



# MERRILL LYNCH COMMODITIES, INC. (MLCI)

## PRICE REPORTING POLICY

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## I. INTRODUCTION – STATEMENT OF POLICY

*Last Revised: November 2007*

It is the policy of Merrill Lynch Commodities, Inc. (“MLCI”), as a commodity transaction data provider, to comply with all applicable price reporting laws and regulations, including: the [Energy Policy Act of 2005](#), [Federal Energy Regulatory Commission \(“FERC”\) electricity and natural gas Market Behavior Rules](#), relevant provisions of the [Commodity Exchange Act and related Commodity Futures Trading Commission \(“CFTC”\) regulations](#), and the [FERC’s Policy Statement on Natural Gas and Electric Price Indices \(“Policy Statement”\)](#).

References: For additional information, refer to the following:

- [Order Amending Market-Based Rate Tariffs and Authorizations](#), 68 Fed. Reg. 65902 (F.E.R.C. Nov. 24, 2003) (“Electric Market Behavior Rules”), as amended May 19, 2004; Order No. 644 – Amendments to Blanket Sales Certificates, 68 Fed. Reg. 66323 (F.E.R.C. Nov. 26, 2003) (“Gas Rules”), clarified, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, et al., EL01-118-000 et al., (Dec. 11, 2003), as amended May 19, 2004.
- The [CFTC’s](#) regulations are set forth at [17 C.F.R. § 1 et seq.](#)
- [Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶ 61,121 \(2003\) \(“Policy Statement”\)](#), clarified, [Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices, 105 FERC ¶ 61,282 \(2003\) \(“Clarification of Policy Statement”\)](#).

MLCI also will consider industry guidance and best practices, including, but not limited to, the recommendations of the [Committee of Chief Risk Officers \(“CCRO”\)](#) for gathering, submitting and retaining records concerning the reporting of price information to index publishers. In addition, MLCI has adopted, and will make public, [EPSA’s Code of Ethics and Sound Trading Practices for Electric Power Suppliers](#) as its Code of Conduct, which also will apply to MLCI’s FERC-jurisdictional natural gas trading activities except to the extent that the Code of Conduct refers to activities that are specific to the electric industry.

Reference: For additional information, refer to [Policy Statement ¶ 34.1](#).

If you have any questions about any aspect of these policies and procedures (“Policies”), please promptly seek guidance from the Legal Department.

## II. MLCI'S POLICY WITH RESPECT TO REPORTING ELECTRICITY AND NATURAL GAS TRANSACTION DATA

### A. Separation of Duties

MLCI prohibits providing oral reports of transaction data or energy market data to index publishers. Transaction data must be reported by a department of the company that is independent from, and not responsible for, trading (e.g., Corporate Risk Control, middle office or back office personnel).

References: For additional information, refer to the following:

- [Policy Statement ¶ 34.2 n.9](#)
- [CCRO White Paper § 3.2.1](#)

It is MLCI's policy that the Risk Control Department (a department independent of the front office) is the only group authorized to extract Reportable Data from the deal capture system and report it to pre-approved index publishers.

### B. Types of Data Submitted

The reporting of electricity and natural gas transaction data to index publishers is currently voluntary. However, if MLCI chooses to report such data, it must follow certain guidelines. It is MLCI's policy to submit to index publishers the following transaction data for each commodity that it reports

- price,
- volume,
- buy/sell indicator,
- delivery/receipt location,
- trade date, and
- term (e.g., next day or next month delivery)

for each non-index-based, broker, bilateral, physically settled, arm's-length transaction at all trading locations between MLCI and companies unaffiliated with MLCI ("Reportable Data") without performing any calculations to aggregate the data.

Notes:

- MLCI should report delivery point information in accordance with the price locations defined by the particular index publisher or publishers to which it reports.
- Reportable Data includes all applicable electricity and natural gas transactions captured in the deal capture system at specific cut-off times established by the Risk Control Department to conform to the deadlines set by the publications to which MLCI reports transaction data. Transaction data

residing in MLCI's trade capture system at such time will be reported that day for the following business day's publication (e.g., Monday for Friday, Saturday and Sunday).

