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March 7, 2016

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**Re: Comments on Draft Technical Specifications for Certain Swap Data Elements**

Dear Mr. Kirkpatrick:

On December 22, 2015, the Commodity Futures Trading Commission (“Commission” or “CFTC”) staff (“Staff”) issued Draft Technical Specifications for Certain Swap Data Elements (“DTS”). The International Energy Credit Association (“IECA”) respectfully provides these comments in response to the request for public comment on the DTS.

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. Many of the IECA’s members are representatives of commercial end-users that rely on futures contracts and swaps to help them mitigate and manage (i.e., hedge) the risks of energy commodity price volatility to their physical energy businesses, all of whom have a fundamental mission of providing safe, reliable, and reasonably priced energy commodities that US businesses and consumers require for our economy and our livelihood.

**I. Actions by the Commission to address swap data reporting issues**

We commend the Commission for undertaking commercially reasonable revisions to its various earlier rules enacted under the DFA when the Commission did not have either the data or the experience with swap markets and their regulation. Now that the Commission has more actual data and experience on which to rely in exercising its decision making powers, the IECA encourages the Commission to make such revisions with a proper consideration of the costs and benefits of any such proposals.



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For example, the proposed rule on “Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps,” 80 Fed.Reg. 52544, published on August 31, 2015, seeks to put greater responsibility on Derivatives Clearing Organizations (“DCOs”) for reporting cleared swaps, which may reduce some of the burdens on end-users from reporting cleared swaps. Similarly, the Commission noted various specific issues with respect to the data reported by swap data repositories (“SDRs”) in Staff’s Swap Dealer De Minimis Threshold Preliminary Report.

Also, the Commission Staff was concerned enough with swap data reporting errors and omissions by swap dealers (“SDs”) and major swap participants (“MSPs”) that it issued Letter No. 15-66, in which Staff sought to remind SDs and MSPs of their various reporting obligations by saying:

“SDs and MSPs are required by Regulations 23.204 and 23.205 to report all information and data in the time and manner specified in parts 43 and 45. This includes reporting continuation data in a manner sufficient to ensure that all data in the swap data repository (“SDR”) concerning swaps remains current and accurate. It also includes correcting errors or omissions promptly after discovery.

DSIO has observed that some SDs and MSPs are having reporting issues and failures resulting in not reporting accurate and timely data in accordance with the regulatory requirements. SDs and MSPs should evaluate their reporting practices to ensure compliance with their reporting requirements. DSIO discusses below some of the more common issues and failures it has observed and suggests some steps that might assist in addressing these issues.”

The IECA suggests that, before Staff adds potentially 120 additional new data fields onto the existing swap data reporting requirements, Staff should give the above-noted initiatives an opportunity to improve the swap data being collected under the Commission’s existing swaps data reporting rules and from that experience determine whether any of the 120 additional data fields are necessary for the Commission and Staff to carry out its regulatory responsibilities under the DFA amendments to the CEA.

Moreover, the IECA believes that any expansion of the existing swap data reporting fields must only be accomplished by following the notice of proposed rulemaking process, including notice of actual proposed Commission rules that are sought to be changed. Under the Administrative Procedures Act (“APA”), this notice of proposed rulemaking procedure should require the development of an appropriate comparison of the costs and burdens of adding new data fields compared against the benefits of adding such additional data reporting fields.



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In this way, the Commission would be made aware of, and the public could comment on, the relative burdens and benefits of adding such additional swap data elements. The IECA believes that expanding the Commission's existing swap data reporting obligations under parts 43 and 45 to include many of the 120 additional data fields set forth in the DTS will result in substantial burdens and costs on end-users of swaps, without any comparably-valued benefit to the Commission, the markets or the public from adding such additional data fields.

If the appropriate cost-benefit comparison were undertaken, we believe the addition of each swap data field would be subject to the rigors of a proper cost-benefit analysis and public scrutiny of each such cost-benefit comparison would ensure that the Commission's decision making process does result in commercially reasonable revisions to the Commission's swap data reporting rules.

