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November 13, 2015

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Email to secretary@cftc.gov and electronically to http://comments.cftc.gov

Re: Comments of the International Energy Credit Association with respect to the CFTC's Supplemental Notice of Proposed Rulemaking entitled "Aggregation of Positions," 80 Fed.Reg. 58365 (September 29, 2015), RIN 3038-AD82

Dear Mr. Kirkpatrick:

The International Energy Credit Association ("IECA") is pleased to submit the comments set forth herein to the Commodity Futures Trading Commission ("Commission" or "CFTC") with respect to the CFTC's supplemental notice of proposed rulemaking on Aggregation of Positions, published on September 29, 2015, RIN 3038-AD82 ("2015 Aggregation Proposal").

Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA") and its amendments of the Commodity Exchange Act ("CEA"), the IECA has filed numerous comments with the Commission seeking to protect the rights and advance the interests of the commercial end-user community that makes up the majority of its membership. While the IECA's members present a diverse cross-section of the different types of businesses that participate in the energy industry, many of its members are representatives of commercial end-users that rely on swaps to help them mitigate and manage (i.e., hedge) the risks of energy commodity price volatility to their physical energy businesses.

Correspondence with respect to these comments should be directed to the following individuals:

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I. IECA Supports and Commends the Commission for Amending the 2013 Aggregation Proposal to Allow Use of the "Notice Filing Procedure" Under Regulation 150.4(c) for Accessing the "Owned-Entity" Exemption Under Regulation 150.4(b)(2) for Persons Owning 50 Percent or More of an Owned Entity.

The IECA commends the CFTC for proposing in its 2015 Aggregation Proposal to amend the 2013 Aggregation Proposal[1] to allow persons with a greater than 50 percent ownership or equity interest in a separately organized entity (an "owned entity") to utilize the "notice filing procedure" under Regulation 150.4(c) for accessing an "owned-entity" exemption under Regulation 150.4(b)(2) from the otherwise applicable aggregation requirement under Regulation 150.4(a).

Utilizing this "notice filing procedure" under the 2013 Aggregation Proposal, an eligible person (i.e., which owned more than 10 percent but no more than 50 percent of an owned entity) could become exempt from the aggregation requirement, for purposes of applying the position limits under Regulation 150.2, effective immediately upon filing the requisite notice with the Commission. A person owning greater than 50 percent of an owned entity, however, was required by the 2013 Aggregation Proposal to file an application with the Commission and wait until the Commission issued a decision in response to that application before any "owned-entity" exemption under Regulation 150.4(b)(2) would be effective.

The IECA applauds the Commission for expanding the availability of this "notice filing procedure" to all persons owning 10 percent or more of an owned entity. We agree with the Commission that a person that demonstrates the absence of control of trading positions of an owned entity, as required by the "notice filing procedure" under Regulation 150.4(c), should be eligible for an immediate exemption from the Commission's aggregation requirements whether that person owns 10 percent to 50 percent of the owned entity, or 50 percent to 100 percent of the owned entity.

Applying such common sense standards to modifying the Commission's proposed rules for aggregating positions and applying position limits will help minimize the

[1] *See Aggregation, Position Limits for Futures and Swaps*, 78 Fed.Reg. 68946 (November 15, 2013), which is referred to herein as the "2013 Aggregation Proposal."

barriers to participation in the markets thereby ensuring that the liquidity of the markets is not constrained by unnecessary regulatory burdens. All market participants, especially commercial end-users using hedges to manage and mitigate commodity market risks, will benefit substantially from enhancements to the otherwise diminished liquidity of the swaps and futures markets.

The IECA similarly encourages the Commission to conclude, contrary to some of the comments that were submitted to the Commission,[2] that the separate management and control conditions set forth in Regulation 150.4(b)(2)(i)(A) through (E), which must be met by a market participant to rely on the proposed "owned-entity" exemption under Regulation 150.4(b)(2), will prevent a market participant from lawfully orchestrating trading decisions and dividing the positions among various subsidiaries in order to avoid the Commission's position limits requirements.

II. IECA Requests that the Commission Clarify that, if a Notice is Submitted by a Market Participant in Good Faith under Regulation 150.4(c) and if the Commission Subsequently Determines that such Market Participant is Ineligible for the "Owned-Entity" Exemption under Regulation 150.4(b)(2), then the Commission Should Only Require that Such Market Participant Begin Aggregating Positions on a Prospective Basis Starting with the Date of such Determination by the Commission.

The IECA suggests modifying the provisions of Regulation 150.4(c) to clarify that so long as a notice has been submitted by a market participant in good faith (i.e., not fraudulently) in compliance with Regulation 150.4(c), then if the Commission subsequently determines that such market participant is ineligible for the "owned-entity" exemption under Regulation 150.4(b)(2), then such market participant should be instructed by the Commission to begin aggregating positions only on a prospective basis from the date of such determination. The Commission should also indicate that such a market participant would have no liability for its failure to aggregate positions from the date of its good faith filing of a notice under Regulation 150.4(c) until the date of the Commission's determination that such market participant was ineligible for the "owned-entity" exemption under Regulation 150.4(b)(2).

