

June 22, 2015

VIA ELECTRONIC SUBMISSION

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Comments on the Notice of Proposed Rulemaking, *Trade Options*
(RIN 3038-AE26)**

Dear Mr. Kirkpatrick:

I. INTRODUCTION

On behalf of The Commercial Energy Working Group (“**Working Group**”), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the Commodity Futures Trading Commission’s (the “**CFTC**” or “**Commission**”) request for comment on the Notice of Proposed Rulemaking, *Trade Options* (“**TO NOPR**”).¹

The Working Group is a diverse group of commercial firms in the energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. Among the members of the Working Group are some of the largest users of energy derivatives in the United States and globally. The Working Group considers and responds to requests for comment regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

¹ See Notice of Proposed Rulemaking, *Trade Options*, 80 Fed. Reg. 26,200 (May 7, 2015), available at <http://www.cftc.gov/ucm/groups/public/@Irfederalregister/documents/file/2015-11020a.pdf>.

II. COMMENTS OF THE WORKING GROUP

A. THE WORKING GROUP APPRECIATES THE CFTC'S EFFORTS TO ADDRESS END-USERS' CONCERNS WITH THE TO NOPR.

The Working Group appreciates the Commission's continued efforts to address the issues confronting commodity end-users. The TO NOPR would meaningfully ease regulatory burdens for many market participants. Specifically, the elimination of the obligation to file Form TO will allow those market participants to (i) reduce the amount of resources dedicated to identifying and tracking their trade options and (ii) reallocate resources for optimal utilization. With the inclusion of the improvements suggested below, the TO NOPR could provide near-complete regulatory relief for commodity end-users with respect to their trade options.

B. THE CFTC SHOULD CLARIFY THAT THE ALTERNATIVE \$1 BILLION NOTICE IS INTENDED TO LESSEN END-USERS' REGULATORY BURDENS ASSOCIATED WITH PHYSICAL TRANSACTIONS THAT MIGHT BE TRADE OPTIONS.

As proposed, the TO NOPR would require end-user counterparties to trade options to provide notice by email to the CFTC's Division of Market Oversight ("DMO") within 30 days after entering into trade options that have an aggregate notional value in excess of \$1 billion in any calendar year (the "\$1 Billion Notice"). In the alternative, an end-user may provide notice by email to DMO that it reasonably expects to enter into trade options having an aggregate notional value in excess of \$1 billion during any calendar year (the "Alternative \$1 Billion Notice").

The Working Group appreciates the inclusion of the Alternative \$1 Billion Notice. It appears that the Commission's intent in proposing the Alternative \$1 Billion Notice is to allow end-users to avoid the burdens associated with classifying and tracking each of their physical transactions that might be trade options.² If that is in fact the case, the Working Group agrees with the Commission and requests that the Commission clearly state that intent in the final trade options rulemaking.

C. THE APPLICATION OF SPECULATIVE POSITION LIMITS TO TRADE OPTIONS SHOULD BE ADDRESSED IN THE FINAL TRADE OPTIONS RULE.

The Working Group agrees with the sentiments expressed by Commissioner Giancarlo in his statement on the TO NOPR that (i) the application of speculative position limits to trade options should be addressed in the final trade options rule – not the final position limits rule – and (ii) the final trade options rule should make clear that trade options are exempt from speculative position limits.³

The final trade options rule is the best context in which to address the application of speculative position limits to trade options for a number of reasons. For example, the TO NOPR

² See, e.g., TO NOPR at 26,203 n.39.

³ See *id.* at 26,210 (Appendix 4 – Statement of Commissioner J. Christopher Giancarlo).

pertains to the obligations associated with trade options, and as such, market participants should be provided with a full and clear expectation of those obligations. To avoid continued regulatory uncertainty with respect to the implications of a contract being deemed a trade option, the final trade options rule should make clear that trade options are exempt from speculative position limits. In his statement on the TO NOPR, Commissioner Giancarlo precisely captured the need for clarity in this respect and the reason it is merited when he noted the following:

As long as the specter of position limits hangs over trade options, market participants that have used these instruments for decades as a cost effective means of ensuring a reliable supply of a physical commodity and to hedge commercial risk will be reluctant to use them.⁴

III. CONCLUSION

The Working Group appreciates this opportunity to provide comments on the Commission's TO NOPR and respectfully requests that the Commission consider the comments set forth herein.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe

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Working Group*