References: For additional information, refer to the following:

- [Clarification of Policy Statement ¶ 10](#)
- [Policy Statement ¶ 34.3 and n.9](#)
- [CCRO White Paper § 3.1.1](#)

## 1. MLCI Must Report All Reportable Data for Each Commodity that it Chooses to Report

If MLCI chooses to report its electricity and/or natural gas transactions to index publishers, it must report all Reportable Data for each commodity.

Reference: For additional information, refer to the following:

- [Policy Statement ¶ 34.3](#)
- [Clarification of Policy Statement ¶ 12](#)
- [CCRO White Paper § 3.1.1](#)

Note: Every market participant that trades electricity or natural gas must notify FERC if it chooses to report transaction data to index publishers. Such notice must specify each commodity for which it chooses to report transaction data. In order to provide FERC with accurate notification that it is reporting electricity and/or natural gas transaction data to index publishers in accordance with the Policy Statement, MLCI must be providing to index publishers all Reportable Data for that commodity.

References: For additional information, refer to the following:

- [Gas Rules ¶ 72](#)
- [Electric Market Behavior Rules ¶ 116 \(Market Behavior Rule 4\)](#)
- [Section II.D](#) of this manual for reporting to FERC all changes in MLCI's reporting status

MLCI is not required to report to more than one publisher for each commodity as long as all Reportable Data for that commodity is given to the publisher. However, if MLCI reports trades to an index publisher that publishes only a limited or regional index, MLCI must report its other trades in that commodity to another index publisher.

Reference: For additional information, refer to [Clarification of Policy Statement ¶ 12](#).

## 2. Required Approvals

It is MLCI's policy to submit such Reportable Data only to index publishers who seek this information and who are pre-approved by MLCI's Risk Control and Legal Department, as well as the Trading Leader and the Chief Legal Officer. MLCI personnel approached by an index publisher

seeking transaction data or market observations must refer the request to the Risk Control Department, which will determine how to respond to the request pursuant to these Policies. It is MLCI's policy to provide the aforementioned data as requested by the index publishers to which it reports in accordance with the index publisher's written instructions or Best Practices.

References: For additional information regarding the types of data submitted as Reportable Data, refer to [Section II.B](#) of this manual.

To the extent that a publisher asks a Risk Control Department employee to report transaction data for different types of products not specified in the publisher's written instructions or Best Practices (i.e., financially-settled versus physically-settled transaction data), the Risk Control employee must contact the Legal Department before providing the requested information.

Note: An index publisher may provide written instructions directly on the spreadsheet or template that it provides for price reporting. It may also provide additional guidance under a variety of headings (e.g., "Code of Conduct," "Best Practices," "Guide to Providing Data"). To the extent that the written instructions conflict with such additional guidance, or to the extent either conflict with MLCI's Policies as contained herein, you must promptly seek guidance from the Legal Department.

## C. Types of Data Not Submitted

### 1. Intra-Company, Affiliate, Financially Settled, Physical Exchange and Structured Transactions

When reporting Reportable Data to index publishers, MLCI must **not** include data from intra-company transactions (e.g., between trading desks), transactions with MLCI affiliates, financially-settled transactions, physical exchanges of gas and electricity or non-standard or structured transactions in which MLCI purchases or sells a commodity at a price other than the prevailing market price.

References: For additional information, refer to the following:

- [CCRO White Paper § 3.1.5, and § 3.1.6](#)
- [Policy Statement ¶ 34.3](#)

### 2. Counterparty Names

It is MLCI's policy to exclude counterparty names when submitting transaction level detail to index publishers because many existing contractual agreements between market participants, such as master trading agreements, currently may not explicitly allow for the release of confidential information, particularly counterparty names, except as required by law.

Reference: For additional information, refer to [CCRO White Paper § 3.1.3](#).

### 3. Index Publishers and Confidentiality of Data

MLCI currently has confidentiality agreements in place with the index publishers to which it intends to report. If MLCI chooses to report to additional index publishers, MLCI's Risk Control and Legal Department will review the index publishers' confidentiality agreements, as well as the Codes of Conduct required by FERC's Policy Statement. MLCI will verify that index publishers' confidentiality agreements and Codes of Conduct, among other things, describe the process for gathering and submitting data and the methodology for generating an index value, and explain that MLCI owns the data and the index publisher/publisher owns any resulting index or other product it creates. The confidentiality agreements and Codes of Conduct should follow closely FERC's Policy Statement and sample contractual agreements provided in the CCRO White Paper.

Reference: For additional information, refer to [Policy Statement ¶ 33.1 and ¶ 36](#).

### 4. Required Approvals

MLCI must **not** submit to an index publisher, data elements, including counterparty names that are additional to those included in Reportable Data, without the prior written approval of MLCI's Risk Control and Legal Departments.

## D. Changes in Reporting Status

MLCI is required, on an ongoing basis, to update FERC within 15 days of any change in the status of its electric and/or natural gas transaction reporting to index publishers (e.g., commencing, ceasing or recommencing reporting of one or more commodities to one or more index publishers, or changing what data is reported).

Note: In order to represent to FERC that it is reporting transaction data for a particular commodity pursuant to the Gas Rules and the Electric Market Behavior Rules, MLCI must be reporting in accordance with FERC's Policy Statement, which includes a requirement that MLCI provide to index publishers all Reportable Data.

References: For additional information refer to the following:

- *Gas Rules* ¶ 72;
- [Electric Market Behavior Rules ¶ 116 \(Market Behavior Rule 4\)](#)
- [Policy Statement ¶ 34.3](#)
- [Clarification of Policy Statement ¶ 12](#)

Note: If MLCI is not providing to index publishers all Reportable Data, or if MLCI is not otherwise reporting in accordance with FERC's *Policy Statement*, MLCI must notify FERC that it is not reporting to index publishers.

Reference: For additional information regarding the types of data submitted, refer to [Section II.B](#) of this manual.

If MLCI chooses to report transaction data to index publishers, it must provide such notice to FERC and specify each commodity for which it chooses to report transaction data. In order to provide FERC with accurate notification that it is reporting electricity and/or natural gas transaction data to index publishers in accordance with the Policy Statement, MLCI must be providing to index publishers all Reportable Data for that commodity.

Notes:

- MLCI currently executes only some of its trades electronically. Consequently, to be reporting “all transactions” in that commodity, for purposes of notifying FERC, MLCI must report all transactions, including the electronic transactions, to at least one index publisher. However, if MLCI ever chooses to execute all of its trades in a particular commodity electronically, or has all such trades confirmed through an electronic confirmation service, or a combination of both (“electronic transactions”), and all data from such electronic transactions are published in one or more indices, then MLCI automatically is deemed to be reporting its trades and should notify FERC that it is reporting transactions for that commodity pursuant to *Gas Rules* ¶ 72, [Electric Market Behavior Rules ¶ 116](#), and [Clarification of Policy Statement ¶ 12](#).
- If MLCI executes some electronic transactions, but chooses not to report any transactions in that commodity (electronic or non-electronic) to other index publishers, that participant is choosing not to report such transactions ([Clarification of Policy Statement ¶ 12](#) at n.5). In that case, under *Gas Rules* ¶ 72 and [Electric Market Behavior Rules ¶ 116](#) (Market Behavior Rule 4), MLCI would notify FERC that it is not reporting transactions in that commodity to index publishers.

In order to provide sufficient lead-time to comply with FERC’s 15-day notice deadline, employees are prohibited from changing MLCI’s transaction reporting status without prior approval from the Risk Control and Legal Departments. You must seek Legal Department guidance if you are uncertain whether a particular course of action would constitute a change in transaction reporting status.

## E. Data Submission Method and Safeguards

Data should be submitted to index publishers electronically. If no transactions are executed during the transaction-reporting interval, a file or spreadsheet containing the statement “intentionally blank” should be submitted to the index publisher in order to reduce confusion and delay. The accompanying email should explain that MLCI is not reporting any data because it has no transactions for the relevant period that meet the criteria established for Reportable Data.

Reference: For additional information, refer to [CCRO White Paper § 3.2.4](#).

The Risk Control Department is responsible for implementing sufficient technical, organizational and procedural protections against abuse of the data submission process. A detailed description of processes and procedures is maintained by the Risk Control Department.

