Edison Electric Institute

Power by Association

September 20, 2012

Via Electronic Submission

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comments on Proposed Rule Regarding Clearing Exemption for Swaps Between Certain Affiliated Entities (RIN 3038-AD47)

Dear Mr. Stawick:

The Edison Electric Institute ("**EEI**") respectfully submits these comments in response to the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") proposed exemption from the clearing requirement for swaps between affiliated entities (the "**Proposed Rule**" or "**Proposed Exemption**").[1] In the absence of the Proposed Exemption, it is unclear whether risk transfers (that arguably fall within the definition of "swap") between affiliates would be subject to the Dodd-Frank Act's mandatory clearing and trade execution requirements, unless the swap otherwise qualified for the end-user clearing exception.[2]

Section 4(c)(1) of the Commodity Exchange Act, as amended ("**CEA**") provides the Commission with the authority to exempt any class of transactions from any CEA requirements if the Commission finds that the exemption "promote[s] responsible economic or financial innovation and fair competition."[3] EEI supports the Commission's decision to exercise its exemptive authority under CEA Section 4(c)(1) to issue the Proposed Rule. Inter-affiliate risk transfers offer substantial benefits to members of the same corporate group, including facilitating the management of risk on a group, rather than entity-specific, level. Such inter-affiliate risk transfers pose no marginal or systemic risk to the financial system. Indeed, internal risk transfers enable a corporate group to manage less exposure in the market because they enable affiliates to net offsetting exposures before managing their net exposure in third-party transactions. Therefore, it is appropriate for the Commission to exempt them from mandatory clearing and trade execution requirements. However, as discussed below, EEI respectfully requests that the Commission simplify and minimize the conditions that affiliates must meet in order to elect the exemption.

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1 *Clearing Exemption for Swaps Between Certain Affiliated Entities*, 77 Fed. Reg. 50425 (August 21, 2012) (EEI uses the terms "inter-affiliate risk transfers" and "inter-affiliate swaps" synonymously in these comments.).

2 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010) (the "**Dodd-Frank Act**"). *See* CEA Section 2(h)(1)(A); Section 2(h)(8).

3 CEA Section 4(c)(1).

I. Summary of EEI's Comments on the Proposed

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. EEI also has more than 65 international electric companies as Affiliate members, and more than 170 industry suppliers and related organizations as Associate members. EEI's members are physical commodity market participants that rely on swaps and futures contracts primarily to hedge and mitigate their commercial risk. They are not financial entities.

As users of commodity swaps and futures contracts to hedge commercial risk, EEI's members have a significant interest in the Proposed Exemption. EEI members will rely upon the inter-affiliate exemption from clearing for those affiliate swaps that either do not qualify for, or for which they do not wish to claim, the end-user clearing exception. In the absence of a clearing exemption for affiliate trades, the costs of clearing likely would deter most market participants from entering into inter-affiliate transactions and could create more risk for clearinghouses.[4] For example, without the Proposed Exemption, additional affiliates in a corporate family would need to become clearing members or open accounts with a Futures Commission Merchant and all affiliates would need to develop and implement redundant risk management procedures and trade processing services, such as e-confirm.

In order to ensure that inter-affiliate risk transfers remain a method of effective risk management across corporate groups, EEI supports the Commission's Proposed Exemption, but with several proposed recommendations, discussed below, that are designed to increase its efficacy and decrease the substantial burdens imposed by the conditions of the Proposed Exemption.

EEI respectfully requests that the Commission revise the Proposed Exemption to:

- Replace the reporting requirement with a one-time election between eligible entities that choose to elect the proposed exemption;
- Confirm that the reporting obligations under Part 45 do not apply to trades for which the clearing exemption is elected;
- Eliminate the trade relationship documentation requirement in recognition that traditional corporate and accounting records are sufficient to record and document inter-affiliate transactions; and

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[4] The risk for clearinghouses could be increased because, in the event the corporate family faced bankruptcy, the clearinghouse would face multiple related entities, all of whom would be in default rather than only the net position of the group. EEI notes that corporate families typically face bankruptcy together and that it is unusual for only one member of a corporate group to go bankrupt.

- Eliminate the risk management program requirement because it is redundant of pre-existing industry-standard risk management practices of corporate groups.

