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July 13, 2016

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
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Re: Comments of the IECA on CFTC's Proposed Supplemental Notice of Proposed Rulemaking, Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38458, RIN 3038-AD99, published on June 13, 2016 ("Position Limits Supplement")

Dear Mr. Kirkpatrick:

On June 13, 2016, the Commodity Futures Trading Commission ("Commission" or "CFTC") published the above-captioned Position Limits Supplement as a supplemental notice of proposed rulemaking to the CFTC's already pending proposed rule entitled Position Limits for Derivatives published by the CFTC on December 12, 2013 (the "December 2013 Position Limits Proposal").[1] As the CFTC explained, the December 2013 Position Limits Proposal is intended to "conform" the CFTC's position limits under Part 150 of its regulations for futures and options contracts to the changes to the Commodity Exchange Act ("CEA") introduced by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") by proposing "federal position limits for 28 exempt and agricultural commodity futures and option contracts and swaps that are "economically equivalent" to such contracts." (Emphasis added.)[2]

The CFTC's December 2013 Position Limits Proposal is comprised of three primary elements: "(1) the level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot month, an individual month, and all months combined, (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions, and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels." (Emphasis added.)[3] The CFTC's proposed

[1] See *December 2013 Position Limits Proposal*, 78 Fed. Reg. 75680 (published December 12, 2013).
[2] See *Position Limits Supplement*, 81 Fed. Reg. 38458 at 38458.
[3] Id.

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Position Limits Supplement is intended to address primarily the second element of the Proposed Position Limits.

The International Energy Credit Association ("IECA") respectfully offers these comments to the CFTC's proposed Position Limits Supplement.

I. The IECA Commends the CFTC for Deciding Not to Subject Trade Options to Position Limits and Requests that the CFTC Memorialize that Decision in its Final Rule on Position Limits and that the CFTC Allow a Commercial End-User to Hedge its Trade Options as NEBFH Positions.

In numerous comments submitted by the IECA in several different proceedings before the CFTC, the IECA has advocated that the CFTC should not subject commodity options that qualify for the CFTC's trade option exemption under Section 32.3 of the Commission's regulations ("Trade Options")[4] to position limits under Part 150 of the CFTC's requirements.

In earlier proposed rulemakings, the CFTC had proposed subjecting Trade Options to the CFTC's position limits regulations. Several recent presentations and statements by Chairman Massad and Commissioner Giancarlo support excluding Trade Options from the CFTC's proposed position limits requirements in recognition of the positions taken by the IECA and many others in their various comments before the CFTC.

Both the December 2013 Position Limits Proposal and the Position Limits Supplement contain no mention of Trade Options. Similarly, the CFTC's Trade Options Final Rule contains no statement that Trade Options are in any way subject to position limits under Part 150 of the CFTC's regulations.

The IECA requests that the CFTC memorialize this silence as an affirmative decision by the CFTC that position limits under Part 150 of the CFTC's regulations do not apply to Trade Options and that a market participant's positions under one or more Trade Options will not be counted in any determination of whether that market participant has exceeded any applicable position limit under Part 150 of the CFTC's regulations.

Consistent with prior comments of the IECA, the IECA also requests that the CFTC recognize that Trade Options, while technically swaps under the CFTC's Trade

[4] 17 C.F.R. 32.3; and see *Trade Options Final Rule*, 81 Fed. Reg. 14966 (March 21, 2016).

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Options Final Rule, are in fact part or possibly all of a commercial end-user's physical supply arrangements for a physical commodity and such a commercial end-user will need to hedge its commercial risk with respect to its Trade Options. As a result, the IECA requests that the CFTC expressly recognize and exempt a commercial end-user's hedges of its Trade Options as bona fide hedge positions just as it would recognize and exempt as bona fide hedge positions a commercial end-user's hedges of any other physical supply arrangement in the cash market.

II. The IECA Commends the CFTC for Delegating to the Exchanges the Process for Determining Whether Particular Positions Qualify as Non-Enumerated Bona Fide Hedges for Purposes of the Bona Fide Hedging Exemption to Position Limits and Urges the Commission to Allow the Exchanges to Make such Determinations Utilizing their Expertise to Perform a Fully Independent Analysis of the Facts and_Circumstances of Each Application for an Exemption Determination.

In the proposed Position Limits Supplement, the CFTC proposes delegating to registered swap execution facilities ("SEFs") and designated contract markets ("DCMs," referred to herein collectively with SEFs as the "Exchanges") the important roles of accepting and processing applications for:

(i) recognition of non-enumerated bona fide hedges ("NEBFHs") under new Section 150.9;

(ii) exemption from position limits of certain spread positions under new Section 150.10; and

(iii) recognition of bona fide hedges for unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedge positions under new Section 150.11.

The IECA fully supports the CFTC's delegation of this role to the Exchanges. This delegation recognizes the considerable knowledge of the markets and use of those markets by commercial end-users seeking to hedge their exposure to physical commodity risks arising due to the Exchanges having performed this function with respect to Exchange-set limits applicable to futures and options contracts for many years prior to the introduction of swaps into their product mix as a result of the Dodd-Frank Act. The IECA believes that the CFTC is wise to rely on and put to good use the Exchanges' knowledge and expertise in making these exemption determinations.

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The IECA urges the CFTC and its Staff to avoid setting rigid, unwritten rules regarding what types of hedge transactions the Exchanges should accept in each of the new processes under Sections 150.9, 150.10 and 150.11. Instead, the CFTC and its Staff should allow the Exchanges, in accordance with the written regulations being established by the Position Limits Supplement, to exercise their independent review and analysis of each application for an exemption.

The IECA believes that the Exchanges have been performing this role for many years with respect to futures and options contracts, prior to the inclusion of "financially equivalent Swaps" under the Dodd-Frank Act, and that the Exchanges have done so generally in the best interests of both the markets and the commercial end-users who rely on those markets to hedge their exposure to physical commodity volatility risks. Accordingly, the IECA requests that CFTC allow the Exchanges to continue to independently evaluate exemption applications and recognize NEBFH positions relying on the Exchange's extensive knowledge of the markets and how commercial end-users use those markets.

III. The IECA Commends the CFTC for Certain Aspects of its Proposed Amendments to the Definition of Bona Fide Hedging Position and Urges the CFTC to Make Certain Further Clarifications.

As the CFTC notes in the Position Limits Supplement:

> In this regard [of the new processes proposed for Exchanges to recognize certain position limit exemptions], the Commission proposes to amend certain of the regulations proposed in 2013 regarding exemptions from federal position limits and exchange-set position limits to take into account these new alternative processes. In connection with these changes, the Commission proposes to further amend certain relevant definitions, including to clearly define the general definition of bona fide hedging for physical commodities under the standards in CEA Section 4a(c).[5]

For all the reasons expressed in the IECA's previous comments to the CFTC and in the comments of several other market participants on this subject, the IECA commends the CFTC for amending the definition of bona fide hedging position to remove the incidental test and the orderly trading requirement.

[5] See *Position Limits Supplement*, 81 Fed. Reg. 38458 at 38459.

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CEA Section 4a(a) authorizes the CFTC to establish position limits to address "excessive speculation."[6] CEA Section 4a(c)(1) specifies, however, that no rule, regulation or order issued under CEA Section 4a(a) shall apply to transactions that are shown to be "bona fide hedging transactions or positions." CEA Section 4a(c)(1) then specifies that the term bona fide hedging transactions or positions "may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange."[7]

Paragraph (2)(i) of the definition of "bona fide hedging position" proposed in Section 150.1 of the CFTC's regulations provides that, with respect to positions in commodity derivative contracts in a physical commodity, a bona fide hedge position: (A) represents a substitute for transactions in a physical marketing channel, (B) is economically appropriate to the reduction of commercial risk, (C) arises from the potential change in value of certain assets, liabilities or services, and (D) is "(1) enumerated in paragraph (3), (4) or (5) of this definition; or (2) recognized as shown to be a non-enumerated bona fide hedges [sic] by either a designated contract market or swap execution facility [i.e., an Exchange], each in accordance with §150.9(a); or by the Commission."[8] (Emphasis added.)

Cross-Commodity Hedges. With respect to "cross-commodity hedges," the text of paragraph 5 of the definition of "bona fide hedging position" proposed in Section 150.1 of the CFTC's regulations in the Position Limit Supplement is unchanged from the text of paragraph 5 of that definition in the December 2013 Position Limits Proposal. Paragraph 5 requires that "the fluctuations in value of the position in the commodity derivative contract, or the commodity underlying the commodity derivative contract, are substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through "swap." With respect to the meaning of the words "substantially related" in the text of paragraph 5, the CFTC stated in the December 2013 Position Limits Proposal, that "substantially related" requires a "qualitative factor" and a "quantitative factor."[9]

Under this requisite "quantitative factor," the CFTC indicated in the December 2013 Position Limits Proposal that it "will presume an appropriate quantitative relationship exists when the correlation … is at least 0.80 for a time period of at least 36

[6] CEA §4a(a), 7 U.S.C. §6a(a).
[7] CEA §4a(c)(1), 7 U.S.C. §6a(c)(1).
[8] See Position Limits Supplement, 81 Fed. Reg. 38458 at 38505.
[9] See December 2013 Position Limits Proposal, 78 Fed. Reg. at 75716-75717

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months."[10] The CFTC then stated that it "will presume that positions in a commodity derivative contract that does not meet the safe harbor are not bona fide cross-commodity hedging positions."[11]

On this basis, the Commission then stated in the December 2013 Position Limits Proposal that: "[b]y way of example, the Commission believes that fluctuations in the value of electricity contracts typically will not be substantially related to fluctuations in value of natural gas."[12]

No mention of any such "quantitative factor" being requisite to a finding of "substantially related" for purposes of a cross-commodity hedge under Paragraph 5 of the definition of "bona fide hedging position" was set forth in the Position Limits Supplement. Nevertheless, the IECA is concerned that the CFTC Staff may require such an unwritten rule for determinations by Exchanges that any cross-commodity hedge satisfy this correlation of at least 0.80 over a period of 36 months or some other comparable quantitative factor in order to qualify as a bona fide hedging position.

The IECA requests that the CFTC and its Staff not require satisfaction of the above-described quantitative factor for a cross-commodity hedge to be designated as a bona fide hedging position. Moreover, the IECA urges the CFTC and its Staff to avoid setting rigid, unwritten rules for what the Exchanges will be allowed to recognize as "bona fide hedging positions," whether with respect to "cross-commodity hedges," NEBFH positions, or any other exemption for which the Exchanges are authorized to make initial determinations under the new processes set forth in the Position Limits Supplement.

The IECA is concerned that under the new processes which allow the Exchanges to independently evaluate and recognize various applications for exemptions, the CFTC Staff will not recognize various swaps widely known by the industry and Exchanges to be routinely and regularly used by companies involved in the energy industry to hedge their exposure to commercial risk.

For example, cross-commodity swaps involving a futures contract, option or swap involving natural gas are regularly and routinely procured as a legitimate (bona fide) hedge with respect to a commercial end-user's costs of procuring or selling electricity. This is a legitimate hedge in the electricity markets in the U.S., because natural gas-fired electric generation facilities very often set the market-clearing price for physical sales or purchases of electricity in most electricity markets in the U.S. As a result of this

[10] Id. at 75717.
[11] Id. at 75717.
[12] Id. at 75717.

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correlation between electricity prices and the fuel procured to generate much of the electricity generated in the U.S., the price for physical electricity in many markets in the US depends directly on the underlying price of the natural gas used to generate such electricity. If a commercial end-user buying or selling electricity is unable to hedge its exposure to physical electricity prices by entering into a futures contract, option or swap in natural gas, then that commercial end-user is very likely prohibited from managing its legitimate (bona fide) exposure to commodity risk with respect to electricity.

In fact, the CFTC's application of the so-called correlation quantitative factor in the December 2013 Position Limits Proposal resulted in an illustrative determination by the CFTC that a cross-commodity hedge between natural gas and electricity would fail to satisfy the CFTC's requirements for a "bona fide hedging position." Since this is by far one of the most common cross-commodity hedging transactions utilized in the U.S. energy industry, the IECA respectfully requests that the CFTC and its Staff eliminate this quantitative factor from their analysis of natural gas and electricity as cross-commodity hedges and rely solely on a qualitative factor.

If the end result of the CFTC's creation of this alternative process allows the CFTC Staff to deny commercial end-users access to the futures, options and swaps currently relied on by energy industry companies to hedge (i.e., manage and mitigate) their exposure to genuine commercial risks by not allowing these swaps to be designated as bona fide hedges, then the CFTC's creation of these new alternative processes will not achieve its legitimate and much-needed purpose. Hedges currently relied on in the energy industry allow for a healthy market, and without them the energy industry will not fare well, nor will most other markets that derive any pricing from the price of oil, natural gas or electricity.

IV. The IECA Urges the CFTC to Not Prohibit Bona Fide Hedging Transactions in Non-Financial Energy Commodities from Being Held During the "Last Five Days of Trading or the Time Period for the Spot Month in such Physical Delivery Commodity Derivative Contract" under Several Definitions in Section 150.1 of the CFTC's Proposed Regulations.

Within the definition of "bona fide hedging position" in Section 150.1 of the CFTC's regulations, the sub-definitions of "Pass-through swap offsets," "Hedges of unfilled anticipated requirements," "Other enumerated hedging positions," and "Cross-commodity hedges" all include some version of the following text: "provided that no such position is maintained in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract."

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Contrary to the foregoing definitions, however, market participants utilizing natural gas, crude oil and electricity commodities in their commercial businesses need to maintain their hedge transactions during the last five days of trading of a specific physical delivery commodity derivative contract or the time period for the spot month in such contract.

The price volatility protection that a hedge provides to the underlying commodity is most needed during the time when the underlying commodity price is vulnerable to change. A non-financial energy commodity hedge is another way of protecting a business's monetary risk.

This is the heart of hedging; for example ensuring a commercial end user's power plant is able to purchase natural gas to supply power into the next month at the price they can afford. In order to do this, a hedge is placed by the power plant capping their price risk of the natural gas they must buy. This passes the economically appropriate test for the power plant, as the price to produce power could equal or surpass the selling price of the electricity generated by that power plant if there is a spike in the price of its fuel. The occurrence of the last five days of trading or the time period of the spot month does not lessen the required element of price risk for the commercial end-user nor does it reduce the end-user's need to maintain such hedge through such time periods.

The IECA urges the CFTC to eliminate such prohibition with respect to a commercial end-user's electricity, natural gas and oil (or oil products) positions. The IECA urges the CFTC not to expand the application of this limitation to NEBFH positions or spread position exemptions under Part 150, as is asked by the CFTC in the Position Limits Supplement.

To the extent that the CFTC is concerned with market disruption by persons holding such positions and liquidating such positions during the last five days of trading or during the spot month, the IECA notes that prohibiting commercial end-users from hedging their legitimate commercial risks during such time periods is not the only way and certainly not the most efficient way to address that concern.

Instead, the CFTC should rely on the tools already available to the Exchanges to enable the Exchanges to monitor their markets and address such concerns. If an Exchange sees evidence of such adverse impacts, or is concerned that such situations may occur, the Exchanges may require an otherwise exempt commercial end-user to step-down (i.e., gradually reduce) the size of the position being held over the last five days of the trading or during the spot month, or by revoking the exemption for positions in excess of the otherwise applicable position limit.

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Allowing a commercial end-user to continue to hold such positions in order to hedge its legitimate commercial risks during the last five days of trading and during the applicable spot month, and simultaneously allowing the Exchanges to exercise their current authority to protect the markets by monitoring the markets and exercising step-down and exemption revocation authority is a much more efficient and effective approach to address this concern.

Plus, the CFTC still retains its authority to bring an enforcement action if it determines that market disruption or market manipulation rules have been violated.

Accordingly, the IECA urges the CFTC to not prohibit bona fide hedging transactions in non-financial energy commodities from being held during the "last five days of trading or the time period for the spot month in such physical delivery commodity derivative contract" under several definitions in Section 150.1 of the CFTC's proposed regulations.

V. The IECA Requests that the CFTC Establish a Formal Process for any Proposed Reversal of a Bona Fide Hedge Determination by an Exchange that Subjects any such Proposed Reversal to Public Notice and Provides an Opportunity for Public Comment on such Proposed Reversal Prior to its Becoming Effective. Such a Review Process Should also Authorize any Reversal of an Exchange Determination by the CFTC Staff to be Appealed to the Full Commission Prior to such Reversal Becoming Effective.

Each of the above-referenced new provisions establishing a new alternative process for Exchanges to review applications for and recognize exemptions from Exchange-set and CFTC-set position limits includes (i) provisions explicitly allowing the Commission to review any exemption application submitted to an Exchange (see proposed Sections 150.9(d), 150.10(d) and 150.11(d)) and (ii) provisions explicitly delegating the Commission's authority to be exercised by the Director of the Division of Market Oversight or other employees of the Commission (see Sections 150.9(f), 150.10(f) and 150.11(e)). Included in that authorization is the ability to review an exemption application and to determine that it is not appropriate to recognize a derivative position for which an application has been submitted as a bona fide hedge or that the disposition thereof by an Exchange is inconsistent with the CEA.

The IECA believes that the Exchanges should be allowed to continue their current process of recognizing NEBFH positions, subject to subsequent review and audit by the Commission.

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The IECA requests, however, that the CFTC establish a formal process for any action by the Commission or the CFTC Staff (including the Director of the Division of Market Oversight) seeking to overturn any determination by an Exchange under Sections 150.9, 150.10 or 150.11. Moreover, the IECA requests that such a formal process include notice to the public and opportunity for the public to comment on any such proposed Commission or CFTC Staff decision to overturn or reverse a determination by an Exchange under the above exemption application review process.

Such a public notice and comment process would ensure that any such decision by the Commission or the CFTC Staff will have the benefit of public comment by interested members of the public, including commercial end-users relying on such transactions to hedge their legitimate (bona fide) exposure to physical commodity volatility risk, which the IECA believes is essential particularly in light of previous statements by the CFTC and its Staff that certain energy swap transactions used by commercial end-users in the energy industry to hedge their legitimate exposure to commercial risks were, from the CFTC Staff's perspective, not bona fide hedging positions.

The IECA believes that providing commercial end-users the ability to discover prices for commodities and manage and mitigate (hedge) their exposure to commercial risk are the primary reasons that financial derivatives markets exist. If an Exchange properly approves an exemption application for a bona fide hedging position based on the Exchange's knowledge of the markets and how those markets work and then the Commission or the CFTC Staff can reverse that decision by an Exchange without any opportunity for the public to review and comment on that reversal, then the CFTC's establishing these alternate processes in Sections 150.9, 150.10 and 150.11 may lose most of their value to the marketplace and to commercial end-users seeking to hedge their legitimate (bona fide) exposure to commercial risk associated with physical commodities.

Accordingly, the IECA respectfully requests that the Commission establish a formal process for any proposed decision by the Commission or the CFTC Staff reversing an exemption application decision by an Exchange, which formal process will require that public notice of such proposed reversal be published and an opportunity for the public to comment on such reversal be provided prior to such reversal becoming effective. This formal process should also allow a market participant (including an Exchange, a commercial end-user, or any other person) to appeal to the full Commission any reversal of an Exchange determination by the CFTC Staff prior to such reversal becoming effective.

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VI. The IECA Offers the Following Answers to Several of the Specific Requests For Comment (RFCs) Set Forth in the CFTC's Proposed Position Limits Supplement.

See below the specific Requests for Comment (each shown as a numbered "RFC") listed in the Position Limits Supplement followed by the IECA's response. Note that we have not responded to each RFC.

RFC 1. The Commission requests comment on all aspects of the proposed delay in implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring by exchanges of position limits for swaps. Does any DCM or SEF currently have access to sufficient data regarding individual market participants' open swaps positions to so set and monitor swaps position limits other than by special call? If yes, please describe in detail how such access could be obtained. If no, how easy or difficult would it be for an exchange to obtain access to sufficient swap position information by means of contract or other arrangements?

Response: No. The swap market particularly in the energy and agricultural commodities is largely bilateral. If a bilateral derivative is cleared, the DCM or SEF would have that information, but many bilateral agreements are not cleared. An SDR would have the information, as each entity is specifically identified with their LEI as part of the required PET data submitted when every derivative is executed, but the communication between the SDR and the DCM or SEF would be vital to obtain this information.

RFC 2. Are there any facts and circumstances specific to DCMs that, for purposes of exchange limits, currently recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1), that the Commission should accommodate in any final regulations regarding the processing of NEBFH applications?

Response: The Exchanges have been working with Commercial End User entities for several decades and have a process under regulation 1.3(z) that may contain specific scenarios that work well and are not listed in the NEBFH provisions in proposed Part 150. In alignment with CEA section 4a(c)(1), the CFTC states in the proposed rule that the Commission's interpretation is that the Exchanges, acting as SROs,[13] are not required to have prior approval in order to deem a position strategy as a hedge. One accommodation the Commission could make is to deem every currently recognized hedge strategy by any exchange as a NEBFH. This would eliminate disruption in the

[13] "Self-regulatory organizations" as defined in CFTC Regulation 1.3(ee). See footnote 81 of Position Limits Supplement, 81 Fed. Reg. at 38465.

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market place, as well as encourage the autonomy of the exchanges that the Commission is seeking. If there is an issue that the CFTC discovers subsequently, the CFTC could review the strategy and make a determination as to the continuation of that NEBFH. Providing a reasonable time period to allow market participants to unwind their positions that have been subsequently deemed as non-hedges would also allow the market place to run smoothly without jarring changes, while still achieving the Commission's goals. If circumstances dictate that it is unreasonable to unwind a specific position (e.g., due to a lack of liquidity), then discretion should be given to the Exchange(s) to fashion and authorize a safe harbor for that position continuing to exceed the applicable position limit beyond the prompt month until the position can be unwound in a commercially reasonable manner.

RFC 3. Are there any concerns regarding an exchange that elects to stop processing NEBFH applications? For example, what should be the status of a previously recognized NEBFH, if the exchange that recognized a NEBFH no longer provides for an annual review?

Response: It should remain a NEBFH with ample notice to the participants utilizing that strategy. The notice will allow time for the individual entity to apply to the CFTC directly. Due to potential credit issues, administration costs, contract costs and time required, moving and entity's business to another exchange may not be possible. That does not diminish, of course, the appropriate price risk hedge they are undertaking. A safe harbor timeframe for this scenario would allow for adequate assurance that those currently engaged in the hedge strategy will have enough time to continue their necessary hedging while making arrangements to either move exchanges or apply to the CFTC, regardless of the 1 year renewal timeline. (In other words, if an exchange announces they will not renew just before the renewal is due).

RFC 4. Are there circumstances in which the Commission should permit an exchange to process an NEBFH application for a position in a commodity derivative contract where that contract is a referenced contract that is not actively traded on such exchange or for which the exchange has less than one year of experience administering position limits?

Response: Yes. In light of the fact that an Exchange needs to undergo a rigorous process for approval as a DCM or SEF via the CFTC, the CFTC has an opportunity to thoroughly vet the Exchange for purposes of competency in the area of setting proper position limits. Moreover, the CFTC has the ability to conduct audits of each DCM or SEF and require corrective action by the Exchange if the Exchange is found to not be in compliance with CFTC standards or regulations. As such, for the CFTC to arbitrarily prevent an approved DCM or SEF from setting position limits because the Exchange has less than one year of experience or due to the possibility that a particular contract does not have significant

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volume traded or large enough existing Open Interest, serves as nothing more than a limit to competition and would otherwise operate as a bar for the establishment of new Exchanges and new contracts.

RFC 5. Should the Commission define "actively traded" in terms of a minimum monthly volume of trading, such as an average monthly trading volume of 1,000 futures-equivalent contracts over a twelve month period?

Response: No. Bespoke situations that have legitimate price risk hedging needs may occur. This also may inhibit the growth of the exchange as well as innovation for mitigating physical commodity price risk.

RFC 6. Are there any concerns if a market participant applies for recognition of a NEBFH on one exchange, intending to execute the trades comprising the recognized position away from that exchange (e.g., over the counter)?

Response: No. If this scenario occurs, the main consequence will be the illumination of a legitimate hedging strategy that might be utilized in the future.

RFC 7. Are there concerns regarding the applicability of NEBFH positions in the spot month? Should the Commission, parallel to the requirements of current regulation 1.3(z)(2) (i.e., the "five-day rule"), provide that such positions not be recognized as NEBFH positions during the lesser of the last five days of trading or the time period for the spot month?

Response: See discussion in Section IV of these IECA Comments.

RFC 8. If the Commission permits NEBFH positions to be held into the spot month, should recognition of NEBFH positions be conditioned upon additional filings to the exchange—similar to the proposed Form 504 filings required for the proposed conditional spot month limit exemption?

Response: No. Under the Dodd Frank Act, the Commission has numerous requirements for the collection of additional information from market participants that will meet this information need. Additionally, to require another report will add a cost burden to the industry.

RFC 9. Alternatively, if the Commission permits NEBFH positions to be held into the spot month, should the Commission require market participants to file the Form 504 with the Commission?

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Response: See response to RFC 8. As previously noted, the distinction between spot and non-spot month as to hedge positions is not a necessary distinction.

RFC 10. Would separate application processes for novel and non-novel NEBFHs be more likely to produce inaccurate results, e.g., inappropriate recognition of positions that are not bona fide hedges within the parameters set forth by Congress in section 4a(c) of the Act?

Response: No. The Exchanges are very well practiced in making such determinations.

RFC 11. Is the proposed core set of information required of market participants adequate for an exchange to review applications for NEBFHs?

Response: Yes. Exchanges have been reviewing hedge exemption applications for decades and are apt at understanding the required information for a proposed hedging strategy.

RFC 12. The Commission invites comment regarding the discretion proposed for exchanges to process NEBFH applications in a timely manner.

Response: Providing the Exchanges the discretion to continue to do what they have expertly done for several decades is vital. We are confident that they are capable of processing new NEBFH applications timely.

RFC 13. Should the Commission provide further guidance regarding the types of information that exchanges should seek to elicit from reporting rules with respect to NEBFH positions?

Response: No. See response to RFC 8.

RFC 14. Should the Commission prescribe that exchanges publish any specific information regarding recognized NEBFHs based on novel facts and circumstances?

Response: No. Exchanges are the proper venue for managing regulatory discretion and market integrity vs. a market participants need for anonymity.

RFC 15. Should the Commission require exchanges to publish summary statistics, such as the number of recognized NEBFHs based on non-novel facts and circumstances?

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Response: No. To date Exchanges have not been making such a publication and to ask them to spend time a resources doing so would result in added costs for market participants.

RFC 16. Does the proposed flexibility for exchanges to request Commission review provide market participants with a sufficient process for review of a potential NEBFH?

Response: See response to RFC 12.

RFC 17. The Commission requests comment on all aspects of the proposed reporting requirements.

Response: See Response to RFC 8. Additional reporting adds costs for market participants and end-users without providing value.

RFC 18. The Commission requests comments on all aspects of the proposed review process.

Response: The Commission review process can be easily administered during the normal course of Exchange reviews already conducted by the Commission and does not need to be altered for purposes of position limits.

RFC 19. Would permitting exchanges to process applications for spread exemptions from federal limits, subject to Commission review, provide for an efficient implementation of the Commission's statutory authority to exempt such spread positions?

Response: Yes, Exchange discretion in an independent (SRO-like) fashion should be granted in light of fact that Exchanges have administered position limits and exemptions in a successful fashion for the past several decades.

RFC 20. Are there concerns regarding the applicability of spread exemptions in the spot month that the Commission should consider? Should the Commission, parallel to the requirements of current § 1.3(z)(2), provide that such spread positions not be exempted during the lesser of the last five days of trading or the time period for the spot month?

Response: It is not necessary to distinguish spread positions between the spot and non-spot period. If a market participant holds a spread position he/she will choose to liquidate or roll that position based on economic signals that are prevalent in the cash and derivatives markets. Exchanges should be permitted to allow for spread positions to be exempt from limits as has historically been the case.

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RFC 21. If the Commission permits exchanges to grant spread positions applicable in the spot month, should recognition of NEBFH positions be conditioned upon additional filings similar to the proposed Form 504 that is required for the proposed conditional spot month limit exemption?