In the alternative, presuming that the Commission might conclude as a result of the DTS and the comments received from the public that the Commission should expand its swap data reporting rules to include one or more of the 120 additional swap data fields set forth in the DTS, the IECA wishes to set forth its initial concerns with several of these additional swap data elements by providing answers to the following specific questions asked by the Staff in the DTS.

## **II. Responses to Specific Questions in the DTS**

Staff is requesting comment on draft technical specifications, including descriptions, allowable values and formats, for certain of the swap data elements that are reportable under parts 43 and 45 of the Commission's regulations. Provided below are IECA's responses to some of those questions, which are included for reference.

### **A. Counterparty-Related Data Elements**

- 1. Question #1: Are there challenges associated with identifying the Ultimate Parent and/or Ultimate Guarantor of a swap counterparty? If so, how might those challenges be addressed?*

Information with respect to each swap counterparty such as the Ultimate Parent and Ultimate Guarantor should be provided by the swap counterparty as part of its LEI registration process. The LEI registration could contain all counterparty data fields that the Commission deems necessary to be reported. The burden of sourcing and ensuring these data elements are correct and up-to-date should not be the responsibility of the swap reporting party through parts 43 or 45 reporting.

2. *Question #3: When a swap counterparty has more than one Ultimate Parent, including, but not limited to, situations in which an entity is a joint venture, how might this be reflected in a single data element?*

It would be impossible to reflect multiple parents or guarantors in a single data element. This is why such data should be provided by the counterparty as part of the LEI registration process.

3. *Question #7: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

Special Entity/Utility Special Entity Indicator/US Person Indicator for Ultimate Guarantor/US Person Indicator for Ultimate Parent/Counterparty US Person Indicator/Counterparty Financial Entity Indicator

For the same reasons as stated above for Ultimate Parent/Ultimate Guarantor, each swap counterparty should provide this information to the Commission as part of its LEI registration.

#### Counterparty Dealing Activity Exclusion Type

The inclusion of this new field presumes that every swap is a dealing swap unless one of the enumerated exemptions applies. However, the Commission's Further Definition of Swap Dealer Joint Final Rule makes the distinction between swap dealing and trading and the DTS should do so as well. Swaps that are trading should be reportable as such and not as an exclusion from swap dealing. In addition, the list of enumerated exceptions is too narrow and only excludes hedging of physical positions. This exception should be broadened to include any bona fide hedging as set out in the Further Definition of Swap Dealer Joint Rule.

In addition, if both the counterparty and the reporting party are swap dealing, this field would only indicate that the reporting party is swap dealing. If the reporting party is not swap dealing, but the counterparty is swap dealing, the reporting party will not know this detail and would not be reporting such information.

#### B. Notional Amount

1. *Question #25: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

The DTS states that the Notional Amount data elements “allow for an explicit representation of the notional amount for each leg or cash flow stream, rather than requiring Staff to infer the notional amount for a leg/stream based upon the absence of reported multiple notional amounts”. The problem with this data element is that commodity swap cash flows are not based on a notional amount but are based on the commodity units. The concept of a notional amount does not apply for many commodity swaps used by commercial end-users of energy-based commodity swaps. For example, it would be extremely difficult to ascertain a “notional amount” for a heat rate call option, which is just one of the many relatively complex commodity swaps used to hedge commodity risks in the energy industry. In addition, the CFTC Staff states many times in the DTS that it wants better detail on cash flows, but the addition of many new fields such as Notional Amount, additional fixed payments, option fields, etc., will not provide a complete calculation of cash flows. The only way to properly reflect cash flows is for the reporting party to report cash flows as cash flows are paid. This would be an extremely burdensome process without any comparably-valued benefit to the Commission.