II. EEI Supports the Commission's Decision to Exempt Inter-Affiliate Transactions from the Clearing Requirement

As the Commission itself recognizes, "swaps entered into between corporate affiliates, if properly risk-managed, may be beneficial to the operation of the corporate group as a whole….[I]nter-affiliate swaps may improve a corporate group's risk management internally and allow the corporate group to use the most efficient means to effectuate swaps with third parties."[5] EEI agrees with the Commission that inter-affiliate swaps pose less risk than swaps with unaffiliated parties because "affiliated counterparties internalize each other's counterparty risk because they are members of the same corporate group."[6]

As proposed, the exemption is only available for majority-owned affiliates whose financial statements are reported on a consolidated basis ("**eligible affiliates**"). The majority-ownership standard proposed by the Commission is sufficient to mitigate the minimal, if any, risk to third parties posed by uncleared, inter-affiliate swaps. Majority-owned affiliates have strong incentives to internalize one another's risks because, as the Commission notes, one affiliate's failure negatively impacts all other majority-owned affiliates. Affiliates enter into inter-affiliate risk transfers because they facilitate the effective risk management of the corporate group's aggregate risk. By consolidating risk in one affiliate, the corporate group *reduces* its overall risk exposure by netting affiliates' positions against one another and also reduces the number of hedging transactions it must enter into and manage with unaffiliated entities.

Although the Commission is concerned about the risks posed by conduit or treasury affiliates' transactions with external market participants, this risk is no greater than the risk posed to external market participants if each affiliated entity entered into individual, risk-mitigating transactions with third parties. In fact, because the affiliated entities are now managing their risk on a centralized basis, EEI believes that the risk to the market of transacting with treasury or conduit affiliates is actually less than the risk of transacting with smaller, individual affiliates. In the alternative, absent a clearing exemption, affiliates may choose not to enter into these risk-mitigating transfers and, thus, risk would be allocated inefficiently across affiliates to the detriment of both the corporate group and the market.

For all of the above reasons, EEI supports the Commission's decision to permit majority-owners to elect the inter-affiliate clearing exemption and believes that majority-ownership is the

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[5] 77 Fed. Reg. at 50427.

[6] *Id*.

appropriate standard for claiming the exemption.[7] The additional conditions that the Commission places on eligible affiliates in order to claim the Proposed Exemption are unnecessary and actually may discourage affiliates from using inter-affiliate transactions to effectively manage their risk. In addition, to the extent minority owners have an opinion about electing the exemption, they may negotiate with majority-owners as they deem commercially appropriate for the right to participate in inter-affiliate clearing decisions.

The Commission issued the Proposed Exemption because it recognized the substantial benefits of inter-affiliate transactions and their relatively riskless nature. As discussed further below, EEI believes that removing these unnecessary and burdensome conditions would be entirely consistent with, and would in fact facilitate, the purposes behind the Proposed Exemption (*i.e.*, encouraging inter-affiliate transactions that result in more effective risk management on a consolidated basis). The cumulative effect of the proposed conditions, however, imposes a significant burden on affiliates and will act to deter inter-affiliate transactions.

III. The Commission Should Replace the Proposed Exemption's Reporting Requirement with an Annual Election Between Eligible Entities

In order to elect the proposed exemption, the reporting party, as determined under CFTC Rule 45.8, would need to provide (or cause to be provided) to an SDR (or to the Commission if no registered SDR is available to receive the information) the following information:

- Confirmation that both counterparties to the swap are electing the clearing exemption and that each counterparty meets the eligibility requirements necessary to claim the exemption;
- How each counterparty generally meets its financial obligations associated with non-cleared swaps by identifying one or more of the following items: (i) a written credit support agreement; (ii) pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise); (iii) a written guarantee from another party; (iv) the counterparty's available financial recourses; or (v) means other than those described above; and
- In the case of an SEC Filer, an acknowledgement that the appropriate committee of its board of directors (or equivalent governing body) has reviewed and approved the decision to enter into swaps subject to the inter-affiliate clearing exemption.[8] In addition, the SEC Filer would need to include

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[7] For example, in the context of position limits, a mere 10 percent ownership interest in another entity establishes a presumption of control that triggers aggregation requirements. The majority-ownership standard is sufficient to ensure that affiliates claiming the exemption have aligned economic interests.

