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Telefacsimile: (202) 418-5521 and
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Re: Response of the International Energy Credit Association ("IECA") to Commodity Futures Trading Commission ("CFTC" or "Commission") Notice of Proposed Rule ("NOPR") respecting Swap Data Recordkeeping and Reporting Requirements (17 CFR Part 45, RIN 3038-AD19, Federal Register December 8, 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. Comments.

With respect to this NOPR, the IECA is primarily concerned with “commodity swaps” and the following recordkeeping and reporting obligations in proposed Part 45:

(i) the swap recordkeeping requirements under proposed Section 45.2(b) applicable to end-users, as “non-SD/MSP counterparties” to swaps, obligating end users, through the life of each swap and for a period of at least five years after termination of such swap, to keep records of all “required swap creation data” (including “primary economic terms” and “confirmation data”) and all “required swap continuation data” that they are required to “report pursuant to this part 45,” and “all records demonstrating that they are entitled, with respect to any swap, to the end user exception pursuant to Section 2(h)(7),” and

(ii) the swap reporting requirements applicable to end-users, as “non-SD/MSP counterparties” to “commodity swaps,” with respect to: (1) “swap creation data” (including “primary economic terms” and “confirmation data”) under Sections

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.”)

45.3(a)(2)(i)(C), 45.3(a)(2)(ii)(B) and (C), 45.3(a)(2)(iii)(A), and 45.3(a)(2)(iv)(A) and (B), and (2) "swap continuation data" under Section 45.3(b)(2)(ii), including "daily" reports of "state data" and reports "at intervals to be determined by the Commission prior to its adoption of final swap data reporting regulations" of "valuation data."

The IECA supports the Commission's proposed determination under Section 45.5 of which counterparty to a swap must fulfill reporting regulations with respect to that swap. Section 45.5 specifies that with respect to swaps in which one party is either a Swap Dealer ("SD") or Major Swap Participant ("MSP") and the other is a non-SD/MSP counterparty (such as an end-user), then the SD or MSP shall be the reporting party. In addition, if both parties to a swap are non-SD/MSP counterparties, then Section 45.5 provides that "the counterparties shall agree as one term of their swap transaction which counterparty shall fulfill reporting obligations with respect to that swap."

With respect to the timing of the reporting obligations under the above-referenced provisions of Section 45.3, the Commission has acknowledged that:

"Dodd-Frank does not specify the timeframes for reporting of swap data to SDRs for regulatory purposes (as opposed to real-time reporting). However, to further the objectives of Dodd-Frank regarding systemic risk mitigation, transparency of the entire swaps market to regulators, and enhanced market surveillance and position limit monitoring, the Commission believes it is important that swap data be reported to SDRs either immediately following execution of the swap – the point of time at which the counterparties become irrevocably bound by contract under applicable law – or within a short but reasonable time following execution, rather than waiting until the time that full, signed, legal confirmation by the counterparties of all terms (not just the primary economic terms) of the swap is completed."

In addition, the Commission acknowledges that where execution and verification of the primary economic terms of a swap are not done electronically, "which may occur more frequently for the relatively small number of swaps between non-SD/MSP counterparties, including end users," then "additional time may be needed [for such non-SD/MSP counterparties] to put the required data into an electronic format" (75 FR 76582).

Similarly, the Commission recognizes that non-SD/MSP counterparties (including end-users) will not have the computer technology and trading personnel necessary to perform swap data reporting on a pace comparable to the swap data reporting abilities of SDs and MSPs. As stated at 75 FR 76593, "The Commission also believes it is appropriate for SDs and MSPs to have the responsibility of reporting with respect to the majority of swaps, because they are more likely than other counterparties to have automated systems in place that can facilitate reporting."

A. Request for Exemption for End-users from Swap Data Reporting Requirements.

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

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).

insignificant fraction of the market, the IECA respectfully submits that the Commission should find that such transactions do not present systemic risk and exempt them from the swap data reporting requirements of this NOPR.

If such an exemption is not granted, then the IECA believes that additional time should be allowed for end-users to submit swap data as provided in B and C below.

B. Time Delay for Reporting Required Swap Creation Data for Swaps under Sections 45.3(a)(2)(i)(C), 45.3(a)(2)(ii)(B) and (C), 45.3(a)(2)(iii)(A), and 45.3(a)(2)(iv)(A) and (B).

