to the market participant. As a result, it is not customary for participants to process in internal systems the information relating to the underlying transitory swap for the brief period prior to the swap becoming a future. As such the best source for the data is the CME Clearing House and that data is readily available to the Commission.

Joint Associations' members are working to identify all of their historical swap transactions to comply with Part 46 reporting requirements. Due to the transitory nature of these transactions and due to the fact that they were conducted on an exchange, it would be unduly burdensome for Joint Associations' members to report under Part 46 information on the transitory swap relating to EFS/EOO trades. This effort would require Joint Associations' members to extract broker confirmations for each transaction and to work with brokers, some of whom may no longer exist, to ensure that all information is accurate. Section III of the FIA letter

⁵ See Comments in Support of Request for No-Action Relief Extending the April 10, 2013 Compliance Date for Reporting Swap Transactions under Parts 43, 45, and 46 of the Commission's Regulations (March 8, 2013).

⁶ The contingent swap is one of three linked components of a contingent (also often referred to as "transitory") EFS or EOO trade executed between the same two counterparties. The three components include the swap, termination of the swap, and an economically equivalent position in a futures or options on futures contract. The contingent swap establishes the trade terms for the resulting clearing futures or options on futures position that replaces it, and both comes into existence and is terminated when the futures or options on futures leg is accepted for clearing. The markets for contingent EFS and EOO trades have existed for many years. They have evolved under exchange rules subject to Commission oversight.

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sets forth the burdensome steps that would need to be undertaken by market participants in order to report information for these trades under Part 46 of the Commission's rules and regulations.

As such, the Joint Associations support FIA's request as the information is currently maintained by the clearinghouse and available to the Commission. This approach would be consistent with the Commission's other reporting rules, such as Part 45, which allows for cleared swap transaction data to be reported by the Derivative Clearing Organization.

Respectfully submitted,

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cc: Honorable Gary Gensler, Chairman
Honorable Jill Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner