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February 7, 2011

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
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Telefacsimile: (202) 418-5521 and
Email to secretary@cftc.gov and electronically to http://comments.cftc.gov

Re: Response of the International Energy Credit Association ("IECA") to Commodity Futures Trading Commission ("CFTC" or "Commission") Notice of Proposed Rule ("NOPR") respecting Real-Time Public Reporting of Swap Transaction Data (17 CFR Part 43, RIN 3038-AD08, Federal Register Dec. 7, 2010) pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

Ladies and Gentlemen:

The CFTC by the above-referenced NOPR has requested public comment on the proposed rule and other matters. This letter responds to that NOPR.

I. Introduction.

IECA is the leading global organization focused on credit-related issues in the energy industry. The IECA and its members have wide and deep experience in developing improved metrics, documentation, and tools to assess, manage, and mitigate credit risk. Its members come from more than 500 companies, representing every facet of the energy complex from producers and processors to generators, transporters and energy consumers. Most of these companies execute privately negotiated over-the-counter derivatives in commodities, interest rates, or currencies.

Derivatives are essential to the business of many of these companies, as well as their suppliers, customers and counterparties. Among other things, derivatives are used for purposes of:

- Protecting against increases in costs of inputs to their businesses;
- Protecting against a decline in the value of the goods they sell;
- Managing cash flow, working capital, and liquidity;
- Maximizing the value of their assets;
- Meeting the needs of their customers; and,

- Complying with the terms of their financing arrangements, which frequently require the hedging of interest rate and foreign exchange risk.

The Dodd-Frank Act will have an enormous impact on working capital requirements, the costs of hedging, and earnings volatility - all critical credit-related issues. By increasing the cost, reducing the availability, and sometimes mandating the clearing of derivatives, the Dodd-Frank Act will introduce or enhance systemic risk by degrading the creditworthiness of companies in, or heavily dependent on, the energy sector.[1]

In view of these concerns, the IECA, for the first time in its history, is filing public comments in a rule-making proceeding. The purpose of these comments is to shape the rules in a way that will achieve more certainty for market participants, maximize the potential for bilateral credit relationships, limit the scope of mandatory clearing, and preserve as much competition and flexibility as possible.

Correspondence with respect to these comments should be directed to the following individuals:

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II. <u>Comments</u>.

The IECA believes that the burden of requiring real-time reporting by end-users, particularly with respect to end-user to end-user swaps ("<u>EU-EU Swaps</u>") will not produce a significant benefit to the Commission's price transparency objectives. EU-EU Swaps constitute a relatively insignificant percentage of the total swaps that will be reported to swap data repositories. Moreover, requiring comparable real-time reporting by end-users will increase the likelihood of poor quality pricing data being disseminated to the public due to the lack of systems, technology and trading personnel by most end-users with which to attempt to undertake such comparable real-time reporting.

Furthermore, requiring end-users to create systems, purchase technology and hire additional trading personnel, simply to perform real-time reporting for the relatively small number of EU-EU Swaps likely to be undertaken by most end-users, will impose an excessive cost burden on end-users, and ultimately will drive end-users away from EU-EU Swaps and compel them to enter into swaps solely with SDs and MSPs. This will reduce the number of potential

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1 *See* "Evaluating Limits on Participation and Transactions in Markets for Emissions Allowances," Congressional Budget Office (Dec. 2010), p. 25 (stating that Dodd-Frank "increase[s] the cost of OTC transactions in the hope that participants would shift them to exchanges or clearing houses" and "Historical evidence suggests that higher capital requirements cause [those faced with such requirements] to shift toward riskier investments . . . to compensate for the higher costs imposed by those requirements.")

counterparties and the type of swaps available to end-users to manage the commercial risks of their core energy businesses, thereby increasing the cost of energy to consumers.

For example, two end-users, each attempting to hedge corresponding physical positions in the same commodity (one end-user seeks to hedge its purchase of a commodity, while the second end-user seeks to hedge its sale of the same commodity), might agree to more favorable terms in a EU-EU Swap with each other, than may be available to either end-user seeking to hedge its physical position in a swap with a SD or MSP. In part, this is a result of what is known as "right-way" risk. All other things being equal, a mining concern that locks in the value of a portion of its output, or a utility that locks in the cost of a portion of its delivery obligation, is a safer credit bet.