Response: See response to RFC 8.

RFC 22. Alternatively, if the Commission permits exchanges to grant spread exemptions applicable in the spot month, should the Commission require market participants to file proposed Form 504 with the Commission?

Response: See response to RFC 8.

RFC 23. Do cash-and-carry spread exemptions further the policy objectives of the Act, as outlined in proposed § 150.10(a)(3)? Why or why not? Do cash and carry spread exemptions facilitate an orderly liquidation? Do these exemptions impede convergence or distort the price of the expiring futures contract?

Response: N/A

RFC 24. If cash-and-carry spread exemptions are allowed, what conditions should be placed on the exemptions? For example, on what basis should a trader be required to exit futures positions above position limit levels? Should such exemptions be conditioned, for example, to require a market participant to reduce the positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction? Are there other types of spread exemptions that may not further the policy objectives of CEA section 4a and, thus, should be prohibited or conditioned?

Response: N/A

RFC 25. With cash-and-carry spread exemptions still under review by the Commission, should the proposed rules allow such exemptions to be granted under proposed § 150.10? Why or why not?

Response: N/A

RFC 26. If the proposed rules do not prohibit such exemptions, an exchange could determine that cash-and-carry spread exemptions—or another type of spread exemption—further the policy objectives in proposed § 150.10(a)(3) and so begin to grant such exemptions from federal position limits. If, after finishing its review, the

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Commission disagrees with the exchange's determination, is the proposed process in § 150.10(d) for reviewing exemptions sufficient to address any concerns raised?

Response: N/A

RFC 27. Does the application process solicit sufficient information for an exchange to consider whether a spread exemption would, to the maximum extent practicable, further the policy objectives of CEA section 4a(a)(3)(B)? For example, how would an exchange determine whether an applicant for a spread exemption may provide liquidity, such that the goal of ensuring sufficient market liquidity for bona-fide hedgers would be furthered by the spread exemption?

Response: The Commission should provide the Exchanges with unfettered discretion to continue the good work that has been accomplished over the past several decades.

RFC 28. How would exchanges oversee or monitor exemptions that have been granted, and, if the exchange determines it necessary, revoke the exemption?

Response: N/A

RFC 29. Is it appropriate to have the same processes under § 150.10(b) through (f) for spread exemptions as proposed for NEBFHs outlined under § 150.09 (b) through (f)? If no, explain why and how those processes should differ.

Response: N/A

RFC 30. The Commission requests comments on all aspects of proposed §150.11, including whether the Commission should consider any other factors in addition to those listed in proposed § 150.11(a)(1)(i), (ii), (iii), (iv) and (v).

Response: N/A

RFC 31. The Commission invites comments on its proposed delegation of authority in § 150.11(e)(iv), and on all other aspects of its proposed delegation of authority in § 150.9(f), § 150.10(f) and § 150.11(e).

Response: N/A

RFC 32. The Commission invites comment on all aspects of its proposed expanded definitions of "intermarket spread position" and "intramarket spread position."

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Response: The IECA concurs with the concerns expressed by the Futures Industry Association ("FIA") regarding RFC 32 in its comments submitted to the CFTC with respect to this Position Limits Supplement and in the approach to RFC 32 proposed by Intercontinental Exchange ("ICE") in its comments submitted to the CFTC with respect to this Position Limits Supplemental. It is not necessary for the purpose of evaluating an exemption request that these types of positions receive disparate treatment.

RFC 33. The Commission requests comment on its consideration of the benefits and costs associated with the proposed amendments to guidance. Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data, or other information of support for such assessments. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

Response: See Response to RFC 8 and RFC 11.

RFC 34. The Commission requests comment on its consideration of the benefits and costs associated with the proposed revisions to the definition of "bona fide hedging position." Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data and other information of support for such assessments.

Response: See Response to RFC 8 and RFC 11.

RFC 35. Futures contracts function to hedge price risk because they lock-in prices and quantities at designated points in time. Futures contracts, thereby, create price certainty for market participants. Thus, the Commission believes that bona fide hedging positions need to ultimately result in hedging against some form of price risk as discussed in Section IIB3(i), above. Is the Commission reasonable in concluding that by eliminating the incidental test market participants will benefit from regulatory certainty and reduced compliance costs because they need only focus on price risk or other risks that can be transformed into price risk?

Response: Yes. The IECA supports the CFTC's elimination of the incidental test.

RFC 36. It is challenging to interpret the orderly-trading requirement in the context of the over-the-counter swaps market and permitted off-exchange transactions as discussed in Section IIB3(ii), above. Given this challenge, is it reasonable for the Commission to

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conclude that by eliminating the orderly-trading requirement, market participants benefit from avoiding the compliance costs of an unclear requirement?

Response: Yes. The IECA supports the CFTC's elimination of the orderly trading requirement.

RFC 37. The Commission recognizes that there exist alternatives to the proposed definition of "bona fide hedging position." These alternatives include: (i) maintaining the status quo in current § 1.3(z), or (ii) pursuing the changes in the December 2013 position limits proposal.221 Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

Response: Maintaining the current status quo with Exchanges administering a process that has been in place for decades will provide legal certainty and maintain costs at a current level as opposed to a new process that will undoubtedly cause added costs for the Commission, Exchange Staff, Market Participants, End Users and the public.

RFC 38. Are there any benefits or costs associated with the proposed revisions to the definition of "futures equivalent"? If yes, commenters are encouraged to include both quantitative and qualitative assessments of these costs and benefits, as well as data or other information to support such assessments.

Response: See response to RFC 37.

RFC 39. The Commission recognizes that one possible alternative to the clarifications made to the "futures-equivalent" definition is to retain the definition of "futures-equivalent" as proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission seeks comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

Response: No.

