CFTC's No-Action Relief Fuels Energy Market Competition

By **Stuart Armstrong and Barrett Morris** (March 20, 2026)

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On Dec. 19, the Market Participants Division of the U.S. Commodity Futures Trading Commission issued CFTC Staff Letter 25-51, providing no-action relief from the obligation to include certain energy commodity end-user swaps in de minimis calculations in determining whether a market participant must register as a swap dealer.[1]

Letter 25-51 provides market participants with an opportunity to take advantage of no-action relief through a pilot program designed to expand access to energy markets, increase the ability of market participants to hedge risks, and lower hedging and energy costs for U.S. businesses and consumers.[2]

The Dodd-Frank Act[3] amended the Commodity Exchange Act and directed the CFTC to require registration of swap dealers and establish a de minimis exception to the swap dealer registration requirement.[4]

CFTC Regulation 1.3 provides a swap dealer de minimis exception whereby a market participant shall not be deemed to be a swap dealer under the CEA and commission regulations as a result of swap-dealing activity, so long as the aggregate gross notional amount of swaps entered into over a 12-month period does not exceed an $8 billion threshold.[5]

While many participants in the swaps markets have the capability to offer energy price-hedging swaps, not all of those entities are registered as swap dealers with the CFTC.[6] Registering as a swap dealer is a costly proposition, both in terms of initial outlay and ongoing costs related to compliance and management, and market participants should undertake a cost-benefit analysis of their current and anticipated swaps business.[7]

Increasing demand and volatility in energy commodity markets, driven in part by developments such as power-intensive artificial intelligence applications, have reinforced the desire and need of commercial end users to hedge commodity price risk in the management of their business.[8] The energy swaps pilot program seeks to address these market dynamics and commercial realities in the context of the CEA's regulatory framework for swaps.

According to Letter 25-51, participation in the pilot program is designed to allow those participants to provide commodity price-hedging swaps to commercial end users without consideration of swap dealer registration and its associated costs. The larger intent is to open energy swaps markets to a greater variety of participants and encourage additional market activity to increase price competition.[9]

The nature of the relief is designed to benchmark those goals against usage of the relief by participants, and ultimately inform whether the CFTC should undertake a rulemaking process to codify it.

The Energy Swaps Pilot Program No-Action Relief

Responding to a request from the Edison Electric Institute, the CFTC provided no-action relief from the de minimis threshold requirements if a covered person[10] "fails to include Energy Commodity End-User Swaps," executed in a swap-dealing capacity, "in determining whether it is deemed to be [a swap dealer] pursuant to the criteria set forth in the commission's definition 'swap dealer,'" subject to the following conditions:

- "The covered person maintains records of its Energy Commodity End-User Swaps in accordance with Commission regulation 45.2,[11] including records sufficient to demonstrate compliance with each condition" of CFTC Letter 25-51;

- "Prior to relying on [CFTC Letter 25-51], the Covered Person files a notice of its intent to rely on [the relief] … specifying the Covered Person's full legal name and Legal Entity Identifier"; and

- "For a period of three (3) months starting with the calendar month following the month in which the Covered Person files its notice of intent to rely on [the relief], the Covered Person files a monthly report with regard to its Energy Commodity End-User Swaps … containing the information set forth in Annex A attached [to Letter 25-51] (as of the last business day of each calendar month) by the 10th day of the next calendar month."

Energy Commodity End-User Swaps

The letter defines "energy commodity end-user swaps" as swaps with any counterparty that is

(1) not a "financial entity,"[12] … and (2) a producer, processor, or commercial user of, or a merchant handling the energy commodity that is the subject of the energy commodity swap transaction, or the products or by-products thereof, and is entering into the energy commodity swap transaction solely for purposes related to its business as such.[13]

Practical Implications for Participating in the Energy Swaps Pilot Program

Firms planning to participate in the energy swaps pilot program will need to consider a variety of questions, including but not limited to the following.

Overall De Minimis Picture

How will relief from counting energy swaps factor into the overall de minimis counting for swap-dealing activity at the firm and expected client demand for energy commodity end-user swaps? Does the firm have robust processes to analyze and categorize dealing activities that may be excluded from de minimis threshold calculations?

Counterparty Verification

How will the firm identify and maintain records of swaps that qualify as energy commodity end-user swaps? How will the firm obtain and track representations from counterparties regarding qualifying status as a producer, processor or commercial user of, or merchant handling the energy commodity?[14]

Notice and Reporting Conditions

How will the firm comply with the reporting conditions? How will the firm collect data on the aggregate gross notional amount of eligible swaps, as well as the unique product identifiers for each subclass of energy swaps?

Balancing Act in Regulation of the Commodity Markets

The energy swaps pilot program offers a pause from a flurry of CFTC rulemakings since the passage of the Dodd-Frank Act, reflecting a shift toward supporting robust derivatives markets that balance regulatory safeguards with market accessibility, utility and the needs of commodity end users.

Importantly, according to the CFTC's accompanying press release, the relief is intended to "[u]nleash American energy dominance" by expanding access to energy markets and lowering the cost of trading and hedging energy-related commodities.[15]

Will swap dealers and traditional commodity dealers face increased competition? Not immediately, but that is a key stated goal of the energy swaps pilot program.

Letter 25-51 also marks a departure from the post-Dodd-Frank practice of divisions issuing staff no-action letters that are renewed periodically, typically annually.

At the outset, the relief in Letter 25-51 was provided "until the effective date of a Commission rulemaking or guidance addressing the application of the [swap dealer] de minimis threshold to Energy Commodity End-User Swaps."[16] This means, hopefully, that the division at least anticipated a possible codification of the relief if it works well and serves its underlying goals.

With the CFTC's recent focus on digital assets, event contracts and other innovations in the markets that it oversees and regulates, the energy swaps pilot program signals that the commission has not lost sight of its traditional remit.

It shows that the commission remains focused on ensuring that regulation preserves the integrity of commodity markets while also ensuring that they remain accessible, well functioning and not overburdensome to the commodity end users that rely on them for vital price discovery and hedging purposes in furtherance of the robust energy economy in the U.S.

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[1] See CFTC Staff Letter No. 21-51 (December 19, 2025).

[2] While Letter 25-51 was issued by MPD and CFTC staff no-action relief only represents the views of, and binds only, the issuing Division and not the Commission or other Commission staff, references herein may be made to the CFTC or Commission in relation to the Energy Swaps Pilot Program for ease of reference to the reader.

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

[4] See Section 721 of the Dodd-Frank Act and CEA Section 1(a)(49).

[5] A "swap dealer" is defined as any person who "(i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known ni the trade as a dealer or market maker in swaps." See CEA Section 1(a)(49)(A); 17 CFR Section 1.3. In 2018, the Commission adopted a final rule permanently fixing the AGNA threshold at $8 billion. See 83 FR 56666 (November 13, 2018).

[6] As of the date of this article, there are approximately 108 swap dealers registered with the Commission. See Registered Swap Dealers, January 15, 2026, available at https://www.cftc.gov/IndustryOversight/Intermediaries/SDs/index.htm.

[7] Market participants such as state-chartered and regional banks, commodity merchants, and commodity trading firms may engage in swap dealing, including in commodity swaps, as part of their overall business, but at a sustained level that does not exceed the De Minimis Threshold.

[8] For example, the rapid growth of AI data centers has driven an unprecedented surge in electricity demand, with natural gas emerging as a primary power source. See AI Boom Fuels Natural Gas-Fired Power Demand, New Growth for Oilfield Services Giants, Natural Gas Intelligence (February 2, 2026), available at https://naturalgasintel.com/news/ai-boom-fuels-natural-gas-fired-power-demand-new-growth-for-oilfield-services-giants/.

[9] MPD notes that the pilot period will "permit Commission staff to re-evaluate the SD de minimis threshold as it pertains specifically to Energy Commodity End-User Swaps and to evaluate whether the no-action position results in lower energy costs for the American public by expanding hedging opportunities and reducing costs for energy companies . . ." CFTC Staff Letter No. 21-51 at page 4 (December 19, 2025).

[10] "Covered Person" is defined as a person, or any entity controlling, controlled by, or under common control with the person (each such person or any entity controlling, controlled by, or under common control with such person. See CFTC Staff Letter 25-51 (December 19, 2025).

[11] As part of the Commission's Part 45 Swap Data Recordkeeping and Reporting Requirements, it provides swap recordkeeping requirements for entities that are not SDs, major swap participants or derivatives clearing organizations. See 17 CFR Section 45.2(b).

[12] The term "financial entity" is defined in section 2(h)(7)(C)(i) of the CEA.

[13] Notably, the Division elected to use a counterparty definition that is substantially

similar to the requirements for the commodity Trade Option exemption from the CEA's definition of swap. See 17 CFR Section 32.3(a)(1)(ii).

[14] Firms may generally seek to obtain such representations in master trading documentation (either upon execution or through an amendment), or a side letter or in trade confirmations.

[15] https://www.cftc.gov/PressRoom/PressReleases/9161-25.

[16] See CFTC Staff Letter No. 21-51 at page 4 (December 19, 2025).