## F. Accuracy of Data Submission; Disclosure of Errors

### 1. Accurate and Factual Information Required

The Risk Control Department should make reasonable efforts to provide complete and accurate data and not omit material information or submit misleading information when reporting transaction data to index publishers.

Note: MLCI is not required to take steps to verify the accuracy of the data it submits to index publishers as long as: (1) the Risk Control Department certifies that the prices reported are accurate and complete; or (2) the prices are the same as those recorded in MLCI's books and records in accordance with generally accepted accounting principles. MLCI intends to draw data directly from the deal capture system with very little human interference or discretion, however, MLCI will review the reports for obvious errors.

References: For additional information, refer to the following:

- *Gas Rules* ¶ 72
- [Electric Market Behavior Rules ¶ 116 \(Market Behavior Rule 4\)](#)
- [Clarification of Policy Statement ¶ 13](#)

To that end, the Risk Control Department will (a) establish cut-off times for all trades to be entered into the deal capture system in order to ensure that the data is complete, and (b) extract all Reportable Data from the deal capture system to ensure that the data is derived independently and accurately. MLCI should provide to index publishers a disclaimer warning publishers of the potential for inaccurate data.

Contact the Legal Department if you are unsure if an omission may be considered material or if information may be considered misleading.

### 2. Error Identification and Resolution

Any MLCI employee who identifies an error in Reportable Data must report the error to the Risk Control Department as soon as practicable thereafter. It is MLCI's policy that, as with price reporting, the Risk Control Department must carry out the error resolution process. To that end, the Risk Control Department should cooperate with the error resolution process adopted by the index publisher (e.g., adhering to the process and timeline for submitting corrections and responding to inquiries from the index publisher). It is MLCI's policy to notify the index publisher if an error is detected. The index publisher will be responsible for determining whether the error is material such that the index publisher must take steps to make corrections to its index.

Note: Error resolution, like reporting, must be carried out by personnel independent from, and not responsible for, trading.

References: For additional information, refer to the following:

- [Policy Statement ¶ 34.3 and 34.4](#)

- [CCRO White Paper § 3.2.3](#)

### 3. Recommendations from Index Publishers

Any MLCI employee who receives a recommendation from an index publisher regarding changes to improve the accuracy or timeliness of reporting must communicate the recommendation to the Risk Control and Legal Departments. Those Departments jointly shall consider the recommendation and determine the appropriate response.

Reference: For additional information, refer to [Policy Statement ¶ 34.5](#).

### 4. Audits; Review of Data Gathering and Submission Processes

All MLCI personnel must cooperate with MLCI's internal and/or external auditors conducting annual and other reviews of MLCI's implementation of, and adherence to, the data gathering and submission process that MLCI has established herein. Upon request from a publisher and subject to agreement between MLCI and the publisher on the appropriate use of such information, MLCI will provide a summary of the overall conclusion of a reporting audit (e.g., the overall extent of compliance with the Policies) to the requesting publisher.

Note: MLCI's Internal Audit Department may perform the internal audit as long as its personnel are independent from the trading and reporting departments and personnel, and the audit follows internal auditing standards such as those prescribed by the Institute of Internal Auditors or other similar generally acceptable auditing standards.

References: For additional information, refer to the following:

- [Clarification of Policy Statement ¶ 14](#)
- [Policy Statement ¶ 34.5](#) (requiring an annual independent audit)
- [CCRO White Paper § 3.2.7](#)

### III.MLCI'S POLICY WITH RESPECT TO REPORTING COAL TRANSACTION DATA

The reporting of coal transaction data is not regulated by the FERC. Such reporting is, however, subject to the requirements of [Commodity Exchange Act \(“CEA”\) § 9\(a\)\(2\)](#), which prohibits entities from reporting false or misleading or knowingly inaccurate reports concerning market information that affects or tends to affect the price of any commodity in interstate commerce. To ensure accurate reporting of coal transaction data, prior to reporting coal prices, MLCI will implement appropriate procedures for reporting coal data.

## IV. COMPLIANCE WITH CEASE AND DESIST ORDER

MLCI, as assignee of the assets of Entergy-Koch Trading, LP (“EKT”), must comply with the Commodity Futures Trading Commission (“CFTC”) order requiring EKT to cease and desist from further violations of [CEA § 9\(a\)\(2\)](#).