[8] "SEC Filer" means an issuer of securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") or required to file reports under Exchange Act Section 15(g). 77 Fed. Reg. at 50432.

its SEC Central Index Key number in the report. If both counterparties are SEC Filers, then both counterparties are required to provide this additional information.

The Proposed Exemption would permit eligible entities to make annual filings to satisfy the latter two requirements regarding financial obligations and SEC Filer information.[9] As proposed, both eligible entity counterparties would need to file annual reports, which the Commission anticipates would be "identical."[10] However, under the Proposed Exemption, the reporting party would still need to report on a transaction-by-transaction basis to the SDR that the inter-affiliate clearing exemption was being elected.

Due to the risk-reducing nature of inter-affiliate transactions, EEI recommends that the Commission eliminate the Proposed Exemption's transaction-by transaction reporting requirement, as well as the requirement to demonstrate the eligible affiliates' ability to meet their respective financial obligations. Instead, EEI proposes that one of the eligible entity counterparties be permitted to file an annual notice, on behalf of both counterparties, to exempt all of their swaps from clearing, unless they subsequently decide otherwise. In addition, the annual report would also address a public company's requirement to file its SEC Central Index Key number and required board resolution with an SDR, which would be updated as necessary for material changes.

A. Notice of Annual Election is Sufficient Given the Minimal, if Any, Risk Posed by Inter-Affiliate Swaps

As discussed above, the requirement to specify how the eligible entities intend to meet their financial obligations with respect to uncleared swaps is unnecessary given the intrinsic nature of their inter-affiliate relationship. As majority-owned affiliates, each company effectively guarantees the swaps activities of the other; each would suffer losses should the other affiliate experience losses. Moreover, most eligible entities enter into inter-affiliate transfers after considering the risk, business, and credit factors of an inter-affiliate trade. In the vast majority of cases, the affiliates determine that entering into an uncleared inter-affiliate transfer on net *reduces* their collective risk.

Further, in addition to the increased costs of gathering, confirming and reporting this data, even the non-reporting affiliate will face unnecessary costs under the Proposed Exemption's reporting requirement because it would be forced to communicate certain information to the reporting party for *every* uncleared inter-affiliate swap. For example, the non-reporting party will need to communicate the fact that it agrees not to clear the swap, and, if the parties do not participate in the annual filing process, any additional information relating to how it will meet its financial obligations related to uncleared swaps.

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[9] Proposed CFTC Rule 39.6(g)(5).

[10] 77 Fed. Reg. at 50432.

B. The Commission Should Confirm that Part 45 Reporting Does Not Apply to Inter-Affiliate Swaps for which the Exemption has been Elected

In addition to eliminating the reporting requirement of the inter-affiliate clearing exemption, EEI also requests that the Commission confirm that Part 45 reporting requirements would not apply to inter-affiliate transactions. Although the Preamble states that market participants, in addition to their reporting requirements under the Proposed Exemption, are subject to "general reporting requirements applicable under other applicable rules to a particular type of entity," the cost-benefit analysis in the Proposed Exemption suggests that Part 45 would not apply in full.[11] As part of its cost-benefit analysis, the Commission states that "the costs of satisfying the reporting requirements under the proposed exemption would be less than the costs associated with satisfying all of the requirements under Parts 23, 45 and 46."[12] EEI recognizes that if an eligible affiliate elects the Proposed Exemption, then it would not have to report the data field under Part 45 related to the election of the end-user exception. However, in lieu of reporting that data field under Part 45, the "reporting party" would need to report the election of the Proposed Exemption to an SDR under proposed CFTC Rule 39.6. Consequently, it is unclear to EEI members how the Proposed Exemption reduces affiliates' reporting obligations, unless inter-affiliate trades are exempt, in part or in whole, from the reporting requirements of Parts 23, 45 and 46.

To the extent the Commission intended the Part 45 reporting obligations to apply to inter-affiliate transactions, EEI believes that the reporting requirement is not necessary given that the market-facing entity's swap transactions will be subject to Part 45 reporting requirements.[13] Requiring eligible entities to report a *separate* swap data report to an SDR for every inter-affiliate risk transfer, in addition to the central hedging affiliate's reporting requirements for its market-facing swaps, imposes substantial cost with little, if any, benefit to the Commission. The swap data reports of the central hedging affiliate will enable the Commission to see the corporate group's net positions and additional information pertaining to the corporate group's internal transfers of risk provides little additional regulatory benefit. Moreover, if the Commission has specific concerns regarding a corporate group's inter-affiliate transfers, it can request to see the affiliates' inter-affiliate transaction records, which will be kept in accordance with CFTC Rule 45.2.