C. Additional Fixed Payments

2. *Question #26: What challenges may exist for reporting Additional Fixed Payments? If so, what alternative approaches are available?*

Commodity swaps can be very complex and fees are sometimes booked as miscellaneous deals in order for the system to properly reflect the cash flows. The fee may apply to multiple deals or legs of a deal and are not easily tagged back to the original swaps. In addition, the novation of multiple trades can happen at the same time but one net novation fee is agreed and booked as a miscellaneous fee. It would be extremely difficult and costly to build out systems to record and report miscellaneous fees and we do not see the value that such fee reporting would provide to the Commission.

D. Options

1. *Question #33: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

Staff should add “Asian” to the list of allowable values for “Option Style”. With respect to “Embedded Option Indicator,” the Commission needs to provide more clarity as to what this data element is intending to capture. If a

“swap” contains some type of optionality, there may be no easy way to report such optionality and it could be an extremely manual process to do so.

The IECA notes that presently we are waiting for the Commission’s issuance of a final rule on Trade Options, which we presume will conclude that Trade Options are not subject to reporting under parts 43 or 45. Pending our review of that final rule, we offer the comment that most of the draft technical specifications are nearly impossible to apply to Trade Options, since Trade Options have very little in common with what the Commission has historically viewed as an option and, therefore, Trade Options do not have most of the features that are highlighted in the Staff’s proposed technical specifications for “options.”

#### E. Orders

1. *Question #35: What challenges exist for reporting this type of order information for a particular swap traded on or subject to the rules of a SEF or DCM? Do you have recommendations for addressing these challenges?*

Commercial market participants commonly use voice brokers to transact commodity swaps. Voice brokers will match up the parties to a swap and input the details of the trade for both parties onto a SEF/DCM. The SEF/DCM will report the transaction to the SDR. To the extent the Commission needs details on the order type, quantity, time stamp etc. the voice broker should have the responsibility of inputting such details into the SEF/DCM and the SEF/DCM should report these fields to the SDR. Order information should not be the responsibility of the reporting party.

2. *Question #36: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

For bilateral swaps between two counterparties not executed on a SEF, there may not be an Order ID or Order Book. If there is an Order ID, it most likely is different for each counterparty, because the trade is bilateral and there is not a centralized trading platform to assign a common Order ID. For reporting parties that do not have Order IDs for bilateral swaps, it would be a costly endeavor to design and implement new processes and systems to generate and provide Order IDs. The burdens and costs outweigh any benefits.

#### F. Clearing

1. *Question #43: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

The category for “Clearing Exemption Type” specified currently as “NAL “Free Test”” should likely be replaced with a reference to CEA Section 2(h)(7)(D), as amended on December 18, 2015 by the Consolidated Appropriations Act, 2016; and any applicable regulation that the Commission may issue, if any, to take the place of No-Action Letter 14-144.

In addition, as commodity swaps are not currently mandated to be cleared by the Commission, it is difficult for IECA to comment fully on the need for the fields in this section. However, with respect to the “Clearing Exemption Type,” we understand that the Commission may have written its regulations with the expectation that end-users and hedging affiliates would elect their respective clearing exemption on a trade-by-trade basis at the time of entering into each exempt transaction, but it is our understanding that many end-users (CEA Section 2(h)(7)(A)) and hedging-affiliates (CEA Section 2(h)(7)(D)) typically report the required clearing exemption in their annual filings that are made available to the SDR. If the Commission needs to see the exemption on a trade-by-trade basis, IECA proposes that the SDR provide this data element to the Commission. The reporting party is usually not the end-user or the hedging-affiliate and therefore, the reporting party may not have the required information needed to complete this field and in any event, such information would be duplicative of what is, in many cases, already provided to the SDR.