Notes:

- Pursuant to the terms of the Order: (1) EKT settled with the CFTC for \$ 3,000,000; (2) the CFTC ordered EKT to cease and desist from violating [CEA § 9\(a\)\(2\)](#); (3) EKT and EK agreed not to undertake any act that would limit their ability to fully cooperate with the Commission through the end of January 2009; and (4) EKT agreed that it is and it will continue to be an “active participant in developing industry-wide standards for the accurate reporting of price and volume information to reporting firms.”
- Any violation of the Settlement Order is a felony punishable by a maximum fine of \$1,000,000 or imprisonment for a maximum of five years, or both. Furthermore, [CEA § 6\(d\)](#) provides that “each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.”

Reference: For additional information, refer to *Entergy-Koch Trading, L.P.*, 2004 CFTC LEXIS 16 (CFTC, Jan. 28, 2004) (the “Settlement Order”).

Violation of a cease and desist order involving [CEA § 9\(a\)\(2\)](#) is a felony and could subject MLCI and any involved individuals to substantial criminal penalties. These policies and procedures are designed to ensure that MLCI complies with the cease and desist order.

## V. RECORDKEEPING REQUIREMENTS

### A. Internal Requirements

The Risk Control Department must maintain records of all data reported to publishers for use in price indices (“Reported Data”) in accordance with Merrill Lynch & Co., Inc. policies.

Contact the Legal Department immediately if you are asked to produce to any third party any records described in this Policy.

### B. Federal Requirements

It is MLCI’s policy to comply with the letter and spirit of all applicable legal and regulatory recordkeeping requirements. FERC and CFTC requirements differ with respect to what documents MLCI must retain and for how long. FERC requires MLCI to retain certain documents for three years, whereas the CFTC requires MLCI to retain certain documents for five years. FERC and CFTC recordkeeping requirements differ in other ways as well (e.g., rules regarding the use of electronic versus paper retention). To the extent that both FERC and CFTC recordkeeping requirements address the same set of records, MLCI must retain the records for five years and must adhere to the more stringent recordkeeping requirement. If there is any doubt about whether the Risk Control Department must retain a record (or which agency’s recordkeeping requirement applies, if there appears to be a conflict), it should retain the record and consult the Legal Department as soon as practicable.

#### 1. FERC Requirements With Respect to Natural Gas and Electricity

The Risk Control Department must retain for three years a complete set of contractual and related documents and data upon which MLCI billed a counterparty under all electricity and natural gas transactions (e.g., master agreements; cover sheets; agreement schedules; credit support documents; confirmations; invoices; and trade capture system pricing data (“Trading Documentation”). Sellers do not need to retain all analytical or cost-of-service data, but they must maintain a complete set of the contractual and related documentation that formed the basis for bills sent to customers. The Risk Control Department also must retain a record of all Reported Data. Consult the Legal Department for guidance regarding whether MLCI must retain a particular document or data.

MLCI plans to maintain its records in electronic format. MLCI may maintain records in either electronic or paper format as long as it can make the data accessible in a reasonable fashion.

References: For additional information, refer to the following:

- *Gas Rules* ¶ 72
- [Electric Market Behavior Rules ¶ 123 \(Market Behavior Rule 5\)](#)

## 2. CFTC Requirements

### a. Communications Regarding Commodity Market Information or Conditions

MLCI must retain a copy of: (i) any communication that MLCI releases, distributes, disseminates, publishes or generally circulates outside MLCI, concerning commodity market information or conditions that affect or tend to affect the price of any commodity; and (ii) the source or authority for the information contained in the communication. This requirement encompasses all information that MLCI provides to index publishers, but is not limited to such information.

Reference: For additional information, refer to [17 C.F.R. § 1.40](#).

### b. Duration of Record Retention

All books and records subject to CFTC recordkeeping requirements must be maintained for five years from the date the record was created, readily accessible during the first two years thereof and open to inspection by any CFTC or DOJ representative. MLCI must provide a copy of a required record promptly upon request by a CFTC representative.

Reference: For additional information, refer to [17 C.F.R. § 1.31\(a\)\(1\)](#) and [§ 1.31\(a\)\(2\)](#).