Exemption from Real-Time Reporting for End-users. The CFTC has acknowledged that end-user to end-user transactions do not constitute a significant portion of the derivatives market.[2] Because end-user to end-user transactions are an insignificant fraction of the market, the IECA submits that the Commission should find that such transactions do not present systemic risk and therefore exempt them from reporting.

Additional Time for End-user Real-Time Reporting. If such an exemption is not granted then the IECA believes that the relatively small percentage of swaps likely to be implemented as EU-EU Swaps makes it reasonable for the Commission to lessen the real-time reporting burden on end-users in EU-EU Swaps relative to the real-time reporting required for all other swaps. Allowing end-users in EU-EU Swaps a longer period of time will increase the likelihood of quality pricing data being disseminated to the public and will avoid placing excessive costs on end-users thereby reducing the likelihood that end-users will find it too expensive to utilize EU-EU Swaps to hedge the commercial risks of their core energy businesses.

Specific Comments. Accordingly, for reportable swaps completed on a swap market, the IECA agrees with the Commission's proposal in Section 43.3(a)(2) of Part 43 that for real-time reporting compliance purposes, such swap transactions are treated as reported. 75 Fed. Reg. 76145.

Similarly, for reportable off-facility swaps involving a SD or MSP, the IECA supports the Commission's proposal in Sections 43.3(a)(3)(i) – (iii) of Part 43 that any real-time reporting obligation should be the responsibility of such SDs and MSPs.

In addition, the IECA supports the Commission's proposal in Section 43.3(a)(3)(iv) of Part 43 that in a reportable off-facility swap involving two end-users, that the parties would negotiate which of them is to be the reporting party.

With respect to end-users providing real-time reporting of off-facility swaps, however, the IECA requests that end-users be granted an exemption from real-time reporting of EU-EU Swaps.

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2 *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," RIN 3038-AD06, Federal Register 80174, 80177, fn 18 (Dec. 21, 2010).

If such an exemption is not granted, then the IECA requests that the end-user be given additional time to meet its real-time reporting obligations by submitting a weekly report to a registered swap data repository ("SDR") of all such swaps in which the end-user has the real-time reporting obligation, provided that in any such weekly report each of such swaps included in that weekly report must be reported to an SDR by no later than the close of business on the seventh (7^{th}) business day following the day on which each such swap was executed.

Under such an obligation, for example, the end-user could submit a weekly report to an SDR on Wednesday of a week (week 2) and include all the swaps, for which it has the reporting obligation, that were executed on any day of the preceding week (week 1), because the seventh day following execution of a swap on Monday of week 1 would be Wednesday of week 2.

This real-time reporting requirement could be attained by the following revision to Section 43.3(a)(3):

> "(3) *Off-facility swaps.* Except as otherwise provided in §43.5, all off-facility swaps shall be reported as soon as technologically practicable following execution, by the reporting party, to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in accordance with the rules set forth in this part**; provided that if the reporting party is neither a swap dealer nor a major swap participant, but is an end-user, then such off-facility swap shall be reported in a weekly report to a registered swap data repository, provided that no swap would be reported in any such weekly report by any later than the close of business on the seventh (7th) business day following the day on which such swap was executed.**"

The ICEA submits that granting such a lessened real-time reporting obligation to end-users would more closely balance the reporting costs incurred by end-users with the relative benefits, if any, obtained by the markets from such real-time reporting. Such a lessened real-time reporting obligation would also increase the quality of the data submitted by such end-users for various reasons, including the fact that more of such swaps would have been confirmed by the swap counterparties prior to the time the applicable weekly report were submitted to the SDR.

III. Conclusion.

The IECA believes that granting an exemption to end-users from such real-time reporting, or if such an exemption is not granted, imposing such a lesser real-time reporting burden on end-users with respect to EU-EU Swaps as described herein, provides a more appropriate balance of the costs of the Commission's proposed real-time reporting regulations with the intended benefits of such regulations, without detrimentally affecting price transparency or increasing systemic risk to the financial system.

The IECA appreciates the opportunity to provide the foregoing comments and information to the Commission. The IECA is pleased to make available to the Commission experienced credit and derivatives professionals for further discussion and information upon request.

This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member thereof.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

/s/
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Its Attorneys