#### G. Periodic Reporting

1. *Question #44: To represent that the reporting counterparties and the SDRs have confirmed data accuracy, is there a methodology better than reporting the Data Accuracy Confirmation by Counterparty data element?*

The reporting party currently provides the SDR with information as to whether the trade was confirmed via the normal confirmation process. It would be extremely time consuming and duplicative for the reporting party to attempt to confirm that the counterparty has reviewed the SDR record. The SDR will have the information as to whether the counterparty has affirmed, disputed or failed to affirm the SDR’s record and should have the responsibility of reporting this information to the Commission. The SDR should be responsible for reporting this data element.

Furthermore, IECA recommends that this SDR data element about data accuracy be reworded to “Data Accuracy Confirmation by Reporting

Counterparty,” or that the third allowable value be reworded as “No Response.” Unregistered swap counterparties without reporting counterparty responsibility for a swap have no regulatory obligation to reconcile, or to verify data reported to an SDR.<sup>1</sup> If the non-reporting counterparty discovers an error, the regulatory obligation is to report the error to the reporting counterparty.

2. *Question #45: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

Part 43/45/46

As reporting parties are able to submit one trade report to the SDR that satisfies both parts 43 and 45, the SDR should report this data element to the Commission.

Dissemination ID/Date and time of last open swaps reconciliation with SDR

The SDR will have this information and reporting parties do not separately track these data elements. The SDR should be responsible for reporting these data elements.

3. *Question #46: Are there any challenges for reporting the updated next reset date as the floating leg resets over time?*

Staff has indicated that “periodically reporting the updated next reset date, in addition to a reset date schedule reported at the inception of the swap transaction, would assist Staff in monitoring for important fixing dates in the market.” This would be an extremely burdensome process without any comparably-valued benefit to the Commission.

4. *Question #48: Are there any conditions under which the NPV of a given leg/stream cannot be adequately determined? If so, how should the inability to determine the NPV be reported?*

Due to the complexity of commodity swaps, every swap leg may not have a separate valuation. An overall net valuation amount is already reported to the SDR quarterly and the SDR can report the Valuation Datetime to the Commission.

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<sup>1</sup> Some SDRs charge counterparties for access to their swap record databases, even if counterparty is not otherwise reporting swaps to such SDR. Unregistered swap counterparties should not be required to pay for access to any and all SDRs to which a reporting counterparty to a swap may decide to report a swap.



5. *Question #52: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below:*

A commodity swap may have some portion of its valuation that is marked to market and some portion of its valuation that is marked to model, and therefore, not have a single valuation type. Furthermore, the valuation type could change over time based on market liquidity.

6. *Question #58: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

Under the Commission’s final margin rule on “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants” issued on January 6, 2016, Collateral/Margin is not required to be posted or collected by non-financial end-users. Instead, a non-financial end-user may bilaterally negotiate credit support arrangements with its swap counterparty, including various bona fide means of providing credit support, such as guarantees by creditworthy affiliates, liens on assets that are shared by multiple beneficiaries including a swap counterparty and the non-financial end-user’s senior lenders, a level of unsecured credit based on a non-financial end-user’s credit rating or net worth or its guarantor’s credit rating or net worth, or any number of other mutually agreeable credit support arrangements. Under such circumstances, the data elements in section (d) should only be required to be reported by SD’s, MSP’s and financial end-users as such terms are defined in the final margin rule. To require non-financial end-users to report Collateral/Margin information would be a significant burden as such information is typically held in several systems by different functions (collateral, legal etc.) and would require manual reporting or a significant system build-out, or, as demonstrated by the examples of negotiable credit support arrangements noted above, such Collateral/Margin information is simply not applicable to such arrangements.

#### H. Events

1. *Question #65: Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.*

IECA’s view is that events such as those listed in this section should only be required to be reported if they modify one or more of the primary economic terms.



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### III. Addresses for Communications and Correspondence

Please direct correspondence concerning these comments to:

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### CONCLUSION

The IECA appreciates this opportunity to provide comments to Staff and respectfully requests that the Commission consider these comments as it develops any proposed new regulations.

Yours truly,  
INTERNATIONAL ENERGY CREDIT ASSOCIATION

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