RFC 40. Are there benefits or costs associated with the definitions of "intermarket spread position" and "intramarket spread position"? If yes, commenters are specifically encouraged to include both quantitative and qualitative assessments of these costs and benefits, as well as data or other information to support such assessments.

Response: See response to RFC 37.

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RFC 41. The Commission recognizes that one possible alternative to the proposed definitions of "intermarket spread position" and "intramarket spread position" is to retain the definitions proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such alternative provided.

Response: See response to RFC 37.

RFC 42. The Commission requests comment on its considerations of the benefits of proposed § 150.9. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

Response: See response to RFC 37.

RFC 43. The Commission requests comment on its considerations of the costs of proposed § 150.9. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

Response: See Response to RFC 8 and RFC 11.

RFC 44. The Commission requests comment on whether a Commission administered process promotes more consistent and efficient decision-making. Commenters are encouraged to include both quantitative and qualitative assessments, as well as data or other information to support such assessments.

Response: The likely time delay in a Commission-administered process would not be more efficient for commercial decision making.

RFC 45. The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) not permitting exchanges to administer any process to recognize NEBFHs; or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

Response: See response to RFC 37.

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RFC 46. The Commission requests comment on whether the options for recognizing NEBFHs outlined in the December 2013 position limits proposal are superior from a cost-benefit perspective to proposed § 150.9. If yes, please explain why.

Response: No. The new alternative processes for recognizing NEBFHs, as well as the other new exemption-recognition processes, are superior to the December 2013 Position Limits Proposal. However, the new costs arising from the added reporting obligations in the Position Limits Supplement will result in no added value and should be eliminated.

RFC 47. The Commission requests comment on its considerations of the benefits of proposed § 150.10. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data or other information of support such assessments.

Response: See response to RFC 37.

RFC 48. The Commission requests comment on its considerations of the costs of proposed § 150.10. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of costs as well as data or other information of support such assessments.

Response: See response to RFC 37.

RFC 49. The Commission recognizes that there exist alternatives to proposed § 150.10. These alternatives include: (i) maintaining the status quo, or (ii) pursuing the changes in the December 2013 position limits proposal. The Commission requests comment on whether retaining the framework for spread exemptions as proposed in the December 2013 position limits proposal is superior from a cost-benefit perspective to proposed § 150.10. If yes, please explain why. The Commission requests comment on whether any alternatives to proposed § 150.10 would result in a superior cost-benefit profile, with support for any such alternative provided.

Response: See response to RFC 37.

RFC 50. The Commission requests comment on its considerations of the benefits of proposed § 150.11. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include

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both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

Response: See response to RFC 37.

RFC 51. The Commission requests comment on its considerations of the costs of proposed § 150.11. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these costs, as well as data or other information to support such assessments.

Response: See response to RFC 37.

RFC 52. The Commission recognizes that there may exist alternatives to proposed § 150.11, such as maintaining the status quo, or adopting only § 150.7 as proposed in the December 2013 position limits proposal. The Commission requests comment on whether alternatives to proposed § 150.11 would result in a superior cost-benefit profile, with support for any such alternative provided. The Commission requests comment on whether the framework for recognizing enumerated anticipatory bona fide hedging positions as proposed in the December 2013 position limits proposal would be superior from a cost-benefit perspective to proposed § 150.11. If yes, please explain why.

Response: See response to RFC 37.

RFC 53. Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges further the goals of CEA section 4a(a)(3)(B) and properly protect market participants and the public? Please explain.

Response: Yes. Maintaining the current status quo with Exchanges administering the correct process that has been in place for decades will continue to provide legal certainty and maintain costs at a current level as opposed to a new process that will undoubtedly cause added costs for the Commission, Exchange Staff, market participants, end-users and the public.

RFC 54. Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges affect excess speculation? Please explain.

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Response: As previously noted, the Exchanges have been administering a process to approve hedge exemptions for decades that are tied to appropriate commercial participation in the cash market while maintaining speculative limits at levels that allow for sufficient liquidity to foster well-functioning markets.

RFC 55. Will the ability to assume larger positions by way of exemptions under this supplemental proposal facilitate effective market manipulation by market participants availing themselves of such exemptions? Are existing safeguards and deterrents to market manipulation sufficient to prevent manipulation or does the Commission need to impose position limits without exchange-granted exemptions to prevent manipulation, prophylactically? Please explain.

Response: The Division of Enforcement has numerous tools at its disposal, and the Exchanges have position step-down and exemption revocation authorization at their disposal, to enforce CEA market manipulation regulations. Exchanges administering current exemption relief do so in a fashion that is measured based on commercial end-user participation in the cash markets that serve as a rationale for size of positions allowed in the futures markets.

RFC 56. Is market integrity adversely affected by the proposed rules in this supplemental proposal? If so, how might the Commission mitigate any harmful impact?

Response: Undue restriction of positions will lead to lack of liquidity and reduction in well-functioning futures and spot markets. Status quo will ensure continued functioning markets without added costs of a new process. Quashing market participation by imposing undue regulatory burdens on smaller entities, thereby causing such smaller market participants to leave the market, will not enhance market integrity.

RFC 57. Should the Commission provide more guidance to exchanges on how to assess recognitions under this supplemental proposal, for example, guidance on cash-and-carry spreads, or any other spreads involving the spot-month contract?

Response: No. For reasons previously noted it is clear that Exchanges have a breadth of knowledge and decades of experience that does not need additional guidance from Commission staff that may not have the same depth of experience.

RFC 58. What costs and benefits would accrue to exchanges and market participants should the Commission provide additional guidance to exchanges on how to assess recognitions under this supplemental proposal? Please explain.

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Response: No perceived benefit. Added regulatory and reporting costs will provide nothing of value for market participants or the public.

