

November 13, 2015

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

Re: Aggregation of Positions, RIN 3038-AD82

Dear Secretary Kirkpatrick:

By this letter the Coalition of Physical Energy Companies (“COPE”) responds to the Commodity Futures Trading Commission (“CFTC” or the “Commission”) request for comments on its Supplemental Notice of Proposed Rulemaking to amend its Aggregation of Positions (the “Supplemental Notice”).¹

The members of COPE are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale.² COPE members utilize futures and swaps, mainly in order to hedge the risks arising due to commodity price fluctuations and other potential changes affecting their physical businesses. As a general matter, COPE members are affected by CFTC regulations regarding position limits and aggregation.

In the Supplemental Notice, the Commission has proposed to revise its proposed regulations on aggregation for purposes of its proposed position limits rules such that all owners of 10 percent or more of an owned entity would be permitted to disaggregate the positions of the owned entity on the same basis, subject to a notice filing with the Commission.³ Previously, the Commission had proposed different treatment for owners of greater than 50% of an owned entity, such that a separate application would be required to be approved in order for such entities to disaggregate

¹ *Aggregation of Positions*, 80 Fed. Reg. 58365 (Sep. 29, 2015).

² The members are: Apache Corporation; EP Energy LLC; Iberdrola Renewables, LLC; Kinder Morgan, Inc.; MarkWest Energy Partners, L.P.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

³ Supplemental Notice at 58369.

positions for purposes of position limits, and the notice filing would not have been available to such entities.⁴

COPE supports the Commission's proposal to remove the arbitrary 50% maximum ownership amount for the notice filing, and permit disaggregation for all entities that meet the substantive requirements. As stated by the Commission "the criteria ...are appropriate and suitable for determining when disaggregation is permissible due to a lack of control and shared knowledge of trading activities."⁵ The approach taken in the Supplemental Notice provides an efficient process for entities qualifying for the exemption to aggregation to continue to operate without disruption or uncertainly while at the same time permitting the Commission to effectively carry out its regulatory mission.

COPE recognizes the proposal as another concrete step by the Commission to adopt a common sense approach to its regulations and reduce burdens on end users. COPE encourages the Commission to continue down this path as it considers the overall position limits proposed rule ("PL NOPR").⁶ As currently proposed, the PL NOPR will be the most burdensome Dodd-Frank rule on end-users and will result in seemingly unnecessary duplication between Commission regulation and that of futures exchanges. COPE is hopeful that the Commission will bring the same sensitivity to lessening end users' burdens in its consideration of the PL NOPR that it has brought to its recent actions adjusting prior proposals and rules to reduce end-user burdens.

⁴ *Id.* at 58368.

⁵ *Id.* at 58372 (internal citation omitted). In prior comments, COPE requested clarification to the separation criteria including that an employee that participates on the board or similar governing process of an owned entity but does not control, direct, or participate in an entity's trading decisions of the investing entity, will satisfy the separation criteria. *See* COPE Comments to Aggregation of Positions, RIN No. 3038-AD82 (*filed* Feb. 10, 2014). COPE believes that clarifications such as the foregoing are essential for market participants to be confident they have properly complied with the separation criteria in a notice filing. COPE also believes the Commission should establish a process for persons that don't squarely meet the criteria but can demonstrate a lack of control and shared knowledge of trading activities to seek that the Commission grant disaggregation based upon their unique facts.

⁶ *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013).

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Respectfully Submitted,

/s/ David M. Perlman

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CC: COPE Members