For these reasons, EEI believes that it is sufficient that an eligible entity file an annual notice of both eligible entities' election, along with any required information from SEC Filers, in order to claim the Proposed Exemption. Requiring eligible entities to report on a swap-by-swap

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[11] 77 Fed. Reg. at 50432.

[12] 77 Fed. Reg. at 50433.

[13] Specifically, EEI requests that the Commission confirm that inter-affiliate risk transfers are not subject to swap data reporting of creation data under CFTC Rule 45.3 and continuation data under CFTC Rule 45.4. Most, if not all, inter-affiliate risk transfers are already excluded from the real-time reporting requirement under Part 43 because they are not "arm's-length transactions" and therefore not "publicly reportable swap transactions" subject to Part 43.

basis their intention to claim the election imposes an incremental cost on every inter-affiliate risk transfer without any corresponding benefit to the markets or the Commission. In addition, inter-affiliate swaps should not be subject to the Part 45 reporting requirements given that the market-facing entity's swap transactions will already be subject to all Part 43 and Part 45 reporting requirements.

IV. The Commission Should Eliminate the Trade Relationship Documentation Requirement

In order to claim the Proposed Exemption, eligible affiliates would need to have swap trading relationship documentation in place that includes all terms governing the trading relationship between the two affiliates, including but not limited to: "terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures" (the "**Documentation Requirement**").[14] The Commission suggests that without this requirement affiliates would be unable to (1) effectively track and manage risk arising from inter-affiliate swaps, or (2) offer sufficient proof-of-claim in the event of bankruptcy.[15]

EEI believes that the Documentation Requirement is duplicative of corporate accounting records that affiliates already maintain as a matter of course and prudent business practice. The requirement to create and enter into master agreements with *every* affiliate to document inter-affiliate transactions imposes an additional, costly layer of ministerial process and documentation that is unnecessary to achieve the Commission's stated objectives. Moreover, if the Commission requires affiliates to execute confirmations with one another in order to satisfy the Documentation Requirement, this would impose substantial costs on market participants that could deter some from engaging in inter-affiliate transactions altogether. EEI believes that requiring affiliates to execute master agreements and confirmations with one another imposes an artificial formality upon relationships that the Commission itself acknowledges are not typically "arms-length" transactions.[16] Consequently, EEI respectfully requests that the Commission eliminate the Documentation Requirement, instead allowing firms to document their inter-affiliate risk transfers pursuant to standard commercial accounting and business records practices.

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[14] Proposed CFTC Rule 39.6(g)(2)(ii). This swap trading relationship documentation requirement is identical to the swap trading relationship documentation requirement applicable to SD/MSPs under CFTC Rule 23.504(b). Therefore, to the extent that one of the eligible affiliates is an SD/MSP, this requirement is satisfied by compliance with CFTC Rule 23.504(b). *Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, not yet published in the Federal Register, available at http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules/ssLINK/federalregister082712.

[15] 77 Fed. Reg. at 50429. The Commission asks for comment as to whether risk tracking and management and proof-of-claim concerns could be addressed by other means of documentation.

[16] 77 Fed. Reg. at 50427.

A. The Documentation Requirement Imposes Costs upon Market Participants that are not Justified by any Corresponding Benefit

As entities that report their financial statements on a consolidated basis, eligible affiliates already maintain internal records of inter-affiliate trades pursuant to their current accounting practices. For each inter-affiliate swap, a firm's accounting records would typically include the date, the name of the affiliates entering into the swap, the underlying asset and value of the inter-affiliate swap transaction, and in the case of back-to-back transactions, the value of the treasury or conduit affiliate's swap with third-party market participants to manage the risk of the inter-affiliate swap. Typically, these accounting records will capture all of the basic terms of the transaction necessary for its settlement and would enable the affiliates to determine sufficient proof-of-claim in the event of a bankruptcy of one of the eligible entities. Standard industry practice is to retain these accounting records for at least the length of the swap transactions and in many cases, they are kept for longer time periods. In addition, if market participants satisfy their recordkeeping requirements for inter-affiliate trades under CFTC Rule 45.2 with these accounting records, they will be required to be kept for the term of the swap plus five years. Thus, EEI believes that the *status quo* industry practice of documenting inter-affiliate trades in this manner is sufficient to accomplish both of the objectives meant to be achieved by the Documentation Requirement.

