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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: Report Regarding the Residual Interest Deadline

Dear Mr. Kirkpatrick:

I. INTRODUCTION.

On behalf of The Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the request for public comment related to the March 3, 2016 roundtable held by the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") Division of Swap Dealer and Intermediary Oversight and the Office of the Chief Economist regarding the Commission's forthcoming report on the Residual Interest Deadline[1] (the "**Residual Interest Report**").[2] The Working Group welcomes the Commission's ongoing efforts to ensure that proper measures are in place to protect customers' collateral posted to FCMs and to ensure the adequacy of collateral posted to secure the positions of such customers.

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

[1] The "**Residual Interest Deadline**" is the time at which a futures commission merchant ("**FCM**") is required to deposit additional funds into customer segregated accounts when customer accounts are undermargined. *See* CFTC Regulation 1.22.

[2] *See* http://www.cftc.gov/PressRoom/PressReleases/pr7332-16.

regarding regulatory and legislative developments with respect to the trading of energy commodities, including derivatives and other contracts that reference energy commodities.

II. COMMENTS OF THE WORKING GROUP.

As the Commission is aware, CFTC Regulation 1.22 requires Commission staff to "publish for public comment a report addressing, to the extent information is practically available, the practicability…of moving [the Residual Interest Deadline] from 6:00 p.m. Eastern Time on the date of the settlement…to the time of that settlement (or to some other time of day)."[3] The focus of the Residual Interest Report – the practicability of moving the Residual Interest Deadline to the time of settlement or some other time on the date of settlement – is an important one.

In considering whether a change to the Residual Interest Deadline is appropriate, Commission staff must carefully weigh the costs and benefits of any potential change. In that respect, the current Residual Interest Deadline of 6:00 p.m. Eastern Time on the date of settlement strikes the proper balance as it requires posting of a level of residual interest to cover customer margin deficits on a regular basis while not placing undue burdens on customers.

The Working Group shares the concerns of many other market participants that a change of the Residual Interest Deadline to the time of settlement or a time of day earlier than 6:00 p.m. Eastern Time could have adverse consequences for customers.[4] Specifically, the Working Group is worried that such a change to the Residual Interest Deadline would, in effect, force FCMs to require their customers to pre-margin their accounts or to resort to intraday margin calls. Either of those outcomes would require customers to reserve significant amounts of what is often scarce capital to satisfy the margin requirements on their swaps and futures accounts.

In addition, changing the Residual Interest Deadline to the time of settlement or earlier in the day may not only increase costs to FCMs' customers, it may also increase operational complexity and costs for FCMs. That, in turn, may cause FCMs to pass such costs on to their customers. Moreover, an increase in operational complexity may provide a relative advantage to larger FCMs that are affiliated with banks as they are more likely to have readily adaptable internal resources to address a change to the Residual Interest Deadline. The combination of increased costs and a relative advantage for larger FCMs may make it harder for smaller FCMs to compete in an industry that has already seen a disturbing decline in the number of FCMs. As

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3 *See* CFTC Regulation 1.22(c).

4 *See, e.g.*, Comments of the Managed Funds Association (Jan. 13, 2015), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60226&SearchText=; Comments of the Futures Industry Association (Dec. 17, 2014), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60081&SearchText=; Comments of the National Grain and Feed Association (Jan. 13, 2015), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60236&SearchText=.

such, the Working Group strongly supports keeping the Residual Interest Deadline as 6:00 p.m. Eastern Time on the date of settlement.

III. CONCLUSION.

The Working Group appreciates this opportunity to provide comments regarding the Residual Interest Report and respectfully requests that the CFTC consider the comments set forth herein.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ David T. McIndoe
David T. McIndoe
Alexander S. Holtan

Counsel to The Commercial Energy Working Group