INPUT PROVIDED BY THE ENERGY INDUSTRY COMMERCIAL END-USERS, Responding to Questions Posed in the “Commodity Options Release” and the CFTC’s Interpretations in the “Product Definitions Release,” and Explaining Issues Related to the CFTC’s Commodity Options IFR, and CFTC’s Statutory Construction and Interpretations Concerning Options/Optionalities, as Applied to Energy Industry Agreements, Contracts and Transactions

1. Comment letters on “swap,” CEA 1a(47)(B)(ii), and commodity trade options, filed after publication of, first, the Commodity Options Release and, subsequently, the Product Definitions Release:

(a) Final rule and interim final rule – Commodity Options, 77 Fed. Reg. 25320 (April 27, 2012) (the “Commodity Option IFR”)

   (i) June 26, 2012 (EEI, EPSA, NRECA, APPA)
   http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58272 &SearchText=parikh

   (ii) June 26, 2012 (Working Group)
   http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58267 &SearchText=

   (iii) June 26, 2012 (COPE)
   http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58268 &SearchText=

   (iv) June 26, 2012 (IECA)
   http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58269 &SearchText=

   (v) June 26, 2012 (AGA)
   http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58270 &SearchText=

1 The concerns focus on non-standardized commercial contracts entered into bilaterally (not on a regulated, intermediated exchange or trading facility), governed by state contract law and/or regulatory tariffs. The contracts are not cleared and are not “executed” on a CFTC-regulated trading facility.


(vi) June 26, 2012 (PMAA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58273 &SearchText=

(vii) June 26, 2012 (NEMA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58265 &SearchText=


(i) August 23, 2013 (Conoco Phillips)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58427 &SearchText=

(ii) October 9, 2012 (INGAA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58908 &SearchText=

(iii) October 11, 2012 (AGA, API, APAA and NGSA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58870 &SearchText=

(iv) October 11, 2012 (American Petroleum Institute)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58868 &SearchText=

(v) October 12, 2012 (NRECA, APPA, LPPC, TAPS)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59235 &SearchText= (contains request for reconsideration of statutory construction error – see Section X)

(vi) October 12, 2012 (AGA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58873 &SearchText=

(vii) October 12, 2012 (Atmos Energy)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58895 &SearchText=

(viii) October 12, 2012 (Avista Energy)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58882 &SearchText=
(ix) October 12, 2012 (BG Americas)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58872
&SearchText=

(x) October 12, 2012 (COPE)
(http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58886
&SearchText=

(xi) October 12, 2012 (Entergy Corporation)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58910
&SearchText=

(xii) October 12, 2012 (Gas Processors Association)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58876
&SearchText=

(xiii) October 12, 2012 (Encana Marketing)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58875
&SearchText=

(xiv) October 12, 2012 (IECA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58894
&SearchText=

(xv) October 12, 2012 (INGAA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58898
&SearchText=

(xvi) October 12, 2012 (NGSA)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58880
&SearchText=

(xvii) October 12, 2012 (Portland General Electric)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58884
&SearchText=

(xviii) October 12, 2012 (Working Group)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58888
&SearchText=

(xix) October 12, 2012 (Texas Pipeline Association)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58887
&SearchText=

(xx) October 12, 2012 (ONEOK)
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58871
&SearchText=
2. Requests for Clarification, No-Action or Other Relief Referencing Continuing Concerns about CFTC’s Interpretations in the Product Definitions Release and the Commodity Options Release.\(^4\) Where not available on CFTC website, copies are attached.

(a) Pre-October 12, 2012, the date on which the CFTC’s “swap” regulations began to take effect

http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58821

(ii) September 24, 2012 (EEI, AGA, EPSA) - Request for Extension of Effective/Compliance Dates Affecting Non-SD/MSP Energy Market Participants or in Alternative, for No-Action Relief, (attached)

(iii) September 27, 2012 (NRECA, APPA, LPPC, TAPS) - Letter in Support of Request for Comprehensive Relief (attached)

(iv) October 12, 2012 (IECA) - No-action request for RTO transactions until further guidance on “swap” definition
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58932


