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March 20, 2017

Filed Electronically at <http://comments.cftc.gov>

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

Re: Comments on Proposed Rule on *Recordkeeping*, published on January 19, 2017, 82 Federal Register 6356, RIN 3038-AE36

Dear Mr. Kirkpatrick:

The International Energy Credit Association (“IECA”) respectfully submits these comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) on the above-captioned proposed rule on *Recordkeeping*, which proposes certain amendments to CFTC Regulation 1.31 (hereinafter, “Proposed Rule”), published on January 19, 2017, at 82 Fed. Reg. 6356, RIN 3038-AE36. In its Proposed Rule, the CFTC is proposing amendments to the electronic recordkeeping obligations for records required to be kept under the Commodity Exchange (“CEA”) and the CFTC’s regulations thereunder.

The IECA has previously submitted comments to the CFTC on numerous proposed rulemakings to amend the CFTC regulations in order to implement the various amendments to the CEA under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). In those comments, the IECA has sought to ensure that the Commission is informed of the impacts its various proposed rules would have on commercial end-users in the energy industry that enter into swaps and futures to hedge and mitigate commercial risks arising from energy commodity price volatility.

I. IECA Comments on CFTC’s Proposed Amendments to Regulation 1.31

In these comments, the IECA seeks to ensure that the Commission is aware of the substantial burdens likely to be imposed on commercial end-users of swaps by the Commission’s proposed amendments to CFTC Regulation 1.31 and to urge the Commission to not impose these burdensome requirements on non-registered entities, such as commercial end-users, that retain electronic records.

The IECA commends the Commission for its efforts to modernize and update its regulations to remove outdated technological requirements for electronic records, such as amending Section 1.31(a) to no longer require electronic records to be kept in their native file format, amending Section 1.31(b) to eliminate the WORM requirement for electronic records, and amending Section 1.31(b) to eliminate the requirement to enter into an agreement with a Technical Consultant.

The IECA objects, however, to the new provisions being added to CFTC Regulation 1.31, which, as currently proposed, will impose substantial new regulatory burdens on commercial end-users and other persons not registered with the Commission if they elect to retain their records electronically.

In several different rulemaking proceedings, commercial end-users and other unregistered persons have been granted clarifications allowing them to retain and maintain records in the ordinary or normal course of business. Such clarifications have been granted in order to minimize the recordkeeping burden on commercial end-users and other persons that are not required to register with the CFTC.

In revised Section 1.31(a) under the Proposed Rule, however, the Commission proposes defining “records entity” to mean “any person required by the Act or Commission regulations in this chapter to keep regulatory records.”

The IECA urges the Commission to recognize the clarifications that have been granted to commercial end-users under various provisions of the CFTC’s regulations allowing commercial end-users to retain and maintain records in the ordinary or normal course of business. **Accordingly, the IECA urges the Commission to exempt commercial end-users from the definition of “records entity” by specifically defining “records entity” to only include “persons registered with the Commission and required by the Act or Commission regulations in this chapter to keep regulatory records.”**

As demonstrated below, the IECA objects to the burdens and costs imposed on commercial end-users by the requirements under Section 1.31(b) to “establish, maintain and implement written policies and procedures reasonably designed to ensure that the records entity complies with its obligations under this section. Such policies and procedures shall provide for, without limitation, appropriate training of officers and personnel of the records entity regarding their responsibility for ensuring compliance with the obligations of the records entity under this section, and regular monitoring for such compliance.” (Emphasis added.)

Establishing “written policies and procedures” and requiring “appropriate training of officers and personnel of the records entity” imposes entirely new regulatory costs and burdens on commercial end-users without any explanation of the benefit that will be obtained by imposing these new expenses on commercial end-users and without

providing any demonstration that this new regulatory benefit justifies the regulatory burden and expense imposed on commercial end-users.

The IECA also objects to imposing the requirements of Section 1.31(d) on commercial end-users, including the requirements that “each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records, including, without limitation: (i) Systems that maintain the security, signature, chain of custody elements, and data as necessary to ensure the authenticity of the information contained in electronic regulatory records and to monitor compliance with the Act and Commission regulations in this chapter; (ii) Systems that ensure the records entity is able to produce electronic records in accordance with this section, and ensure the availability of such regulatory records in the event of an emergency or other disruption of the records entity’s electronic record retentions systems; and (iii) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic regulatory records.” (Emphasis added.)

The IECA believes that commercial end-users should not be subjected to the obligation to establish “systems and controls ... that ensure the authenticity of the information ... and ... monitor compliance with the Act and Commission regulations in this chapter.” The expense and burden of that obligation surely goes beyond the clarifications allowed in various other of the Commission’s regulations allowing commercial end-users to retain and maintain their records in the ordinary or normal course of business.

Moreover the creation of an “up-to-date inventory” appears to impose an entirely new regulatory recordkeeping expense that will require a commercial end-user to produce an inventory of its electronic records, and keep that inventory up to date, with respect to the “electronic records” that a commercial end-user is allowed in other portions of the Commission’s regulations to retain and maintain in the ordinary or normal course of business.

If the CFTC is not willing to consider revising its definition of “records entity” to only mean “persons registered with the Commission and required by the Act or Commission regulations in this chapter to keep regulatory records,” then the IECA respectfully requests a technical conference be held by the Commission to discuss the regulatory benefits the Commission expects to achieve by imposing these requirements on the electronic records retained and maintained by commercial end-users. At such a technical conference, commercial end-users and other market participants could describe the regulatory burdens and costs to be incurred by commercial end-users and others in meeting the recordkeeping burdens sought to be imposed by the Commission in its various new requirements of CFTC Regulation 1.31.

For the reasons set forth in these comments the IECA respectfully urges the Commission to reconsider the definition of “records entity” and to revise that definition

to exclude commercial end-users by revising that definition to mean “persons registered with the Commission and required by the Act or Commission regulations in this chapter to keep regulatory records.”

II. About the IECA.

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.

The IECA seeks to protect the rights and advance the interests of a broad range of domestic and foreign energy market participants, representatives of which make up the IECA’s membership. These entities finance, produce, sell, and/or purchase for resale substantial quantities of various physical energy commodities, including electricity, natural gas, oil and other energy-related physical commodities necessary for the healthy functioning of the energy markets and the “real economy”. Many of these energy market participants rely on cleared and uncleared swap transactions to help them mitigate and manage (i.e., hedge) the risks of physical energy commodity price volatility to their commercial energy businesses, which millions of Americans and the American economy rely on for safe, reliable and reasonably-priced energy supplies.

III. Conclusion.

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

Please direct correspondence concerning these comments to:

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Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

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