The IECA agrees with the Commission that the provisions of the Dodd-Frank Act do not specify particular time periods for swap data reporting to be applicable under the various provisions of Part 45. Moreover, the IECA agrees that non-SD/MSP counterparties, such as end-users, are not likely to have the necessary systems (including both computer technology and trading personnel) sufficient to submit swap data reports as quickly as SDs and MSPs and may require additional time for swap reporting obligations.

The IECA believes that the Commission's proposed reporting time periods of "15 minutes after execution of the swap if both execution and verification of primary economic terms occur electronically," "30 minutes after execution of the swap if execution does not occur electronically but verification of primary economic terms occurs electronically," and "24 hours after execution of the swap if neither execution nor verification of primary economic terms occurs electronically" will impose significant cost burdens on non-SD/MSP counterparties such as end-users. The IECA also submits that these burdens on end-users are not justified by the minimal contribution to the Commission's stated fundamental purpose for its swap data reporting requirements that adherence to such timing will produce.

The IECA believes that the Commission's "fundamental purpose" for requiring swap data reporting (separate and apart from real-time reporting which is addressed in the Commission's new Part 43 regulations)³ can be met while applying a longer time delay for non-SD/MSP counterparties, including end-users, to report "required swap creation data," including "primary economic terms" and "confirmation data," of those swaps for which a non-SD/MSP counterparty is the reporting party.

Specifically, the IECA respectfully requests that, if non-SD/MSP counterparties, as a reporting party, are going to be required to report at all, they be required to submit all reports of the required swap creation data, including both primary economic terms and confirmation data, of those swaps for which it is the reporting party in a weekly report to an SDR (or the Commission, as applicable) and in any event (i) the primary economic terms of any such swap must be reported no later than seven (7) business days after the execution of each such swap and (ii) the confirmation data of any such swap must be reported no later than seven (7) business days after the parties to the swap have agreed to the language in the confirmation of each such swap.

³ The Commission reiterates its reasons for imposing these swap data reporting requirements (75 FR 76594): "...the fundamental purpose for the legislation's swap data reporting requirements: making swap data available to the Commission and other financial regulators so as to enable them to better fulfill their market oversight and other regulatory functions, increase market transparency, and mitigate systemic risk."

Moreover such a time delay for reporting required swap creation data would be more likely to result in reports of primary economic terms and confirmation data of a swap after the parties to such swap had exchanged confirmations, thereby increasing the quality of such data and minimizing the number of corrections to “primary economic terms” that will be needed when “confirmation data” is subsequently submitted by the non-SD/MSP counterparty as the reporting party.

C. Time Delay for Reporting Required Swap Continuation Data for Commodity Swaps under Section 45.3(b)(2)(ii).

The IECA believes that the Commission’s “fundamental purpose” for requiring swap data reporting (separate and apart from real-time reporting which is addressed in the Commission’s new Part 43 regulations) can be met while applying a longer time delay for non-SD/MSP counterparties, including end-users, to report “required swap continuation data,” including “state data” and “valuation data,” of those commodity swaps for which a non-SD/MSP counterparty is the reporting party.

Specifically, the IECA respectfully requests that non-SD/MSP counterparties, as a reporting party, be required to submit all reports of the required swap creation data, including both state data and valuation data, of those commodity swaps for which it is the reporting party under Section 45.3(b)(2)(ii) in weekly and bi-weekly reports to an SDR (or the Commission, as applicable) and in any event (i) the “state data” of each of such swaps that were in effect during the preceding week must be reported in each weekly report by no later than three (3) business days after the end of such week, and (ii) the “valuation data” of each of such swaps that were in effect during the preceding two weeks must be reported in each bi-weekly report no later than three (3) business days after the end of such two weeks.

The IECA submits that end-users do not generally determine daily the “state data” or the “valuation data” for each of the commodity swaps they enter into, end-users do not generally have the trading personnel or the computer technology to perform such daily determinations, and the cost of adding such abilities to their businesses would be significant. Moreover, the ability of the Commission to survey the markets, monitor position limits, and mitigate systemic risk with respect to any of such swaps (i.e., the Commission’s fundamental purpose of such reporting) will not be appreciably affected if the Commission does not receive the foregoing data any more often than weekly or bi-weekly.

III. Conclusion.

The IECA believes that granting an exemption to end-users from such swap data reporting requirements, or if such an exemption is not granted, imposing such a lesser swap data reporting burden on end-users with respect to such swaps, provides a more appropriate balance of the costs of the Commission's proposed swap data reporting regulations with the intended benefits of such regulations, without detrimentally affecting the fundamental purpose of the Commission in establishing such swap data reporting obligations.

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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