\(^4\) These are only the requests of which the authors and editors of this List are aware. There are others, some of which are referred to in comment letters listed in Section 1. The CFTC does not have in place a process by which to make market participants aware of prior or parallel, similar or identical, requests pending before the Commission or one or more of its Divisions. Consequently, commercial end-users in the energy industry, and in other industries, must submit duplicate requests and incur and duplicate costs in a common search for regulatory certainty.
(b) Post-October 12, 2012, and in the Months Prior to the Swap Transaction Reporting Deadline (April 10, 2013)

(i) October 15, 2012 (NRECA, APPA, LPPC and TAPS) -- Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58900

(ii) February 15, 2013 (APPA, NRECA, EEI, EPSA) -- Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59170


(iv) March 1, 2013 (The Commercial Energy Working Group) - Request for No-Action Relief Extending the Compliance Date for Reporting “Swaps” under Parts 43, 45 and 46 (attached)

(v) March 1, 2013 (The Commercial Energy Working Group) -- Request for No-Action Relief Extending the Compliance Date for Reporting Trade Options (attached)

(vi) March 8, 2013 (EEI, EPSA, APPA, NRECA) -- Comments in Support of Request for No-Action Relief Extending the Compliance Dates for Reporting under Parts 43, 45 and 46 (attached)

(vii) March 8, 2013 (EEI, EPSA, APPA, NRECA) -- Comments in Support of Request for No-Action Relief Extending the Compliance Date for Trade Options (attached)

(viii) March 15, 2013 (IECA) -- Comments in Support of Request for No-Action Relief Extending the Compliance Date for Trade Options (attached)
March 15, 2013 (IECA) - Comments in Support of Request for No-Action Relief Extending the Compliance Dates for Reporting under Parts 43, 45 and 46 (attached)

March 25, 2013 AGA Letter to Laurie Gussow, Division of Market Oversight, Compliance Challenges for AGA Member Companies for Reporting Physical Transactions under Swaps and Historical Swaps rules

http://www.aga.org/membercenter/gotocommitteepages/FERCReg/cftcbusiness/CFTC%20Business/2013/130325%20Memo%20Re%20AGA%20Member%20Feedback%20to%20CFTC%20DMO%20on%20Reporting%20Challenges.pdf


Post-April 10, 2013, and in the Months Prior to the filing initial Forms TO (March 1, 2014)

AGA letter to Technology Advisory Committee discussing challenges of reporting commodity trade options/volumetric optionality under Part 45 rules for swaps reporting.


AGA Testimony – The Future of the CFTC: End User Perspectives

US House of Representatives, Committee on Agriculture

In the Trade Option Reporting No-Action Letter 13-08 (April 5, 2013), the CFTC acknowledged that it was still considering public comments on the Product Definition Release interpretations and the Commodity Options Release, as well as public comments submitted in the Agency Information Collection Activities dockets for Form TO on December 17, 2012 and February 20, 2013 (see footnotes 4 and 10). The CFTC staff posted Commodity Options FAQs to the agency’s website on or about September 30, 2013 and reissued the document, by press release, on February 28, 2014.
3. Meetings since July 21, 2010 with CFTC Staff to discuss “swaps,” forward contracts and commodity trade options in the context of the energy industry, particularly between commercial end-users

(a) See attached ex-parte meeting notices from CFTC website

(b) March 18, March 19, March 20 2013 – AGA, Commercial Energy Working Group, NGSA, EEI, IECA and NFP Electric Meetings with Division of Market Oversight, OGC Staff, Commissioners and Chairman’s Counsel to discuss reporting challenges for physical agreements with volumetric optionality (unable to locate notice(s) on the CFTC website)

(c) March 26, 2013 – Meeting with Chairman’s Counsel, Ryne Miller, to discuss AGA Request for Interpretative Guidance (unable to locate notice on the CFTC website)

(d) April 3, 2013 – Conference Call with Commissioner Chilton to discuss end-user implementation issues re: volumetric optionality (unable to locate notice on the CFTC website)

4. Legislation introduced to address the CFTC’s misconstruction of CEA 1a(47), as added to the Commodity Exchange Act by Section 721 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

(e) H.R. 4267, Commodity Delivery Relief Act, introduced March 14, 2014 and referred to the House Agriculture Committee http://beta.congress.gov/bill/113th-congress/house-bill/4267/text

---

6 Other groups or individual companies may have met with CFTC on other occasions on these issues. Ex parte meetings are listed in various locations on the CFTC website, and if multiple topics were discussed, the meetings are not always linked to all subject matter topics discussed.