



## Industrial Energy Consumers of America

*The Voice of the Industrial Energy Consumers*

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March 30, 2015

### Via Electronic Submission

Attn: Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: *Reopening of Comments Periods, Notice of Proposed Rulemaking, "Position Limits for Derivatives and Aggregation of Positions," RIN 3038-AD99 and 3038-AD82, 80 Fed. Reg. 10022, et seq. (February 25, 2015)***

Dear Mr. Kirkpatrick:

The Industrial Energy Consumers of America (IECA) submits the following comments in support of setting speculative position limits for derivatives and aggregation of positions.

### **Industrial Energy Consumers of America**

IECA is a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales, over 2,900 facilities nationwide, and with more than 1.4 million employees worldwide. Unlike many other trade associations, IECA's member companies are exclusively large manufacturing companies. ***The membership does not include producers of natural gas, oil, coal, nor companies whose primary business is to produce and sell electricity.***

It is an organization created to promote the interests of manufacturing companies through 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: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, brewing, independent oil refining, and cement.

IECA member companies are some of the largest consumers of natural gas and electricity in the country, if not in the world. The member companies of IECA are mostly energy-intensive trade-exposed (EITE) companies, which means that relatively small increases to the cost of natural gas or electricity can have significant impacts on their global competitiveness. These are companies who are greatly impacted by this rulemaking.

IECA has been an active participant at the CFTC in support of speculative position limits for over a decade, and has testified before the Commission, the U.S. Senate, and the U.S. House of

Representatives on several occasions on this subject. Excessive speculation increases price volatility, separates prices from the underlying supply and demand of the commodity, and increases costs.

### **1. The credibility of the EEMAC is in question.**

The Energy & Environmental Markets Advisory Committee (EEMAC) membership does not have a manufacturing sector member despite the fact that the manufacturing sector consumes about 30 percent of the natural gas and 27 percent of electricity in the U.S. Other important consumer voices are also missing. Without representation that would have voiced serious questions to the credibility of certain presentations as being biased or self-serving, puts in question any of the outcomes by the EEMAC from its February 26, 2015 meeting. The legitimacy of the EEMAC is in question.

In previous years, IECA was a member of the EEMAC and we were surprised to learn that in 2015 IECA was no longer a member. In response to this oversight, IECA sent a letter to the Commission urging that IECA be incorporated as a member of the EEMAC. IECA did not receive a response.

If one looks at the agenda from the February 26, 2015 meeting (see below), other than CFTC presenters, every presenter has views that are not consistent with CFTC action to set speculative position limits. Professor Pirrong has a long history of client paid studies in this area and will need to identify who paid for the underlying data and study for his results to be credible on this subject. We ask the question – where was the presenter that was the voice of the consumers in this meeting?

#### *Panel I: What Does the Data Show?*

- *Vince McGonagle, Director, Division of Market Oversight*
- *Steve Sherrod, Senior Economist, Division of Market Oversight*
- *Tom LaSala, Chief Regulatory Officer, CME*
- *Erik Haas, Director – Market Regulation, ICE Futures U.S.*
- *Craig Pirrong, Professor of Finance and Energy Markets, Director of Global Energy Management Institute, Bauer College of Business, University of Houston*

#### *Panel II: Designated Contract Market Experience with Position Limits and Trading Liquidity*

- *Tom LaSala, Chief Regulatory Officer, CME*
- *Erik Haas, Director – Market Regulation, ICE Futures U.S.*

#### *Panel III: Bona Fide Hedging*

- *Vince McGonagle, Director, Division of Market Oversight*
- *Steve Sherrod, Senior Economist, Division of Market Oversight*
- *Joe Nicosia, Commodity Markets Council*
- *Ron Oppenheimer, Commercial Energy Working Group*

## **2. IECA's comments are not meant to replace previously submitted comments.**

This letter is meant to supplement, not replace, comments previously submitted by IECA. We urge the CFTC to review these previously submitted comments as it proceeds with the drafting of a final rule.

## **3. Necessity and appropriateness of position limits.**

Speculative position limits, like many public policies, can create winners and losers. Those who oppose speculative position limits will never be persuaded to support them because it could impact their business and reduce profitability. The reverse is true for bona fide hedgers, such as IECA member companies. Putting in place responsible speculative position limits reduces volatility and costs.

On one side are banks, hedge funds, ETFs, sovereign hedge funds, trade associations representing traders, banks, and exchanges, and the exchanges themselves. They can make money on price volatility or through the volume of transactions. On the other side are consumers of every type. They simply want the market price to reflect fundamental supply and demand without interference of deep pocket market players jockeying for market power or manipulation of price without regard to impact to the consumer.

There is a significant record in the U.S. Senate, U.S. House of Representatives, and the CFTC through hearings, witnesses and thousands of supportive filings, which show over a decade of support for the necessity and appropriateness of position limits.

During and after the recent EEMAC meeting, some have continued to argue that the Commission has not adequately demonstrated the statutory necessity and appropriateness of position limits. They further argue that academic analysis into the impact of excessive speculation is insufficient, and that the CFTC has yet to fully appreciate the costs and benefits of the proposed rule. IECA argues for every one academic study which says speculative limits are not necessary, there are more than two studies that support speculative position limits. We urge the CFTC to seek the facts.

## **4. Ceding CFTC authority to commodity exchanges.**

Some commenters are suggesting that the CFTC cede its authority to impose speculative position limits to the exchanges. We oppose these proposals because it is in conflict with Congressional intent. It is the responsibility of regulators to regulate and oversee the exchanges. Doing so is contrary to the intent of Congress, which is that the CFTC, not the exchanges or self-regulatory organizations, should be tasked with setting speculative position limit levels as appropriate, and define who should be eligible for bona fide hedge exemptions.

These same commenters have suggested that the CFTC not act to impose position limits on single-and all-month contracts and allow the exchanges to impose limits on these contracts as appropriate. Similarly, there were statements made at the EEMAC meeting that imply a bias towards exchange-imposed accountability limits and broad exchange-defined hedge exemptions.

Commodity exchanges cannot replace government regulatory agencies created to implement the law with the purpose of protecting the public interest. Exchanges benefit from higher trading volumes and volatile prices. Dodd-Frank recognized that exchanges have a profit motive to make position limits voluntary or unreasonably high, and to institute broad hedge exemptions that may include non-commercial market participants (such as financial speculators).

**5. Hedge exemptions and position aggregation.**

Questions have been raised regarding the efficacy of the CFTC's proposed enumerated hedge exemptions and changes to position limit aggregation rules. We caution the CFTC not to broaden the bona fide hedge exemption in such a manner that would allow non-commercial entities, including speculators, financial institutions and index funds to avoid speculative position limits.

Thank you for the opportunity to provide additional comments on this important subject matter. We urge the CFTC to move forward to set responsible speculative position limits which serve the market and the ability of bona fide commercial hedgers to manage commodity price risks.

Sincerely,

Paul N. Cicio  
President