



**Industrial Energy Consumers of America**  
*The Voice of the Industrial Energy Consumers*

---

1155 15<sup>th</sup> Street, NW, Suite 500 • Washington, D.C. 20005 202-223-1420

May 24, 2011

David Stawick  
Secretary  
Commodity Futures Trading Commission

Dear Secretary Stawick:

**Re: *Real Time Reporting (RIN number 3038-AD08)***  
***Requirements for Swap Execution Facility (RIN number 3038-AD18)***

On behalf of the Industrial Energy Consumers of America, please accept these comments regarding the CFTC's proposed rules on real time reporting and the requirements for swap execution facilities. Because these proposed rules lie at the heart of the transparency of the OTC derivatives market they are of central concern to the end users that IECA represents.

**About IECA**

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$800 billion in annual sales and with more than 750,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through research, advocacy, and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: plastics, cement, paper, food processing, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

**The Proposed Rules**

IECA's members believe that transparency is critical to ensure that OTC derivatives markets operate to the benefit of the thousands of end users, such as IECA's member companies, that rely on them to hedge risk. At the same time IECA's members appreciate the need to ensure that these markets allow end users to enter into unique, custom tailored risk management contracts for which there may not be a readily liquid tradeable market. It is our belief that the purpose of Dodd Frank was to create the appropriate conditions for both kinds of contracts: bespoke derivatives tailored to the needs of individual companies, and more widely marketable, standardized transactions that might solicit a variety of market interest.

**Real Time Reporting**

IECA members are end users of derivatives. As such it is likely that the reporting requirements of Dodd Frank would in most (though not all) cases fall upon these companies' counterparties, who will most likely be registered as swap dealers. It is worth noting that many IECA companies enter into principal-to-principal trades with other end users, and in such cases would decide among themselves who must report. However in either case, it is apparent that Congress intended the real time reporting rules to serve as a source of transparency in the OTC derivatives markets.

We support the CFTC's proposal that most trades be reported as soon as technologically feasible. We anticipate that for most liquid transactions this will mean trades are reported and publicly available as soon as they are executed. This information will be useful to end users, who will be able to compare prices in different contracts both in order to help their own risk management purposes, as well as gain valuable pricing information for underlying products such as energy or physical commodities.

In the case of block trades, IECA's members understand the concerns of some that certain transactions are so complex as to require execution over an extended period of time. In such circumstances it is alleged that reporting a trade may allow other market participants to "front run" the counterparty (most likely a swap dealer) who is accommodating the trade. It is alleged that this will drive dealers from the market and create illiquidity.

Block trades are not a phenomenon unique to OTC markets. As the Commission knows such trades have been a regular feature of the exchange traded futures markets for many years. Because transparency and liquidity are both important components of a healthy market we urge the CFTC to carefully weigh whether the proposed 15 minute reporting delay for block trades is sufficient to allow market participants to spread out the elements of the most complicated trades. At the same time we expect that the CFTC will rely on its existing expertise and experience with block trades in the futures markets in making any reporting delay for such trades, and we urge the Commission not to be unduly influenced by claims that reporting prices will necessarily lead to non functioning markets.

### **Requirements for Swap Execution Facilities**

The Dodd-Frank Act requires the CFTC to designate trades that must be cleared when entered into by parties other than end users. When a trade is subject to the clearing requirement Dodd Frank further requires that such trades be executed on a designated contract market, or a swap execution facility, in the case either market makes such a contract available for trading. This latter requirement, the "execution requirement," is an important component of Dodd-Frank's attempt to bring greater transparency to the OTC markets. As such we urge the Commission to be vigilant in ensuring that swap execution facilities provide an open and competitive marketplace for discovering prices. This will benefit end users even considering that end users will not be subject to this requirement.

Dodd Frank defined a "swap execution facility" as "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that facilitates the execution of swaps

between persons; and is not a designated contract market.” By its terms the definition appears to require a SEF to be a central trading market that allows multiple parties to present bids and offers to multiple other parties. It appears that such market is to be open on a nondiscriminatory basis, and transparent to all in illustrating the current market price for traded swaps.

The SEF definition is consistent with the general market architecture of Dodd Frank: the most liquid and widely demanded contracts, which must be cleared, must likewise be traded in an open, transparent and competitive market. Meanwhile transactions which are unique or highly customized, for which there is little demand, can continue to be entered into on a principal-to-principal basis.

End users benefit from this architecture because they have the option of seeking out customized trades, or trading and clearing on a market. Even in the case of transactions an end user does “off facility”, it still benefits because it is able to see the prices at which similar or related trades are executed. The SEF requirements thus have an important role both for registered market participants like swap dealers and major swap participants, as well as end users.

Because SEFs are a cornerstone of the new, open and transparent OTC markets created by Dodd Frank we urge the Commission to require SEFs to allow multiple parties to see and make quotes to other multiple parties in an open and publicly available forum. Request for quote systems, which allow a dealer to solicit prices in a closed, non-transparent proprietary market, do not appear to meet either the literal terms of the SEF definition or the larger goals of Dodd Frank. We urge the Commission to require that SEFs operate in a manner that publicly reveals market prices. Doing otherwise, such as preserving the “one-to-one” pricing model of existing dealer systems, would merely ratify the status quo and appear to be inconsistent with the goal of Wall Street reform.

## **Conclusion**

Transparency and the ability to enter into unique transactions are both vitally important to derivative end users. We believe Dodd Frank’s primary goal with respect to derivatives reform was to provide both. Thus we respectfully request that in the areas related to transparency, such as the real time reporting and swap execution facility requirements, the Commission seek to create open, transparent markets that provide vital information to end users. At the same time the Commission should ensure that end users can access unique risk management products tailored to their individual needs.

Thank you for considering our comments, and please know we are available to provide any further information.

Sincerely,

Paul Cicio  
President