



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

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July 11, 2011

*Submitted Electronically*

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants” and “Capital Requirements of Swap Dealers and Major Swap Participants”

Dear Mr. Stawick:

On behalf of the Industrial Energy Consumers of America (IECA), thank you for the opportunity to comment on the Commodity Futures Trading Commission’s (CFTC) “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, and “Capital Requirements of Swap Dealers and Major Swap Participants”. These Notices propose to implement margin and capital requirements as mandated by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 for certain swap dealers (“SDs”) and major swap participants (“MSPs”).

The Margin Notice proposes to implement initial and variation margin requirements for SDs and MSPs on all swaps that are not cleared by a registered derivatives clearing organization (“DCO”). The Notice proposes capital requirements and related financial condition reporting and recordkeeping requirements for SDs and MSPs. Both proposals would apply only to uncleared swaps executed after the final effective date of the proposed rules.

**I. Industrial Energy Consumers of America (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, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

IECA members are exclusively manufacturing companies and are nonfinancial end-users under the Dodd-Frank Act and qualify for the end-user exemption from clearing requirements. Manufacturing companies depend upon both the physical commodity markets as well as the markets in OTC derivatives to help meet their natural gas needs for both fuel and feedstock. These markets play an essential role in the hedging practices to reduce financial risk and lock in prices or take delivery.

## **II. IECA Supports the Commission's Proposed End User Exemption From Margin Rules**

The CFTC proposal would not impose initial or variation margin requirements on nonfinancial entities such as bona-fide hedgers (end-users). As such, the CFTC's proposed margin rules neither require that nonfinancial entities post initial or variation margin, nor do they prohibit covered swap entities from requiring margin in their agreements with end-users.

## **III. IECA Opposes the Proposed Capital Rules for End Users**

The CFTC also proposes capital rules that would apply to covered swap entities. IECA is opposed to the CFTC proposal because it will result in raising our costs substantially. The CFTC proposal would negate the benefits of the end-user exemption and is contrary to the explicit intent of Congress in including the end user exemption within the Dodd-Frank Act. We urge the CFTC to remember that end users did not cause the financial melt-down - nor will they ever. The proposal flies in the face of the reality that end user transactions are relatively low-risk and volumes are relatively small as compared to speculators. End users do not engage in speculation – they consume the physical product and they have relatively high credit worthiness.

Despite the end-user exemption, under the CFTC proposal, bonafide hedgers would face increased costs to enter into swap transactions to the extent that the proposed rules would apply a capital charge to the covered swap entity in connection with its transactions with nonfinancial end-user transactions, and the covered swap entity “passes-on” these increased costs to the end-user. Under the CFTC's proposed rules, a covered swap entity will be required to take a charge to capital associated with its uncleared swap transactions regardless of whether the transaction is with a nonfinancial end user under the end user exemption. It is reasonable to assume that the covered swap entity will pass the cost of its capital charge back to the nonfinancial end-user.

Secondly, the Commission proposal of imposing a higher capital charge on covered entities that do not require margin from their (nonfinancial end user) counterparties is very troubling. Assuming that this increased cost is also passed-on to the end-user by the covered swap entity, these requirements

effectively punish nonfinancial end users for being permitted by a covered entity to enter into a non-margined, uncleared transaction.

The legislative record is very clear that the drafters of the Dodd-Frank Act recognized the importance of allowing nonfinancial end-users to continue to hedge their commercial risk without having to bear the added costs of capital charges. As evidenced below the Congressional Record show that the intent of Congress was to establish an exemption for nonfinancial end-users from the regulatory burdens and costs related to Title VII Derivates.

The June 30, 2010 letter from Senator Dodd and Lincoln says “Congress clearly stated in this bill that the margin *and capital* requirements are not to be imposed on end users.” And a colloquy between Senators Lincoln and Hagan further reinforces the intent that capital and margin requirements not apply to nonfinancial end-users. Senator Lincoln stated “As we point out, it is clear in this legislation that regulators only have the authority to set *capital* and margin requirements on swap dealers and major swap participants for uncleared swaps, not on end users who qualify for the exemption from mandatory clearing.”

For these reasons, IECA urges the CFTC to modify its proposed capital rules to exempt transactions involving nonfinancial end users from any capital charge.

Sincerely,

Paul Cicio  
President