III. IECA Suggests Clarifying the Conditions of the "Owned-Entity" Exemption under Regulation 150.4(b)(2)(i)(B) to Require "Trading Pursuant to Separately Developed and Independent Trading Strategies" in Lieu of "Separately Developed and Independent Trading Systems."

Under Regulation 150.4(b)(2)(i)(B) the person seeking the exemption (the "owner") and the owned entity are required to "(B) Trade pursuant to separately developed and independent trading systems." The first condition of the "owned-entity" exemption under Regulation 150.4(b)(2)(i)(A) prohibits knowledge of each other's trade

[2] See references to comments submitted by "Better Markets" and "Occupy the SEC" as described in the 2015 Aggregation Proposal (80 Fed.Reg. at 58369).

decisions by requiring that the owner and the owned entity "(A) Do not have knowledge of the trading decisions of the other." With that condition under clause (A) already established, there is no need to tie the second condition under clause (B) to require separate "trading systems," when really what the Commission is seeking is that the owner and the owned entity are prohibited from using "trading strategies" that were developed in coordination between the owner and the owned entity. Accordingly, we suggest changing clause (B) of Regulation 150.4(b)(2)(i) to require that the owner and the owned entity "(B) Trade pursuant to separately developed and independent trading **strategies**;" (emphasis added).

Making this change would allow the owner and the owned entity to utilize a single shared system for trading. So long as the owner and the owned entity can demonstrate that the condition in clause (A) is being met, particularly at the time that trades are initially booked and captured by the owner and the owned entity, then use of a single shared system for trading will actually enhance a company's risk management efforts. More specifically, monitoring and surveillance of a single trading system by the managements of the owner and the owned entity would increase the likelihood that such efforts would be more likely to identify instances of traders operating under a common trading strategy or otherwise acting in collusion in violation of the Commission's rules. Requiring separately developed and independent trading systems would frustrate such risk management efforts by the managements of the owner and the owned entity.

At a minimum, the Commission should distinguish between front-end systems (used for trade capture and trade booking) and back-end systems (used for risk management and trade reporting). The Commission should seek to strike a functional balance between the potentially conflicting requirements of having separate systems and having the ability to quickly pull together, assess and manage a corporate family's exposure to financial risks. Not only would requiring separate and independent back-end systems not accomplish any of the Commission's stated goals, it would in fact frustrate the entities' risk management efforts and increase the costs and the likelihood of errors in the entities' trade reporting efforts.

Accordingly, changing "systems" to "strategies" in clause (B) of Regulation 150.4(b)(2)(i) could actually enhance the development of trading technologies that promote efficient trading and promote prudent risk management practices.

IV. IECA Offers the Following Comments in Response to Commissioner Giancarlo's Statement Attached to the 2015 Aggregation Proposal.

The IECA would support a proposal to remove the presumption of control of an owned entity if the market participant seeking the exemption owns less than 50 percent of the ownership or equity interests in such owned entity. Absent such a requirement, market participants that own between 10 percent and 50 percent of the ownership or equity interests of an owned entity will be required to submit a notice to the Commission under Regulation 150.4(c) and, periodically, "notices of material change" under Regulation 150.4(c)(4). And yet, contrary to the Commission's presumption, the person

owning between 10 percent and 50 percent may not have any control over the trading undertaken by this owned entity.

For example, consider an electric utility company ("Utility") that owns a 25 percent ownership interest in a special purpose entity ("SPE") that owns an independent power plant, in which 25 percent of the SPE is owned by unaffiliated Company X and 50 percent of the SPE is owned by unaffiliated Company Y. This SPE will, most likely, be required by its lenders (or by Company Y in conjunction with Company X) to hedge any exposure the SPE has to commodity price risks of fuel inputs or power outputs of the SPE's power plant. Under such circumstances, the SPE's hedging program will have no connection with the Utility's hedging program and the Utility will not have control of the trading of positions undertaken by such SPE, but the Utility will nevertheless be required to submit a notice under Regulation 150.4(c) and will have to submit periodic notices of material changes.

Eliminating this additional regulatory filing by removing the presumption of control for a market participant owning any minority interest in an owned entity would reduce the regulatory burden faced by the Utility and would reduce the cost of its participation in the swaps and futures markets.

We also support Commissioner Gincarlo's suggestion that the Commission should consider eliminating or in some way minimizing the impacts of the requirements of Regulation 150.4(b)(2)(i)(E) regarding "not having risk management systems that permit the sharing of trades or trading strategy." We submit that encouraging the use and sharing of systems to ensure effective risk safeguards, i.e., sharing of effective risk management systems, is a policy that the Commission should endorse, rather than prohibit or proscribe as a price for remaining eligible for disaggregation. (See also the related discussion above in Section III of these IECA Comments.)

Conclusion.

The IECA appreciates the opportunity to provide the foregoing comments and information to the CFTC. This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member. If you would like for us to expand our discussion of any of the above-listed discussion points, please let us know.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

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