RFC 59. Are there any anti-competitive effects between exchanges, or exchanges and SEFs, because the rules proposed in this supplemental proposal have the practical effect of allowing exchanges to recognize and grant exemptions from position limits? If so, what are they? Please explain.

Response: No. These proposals should foster innovation and growth for the betterment of the markets.

RFC 60. How might the rules proposed in this supplemental proposal affect price discovery? Please explain.

Response: As previously noted, the Exchanges have facilitated a balanced approach between speculative interests that add to liquidity and attract commercial end-users to hedge risks in markets that allow for fast efficient execution. As a result, the price discovery created between speculative interest and hedging interest has worked well over the past several decades. It would be wise to allow the market to continue down the same path.

RFC 61. How might the rules proposed in this supplement proposal affect liquidity?

Response: Artificial curtailment of hedging interest and speculative interest with the introduction of additional hurdles to overcome and reporting obligation to meet may frustrate new or prospective market participants that could add to the liquidity in the futures and spot markets. Additional regulatory requirements and costs may also drive those market participants away from the futures and spot markets that are already operating on razor thin margins (i.e. note the reduction in swap liquidity for the Utility Special Entities when the Dealer de minimis threshold was artificially low).

RFC 62. Will price discovery be improved on exchanges because of the exemptions outlined in this supplemental proposal?

Response: Price discovery will improve if market participants are allowed to innovate and grow without excessive governmental interference and regulatory reporting costs.

RFC 63. How might spread exemptions that go into the spot month affect price discovery?

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Response: As previously noted, spread exemptions going into the spot month should be allowed as has historically been the case for decades. Spreads (inter-month or inter-commodity) serve as part of the total Open Interest in a commodity futures contract and add to the price discovery process due to the fact that commercial market participants need to hold spread positions to manage physical risk. An example of such a spread position is as follows: Commercial market participant is long the March/April spread (Long March/Short April – (calendar spread)) in a particular physically delivered commodity futures contract and the participant chooses for economic reasons to take delivery of the March futures leg during expiration of the March futures contract while also choosing to hold the short April futures position. The process of establishing the spread position in the first place causes buyers and sellers to meet in the open market at a particular price which by definition is "price discovery" and allowing that commercial participant the ability to hold the spread position into the spot period and take delivery on one leg of the spread allows for proper convergence between the futures and cash while still maintaining a hedge with the deferred month April futures leg. If the CFTC were to restrict a commercial participant's ability to engage in spread activity during the spot period, then the CFTC would be negatively affecting liquidity and potentially disrupting convergence, which could result in uneconomic results and cause more risk for commercial participants, which risk would ultimately have to be passed on to consumers of physical commodities such as corn, wheat, electricity, oil, gasoline and natural gas.

RFC 64. What price-discovery costs and benefits would accrue for spread exemptions that go into the spot month? Please explain.

Response: See response to RFC 63.

RFC 65. How might the rules proposed in this supplemental proposal affect sound risk management practices?

Response: These new proposed rules, modified as requested herein, will be complimentary to sound risk management practices.

RFC 66. Are there any other public interest considerations that the Commission should consider?

Response: Yes. The entities that are the most at risk in this regulatory contemplation are the commercial end-users. Larger banks and other financial institutions are not in the same unique position as a producer or manufacturer that truly relies on mitigating price risk in order to stay afloat. That being said, the more regulation that is added to the ability to mitigate price risk, the more of a burden it adds. Commercial end-users are at risk of being squeezed out of the market, and potentially squeezed out of business, as a

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result of the inability, or reduced ability, to effectively hedge their commercial risks. The Commission recognized this in concept when instituting the various levels of regulatory requirements for Swap Dealers as opposed to commercial end-users. A similar approach is needed to any regulation that is applied to bona fide hedging determinations.

RFC 67. The Commission seeks comments on all aspects of its cost and benefit considerations. To the extent that any of the proposed rules in this supplemental proposal have an impact on activities outside the United States, the Commission requests comment on whether the associated costs and benefits are likely to be different from those associated with their impact on activities within the United States; and, if so, in what particular ways and to what extent.

Response: The Swaps and Futures market have become more global over time and continue to develop agnostic as to borders. As such, to introduce restrictive Position Limit regulations and added reporting requirements in the U.S. will simply drive global companies to house their trading activities in jurisdictions that have more friendly regulatory treatment.

RFC 68. The Commission requests comment on whether there will be any lost benefits related to position limits because of the recognitions and exemptions in the proposed rules in this supplemental proposal.

Response: The benefit of legal certainty and a well-functioning hedge exemption process administered by the Exchanges will be lost if the Commission does not establish the alternate Exchange-implemented processes proposed in the Position Limit Supplement and, instead, elects to administer NEBFH and other exemption applications itself under unclear rule requirements and additional costly reporting obligations.

[SIGNATURE PAGE FOLLOWS]

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VII. Conclusion.

The IECA appreciates the opportunity to provide these IECA Comments and would welcome the opportunity to discuss these comments further should you require any additional information on any of the topics discussed herein.

The IECA is an association of over 1,400 credit, risk management, legal and finance professionals that is dedicated to promoting the education and understanding of credit and other risk management-related issues in the energy industry. For over ninety years, IECA members have actively promoted the development of best practices that reflect the unique needs and concerns of the energy industry.

Following the passage of the Dodd-Frank Act and its amendments to the CEA, the IECA has filed numerous comments with the Commission on various proposed rulemakings affecting markets in energy commodities. Many of the IECA's members are representatives of small to large physical energy companies that rely on financial commodity markets (i.e., futures contracts, options on futures, and swaps to hedge the risks of energy commodity price volatility) and physical commodity markets to achieve their fundamental mission of providing safe, reliable, and reasonably priced energy commodities that US businesses and consumers require for our economy and our livelihood.

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Yours truly,
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