January 24, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: RIN Number 3038–AC96
Notice of Proposed Rulemaking
Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

Dear Mr. Stawick:

BG Americas & Global LNG ("BGA") is a business unit of BG Group plc ("BG Group"), a global natural gas company based in the United Kingdom and a major producer and supplier of natural gas to the United States. BGA is responsible for all of BG Group's operations in North and South America, the Caribbean, BG Group's global marine operations and its global liquefied natural gas ("LNG") operations. BG Group's subsidiary, BG Energy Merchants, LLC, ("BGEM") is a major marketer of natural gas and electricity in the United States.

BGA is submitting comments in response to the Commodity Futures Trading Commission ("CFTC" or "Commission") request for comments in the Notice of Proposed Rulemaking ("NOPR") on Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants.[1]

1. BGA's Comments

The Commission's NOPR on Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants proposes certain duties for swap dealers and major swap participants with respect to risk management procedures, monitoring of trading to prevent violations of applicable position limits, diligent supervision, business continuity and disaster recovery, disclosure of information, and antitrust considerations. BGA's comments address proposed requirements for (1) creating independence between the trading and risk management functions, and (2) preventing violations of position limits.

[1] 75 Fed. Reg. 225 (November 23, 2010).

With respect to the first issue, the Commission proposes that the unit responsible for monitoring risk must be independent from the business trading unit.[2] BGA agrees that it is essential to have independence between the front office trading and the mid-office risk management functions, but requests that the Commission provide further clarification on the level of independence required. The NOPR does not define the term "independent." The proposed statutory language merely states, "The risk management unit shall report directly to senior management and shall be independent from the business trading unit."[3] The term senior management "means, with respect to a registrant, such registrant's chief executive officer and any officer with supervisory duties who reports directly to the chief executive officer."[4] Based on this language, BGA assumes the risk unit and trading unit must report through separate chains up to an officer with supervisory duties who reports to the CEO. If this is the correct reading of the statutory language, BGA requests that the Commission consider making this independence requirement more flexible. The requirement that the shared senior officer <u>report directly to the CEO</u> is too rigid and does not reflect the reality of most trading companies. Many energy companies have multiple layers of senior management and have independent risk and trading units who do not necessarily report to a supervisory officer who reports directly to the CEO. This does not mean that there is not sufficient independence in their management structures to prevent the hiding of trading risks. The Commission should consider allowing the risk and trading units to report to a shared senior officer, as long as the senior officer does not participate in directing, organizing or executing trades. This definition would be consistent with the Federal Energy Regulatory Commission's requirement for achieving independence between franchised public utilities and their market-regulated power sales affiliates,[5] and would achieve the appropriate level of independence without requiring companies to overhaul their existing management structures.

In addition, the NOPR states that "to ensure that trading losses cannot be hidden, personnel responsible for recording transactions in the books of the swap dealer or major swap participant cannot be the same as those responsible for executing transactions."[6] BGA seeks clarification that this requirement is not intended to restrict traders from initially entering their trades into the deal capture system. The typical practice for a trading business is that the trader enters the trade into the deal monitoring system, and then the risk control group performs a daily review of all new and amended trading activity. The mid-office risk control review is followed by a second review of the trade activity performed by the back-office confirmations group, which generates confirmations and performs portfolio reconciliations to

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2 NOPR at 71399.
3 NOPR at 71404.
4 *Id.*
5 18 CFR § 35.39(c)(2)(ii) (2010).
6 NOPR at 71399-400.

match key trade attributes with counterparties. BGA seeks clarification that the reference to "recording transactions in the books" is not intended to restrict the initial recording of the trade into the deal capture system by the trader, but refers to the daily review and confirmations and portfolio reconciliations processes performed by the mid and back offices. Otherwise, restricting a trader from initially inputting his/her own deals into the deal capture system will introduce unnecessary compliance costs for swap dealers and major swap participants, who would need to hire duplicate employees for deal entry every time a trade is executed.

With respect to the second issue, the Commission proposes to require swap dealers and major swap participants to "establish policies and procedures to monitor, detect and prevent violations of applicable position limits." BGA is concerned about the requirement that a swap dealer or major swap participant must "prevent violations" of position limits. Despite having a robust compliance program, it is impossible for a swap dealer or major swap participant to "prevent violations" because a company cannot before-the-fact prevent a trader from entering a deal that causes a position limit violation. BGA seeks clarification that as long as a swap dealer or major swap participant provides training on the position limits and establishes and enforces policies for monitoring, detecting and curing violations, they will have met the obligation to "prevent violations." This interpretation seems consistent with the Commission's statement in the NOPR that "[i]n order to prevent violations, each swap dealer and major swap participant would be required to provide training to all relevant employees on applicable position limits, actively monitor trading, implement an early warning system, test the effectiveness of its policies and procedures, and report quarterly to its senior management and governing body on compliance with applicable position limits."[7]

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[7] NOPR at 71400.

2. Conclusion

BGA supports the goals of the Dodd-Frank Act in promoting robust compliance processes and independence between the trading and risk management functions, but seeks clarification on the Commission's NOPR that (1) the risk and trading units can report to a shared senior officer who does not necessarily report directly to the CEO, as long as the shared senior officer does not participate in directing, organizing or executing trades, (2) traders will not be restricted from entering their transactions on the deal capture system, and (3) as long as a swap dealer or major swap participant provides training on the position limits and establishes and enforces policies for monitoring, detecting and curing violations, they will have met the obligation to "prevent violations."

Respectfully submitted,

__________/s/___________

Matt Schatzman
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