Moreover, in many cases, the central hedging affiliate will enter into an inter-affiliate transaction only to immediately offset that swap in a back-to-back transaction with a third-party market participant. In such cases, the terms of the central hedging affiliate's transaction with its affiliate and the terms of the external swap will mirror one another. The accounting records of eligible affiliates would identify any market-facing swap that mirrors the inter-affiliate transaction, enabling the Commission, by reference to the market-facing swap, to review all Part 45 recordkeeping and reporting data of the central hedging affiliate.

Given that the benefits of the proposed Documentation Requirement are already satisfied by current accounting practices, the costs of imposing the new Documentation Requirement are unjustified. The Commission acknowledges that non-SD/MSPs would "likely incur costs" to develop a standardized document to comply with the proposed Documentation Requirement.[17] The Commission estimates that creating this master agreement would result in a one-time cost of $15,000 but acknowledges that additional costs may be incurred over time in order to address a particular swap's documentation needs.[18] As the Commission notes, the total cost of the exemption depends upon the number of inter-affiliates in one corporate group who would elect the exemption.[19]

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[17] 77 Fed. Reg. at 50434.

[18] 77 Fed. Reg. at 50434.

[19] 77 Fed. Reg. at 50439. The Commission also admits that it is unable to estimate the frequency of and costs associated with modifying this swap master agreement. *See* 77 Fed. Reg. at 50434.

EEI believes that the Commission has underestimated the cost of drafting and negotiating a master agreement with eligible affiliates. The Commission estimates generally that each "parent company" seeking to claim the exemption would have 22 eligible affiliates.[20] For many U.S. energy companies this number is far too low. Moreover, although the eligible affiliates may all adopt a version of a standard master agreement negotiated for the corporate group as a whole, there will still be substantial legal costs associated with individually negotiating and amending this standard agreement between individual affiliates. Given that corporate accounting records already provide sufficient information to track inter-affiliate transactions and establish proof-of-claim in bankruptcy situations, EEI does not believe that the cost of the proposed Documentation Agreement, including requiring possible master agreements and confirmations, is justified.

B. In the Alternative, the Commission Should Clarify that the Documentation Requirement does not Require Affiliates to Execute Confirmations for Each Inter-Affiliate Swap

Should the Commission decide to retain the Documentation Requirement in some form, EEI respectfully requests that the Commission clarify that the requirement is satisfied by a master agreement documenting the terms of the trading relationship between the eligible affiliates. Neither the rule itself, nor the Commission's discussion of the Documentation Relationship requirement in the Preamble, explicitly requires eligible affiliates to execute confirmations for each inter-affiliate swap.[21] However, in the cost-benefit analysis of the Proposed Exemption, the Commission states that "requiring documentation of inter-affiliate swaps in a swap confirmation would help ensure that affiliates have proof of claim in the event of bankruptcy."[22] Given that this is the only reference to a "swap confirmation" requirement, EEI believes that it is not the intention of the Commission to establish a requirement that all inter-affiliate swaps be documented with a swap confirmation. As the Commission notes, if the Commission requires all inter-affiliates transfers to be entered into under a master agreement, all of the terms of a trading relationship, including proof-of-claim in the event of bankruptcy, would be included in that agreement, rendering the need for a confirmation obsolete.

If eligible affiliates were required to develop their own internal software systems for confirming inter-affiliate swaps, or if they registered each affiliate with confirmation services, such as e-confirm, the costs would be substantial. Further, requiring a formal confirmation between affiliates is a nonsensical requirement because eligible affiliates typically view themselves as the same entity. Eligible affiliates' central accounting books net the two affiliates' trades against one another and requiring a formal confirmation is the equivalent, in many instances, of transferring a record from the right hand to the left while the left hand transfers the exact same record to the right. Neither affiliate receives any benefit from the execution of a confirmation. In addition, EEI notes that confirmations are not required under Part 45 swaps

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[20] 77 Fed. Reg. at 50439.

[21] 77 Fed. Reg. at 50429 ("The Commission believes this requirement would not be onerous because affiliates should be able to use a master agreement to document most of the terms of their inter-affiliate swaps.")

