

THE COMMERCIAL ENERGY WORKING GROUP



April 18, 2016

RE: Support for Congressman Valadao's Amendment to the Agriculture Appropriations Bill (FY 2017) Regarding the Swap Dealer *de Minimis* Level

Dear Member of Congress:

The Commercial Energy Working Group ("Working Group") and the Commodity Markets Council ("CMC") collectively represent American manufacturers, producers, farmers, ranchers, energy companies, and their employees and families. We ask you to support Congressman David Valadao's amendment to the Agriculture Appropriations Bill (FY 2017) regarding the swap dealer *de minimis* level when it is considered by the House Appropriations Committee during the full Committee markup on Tuesday, April 19, 2016.

CMC is a trade association that brings together exchanges and their industry counterparts. Its members include commercial end-users that utilize the futures and swaps markets for agriculture, energy, metal, and soft commodities. Its industry member firms also include regular users and members of swap execution facilities (each, a "SEF") as well as designated contract markets (each, a "DCM"), such as the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Minneapolis Grain Exchange, NASDAQ Futures, and the New York Mercantile Exchange. Along with these market participants, CMC members also include regulated derivatives exchanges. The businesses of all CMC members depend upon the efficient and competitive functioning of the risk management products traded on DCMs, SEFs, and over-the-counter markets.

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial and residential consumers. Members of the Working Group are producers, processors, merchandisers and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally.

Given our collective representation and experience, we are well-positioned to provide a consensus view of commercial end-users and energy derivatives market participants generally. We support Congressman Valadao's amendment for two main reasons.

First, Congressman Valadao's amendment protects end-users' ability to hedge risk by ensuring that entities other than banks or other large financial companies can offer swaps. Congressman Valadao's amendment would accomplish this by preventing a drop in the *de minimis* level below its current level. Specifically, preventing a drop in the *de minimis* level is critical to **avoid**: (i) limiting counterparty choices for end-users; and (ii) further consolidating risk and swap activity in a small number of large Wall Street banks.

Second, Congressman Valadao's amendment serves to uphold Congress's intent, as evidenced by last year's Consolidated Appropriations Act of 2016. Specifically, in an explanatory statement

accompanying the Consolidated Appropriations Act of 2016, which the President signed into law on December 18, 2015,¹ Congress “directs the [Commodity Futures Trading Commission (“CFTC”)] to comply with the directive regarding swap dealer *de minimis* in H.Rpt. 114-205.”² H.Rpt. 114-205 directs “the [CFTC] to promulgate a rulemaking either maintaining the [swap dealer *de minimis* level] at \$8,000,000,000, the amount currently set forth in regulation, or above this amount....”³

We applaud CFTC Chairman Massad’s efforts to address many of the issues important to end-users, including the *de minimis* level. While the CFTC has been sensitive to end-users’ concerns, adequate certainty regarding the *de minimis* level can only be provided by Congress.

For the reasons discussed in this letter, we respectfully urge your support for Congressman Valadao’s amendment to the Agriculture Appropriations Bill (FY 2017) regarding the *de minimis* level.

Sincerely,

Commodity Markets Council
and
Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group

¹ See generally Consolidated Appropriations Act of 2016, H.R.2029, Pub. L. No. 114-113 (Dec. 18, 2015), available at <https://www.congress.gov/bill/114th-congress/house-bill/2029/text?q=%7B%22search%22%3A%5B%22hr2029%22%5D%7D&resultIndex=1>.

² Accompanying Statement to the Consolidated Appropriations Act of 2016, Explanatory Statement Division A at 32 (Dec. 2015), available at <http://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD002.pdf>.

³ H.Rpt. 114-205 at 76 (July 14, 2015), available at <https://www.congress.gov/114/crpt/hrpt205/CRPT-114hrpt205.pdf>.