[22] 77 Fed. Reg. at 50436.

recordkeeping obligations and suggests to the Commission that it is inconsistent with the purpose of the Proposed Exemption ─ namely, to facilitate inter-affiliate transfers that mitigate risk within a corporate group ─ to impose more onerous recordkeeping obligations on swaps for which the exemption is claimed than on swaps with third-party market participants. For all of these reasons, EEI respectfully asks the Commission to clarify that the Documentation Requirement in proposed CFTC Rule 39.6(g)(2)(ii) would not require the execution of a confirmation between eligible entities.

V. The Risk Management Program Requirement is Duplicative of Current Industry Risk Management Practices

Inter-affiliate swaps for which the clearing exemption is claimed must be subject to a centralized risk management program "that is reasonably designed to monitor and manage the risks associated with the swap."[23] In the Preamble, the Commission notes that it anticipates that this risk management program would be run by the parent company or the treasury/conduit affiliate, although affiliates have the discretion to implement the program as they see best.[24]

As the Commission notes in the Preamble, all eligible entities have a strong incentive to effectively manage risks among the corporate group in order to maximize their aggregate profits. Indeed, the fundamental purpose behind the vast majority of inter-affiliate swap transactions is to manage risk among affiliates. Consequently, EEI does not believe there is a need to impose a separate, discrete regulatory requirement to document with an SDR or the Commission the existence of a centralized risk management program. Taken in the aggregate with the Documentation and Reporting Requirements, the requirement to document the existence of a Risk Management Program in connection with each uncleared inter-affiliate swap creates a significant bureaucratic burden for eligible entities that is unnecessary.

As the Commission acknowledges, the vast majority of market participants already have risk management programs in place.[25] For example, the boards of directors of public companies are required to provide oversight of a company's corporate information and reporting systems to ensure they have knowledge "respecting material acts, events or conditions within the corporation, including compliance with applicable statutes and regulations."[26] Moreover, boards of directors are required to maximize profits, and thereby manage risk appropriately, on a consolidated basis because of their fiduciary duties to their shareholders. In addition, listed

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[23] Proposed CFTC Rule 39.6(g)(2)(iii).

[24] 77 Fed. Reg. at 50429; 77 Fed. Reg. at 50426 n.14 (defining "treasury" or "conduit" affiliates). If one of the eligible affiliates is an SD/MSP, then that party must comply with this requirement by complying with CFTC Rule 23.600 (requiring SD/MSPs to implement risk management programs). *Id.* at 50429 n.30.

[25] 77 Fed. Reg. at 50434. The Commission acknowledges that many corporate groups currently have centralized-risk-management procedures in place, although some affiliates may have to create a risk management system. The Commission estimates that the main costs would relate to IT and labor, with an average risk management program costing $150,000 to start-up, plus ongoing costs for future adjustments.

[26] *In re Caremark Int'l Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996).

companies on the New York Stock Exchange must have audit committees that are required to perform certain duties with respect to risk assessment and risk management.[27] It is standard industry practice for both public and private companies to have a risk management program in place and EEI does not believe it is necessary for the Commission to impose an additional risk management documentation requirement on eligible entities in order to claim the Proposed Exemption.

However, if the Commission decides to retain the risk management program requirement, EEI believes it is sufficient to require market participants to implement "centralized risk management programs that [are] reasonably designed to monitor and manage the risks associated with the swap," rather than imposing a required minimum standard. Market participants should have the flexibility to design risk management programs that address the unique risks posed by the size, structure, and complexity of their business. Therefore, EEI believes that is appropriate for the Commission to provide market participants with the discretion to implement effective risk management programs that are "reasonably designed to monitor and manage" the specific risks of their businesses, without imposing minimum risk management program standards that may be inapplicable to their particular business model.

VI. Conclusion

EEI appreciates the Commission's consideration of its comments on the Proposed Exemption. For the foregoing reasons, EEI respectfully requests that the Commission minimize the burdens on eligible affiliates seeking to claim the Proposed Exemption, so that inter-affiliate risk transfers that minimize a corporate group's overall risk remain commercially practicable.

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Please contact us at the number listed below if you have any questions regarding these comments.

Respectfully submitted,

Richard F. McMahon, Jr.
Vice President
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 508-5571
Email: rmcmahon@eei.org

[27] NYSE Listed Company Manual 303A.07(b).