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**FINAL**

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Christopher Kirkpatrick, Secretary  
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**Re: Comments of IECA on CFTC Staff Letter No. 17-33 entitled: *Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45 and 49 of Commission Regulations (the “Letter 17-33”) and the Roadmap to Achieve High Quality Swaps Data (the “Reporting Roadmap”), attached as an exhibit to Letter 17-33, issued by the CFTC’s Division of Market Oversight (“DMO”) on July 10, 2017***

Dear Mr. Kirkpatrick:

The International Energy Credit Association (“IECA”) appreciates the efforts of the Commodity Futures Trading Commission (“CFTC” or “Commission”) and its Staff at the DMO undertaking a comprehensive review of the Commission’s swap reporting regulations. We understand that the DMO plans to present rule changes in two tranches, one regarding swap data repository (“SDR”) operations in the fourth quarter of 2017 and the second regarding reporting workflows generally and standardizing and harmonizing data fields early in the second quarter of 2018.

As requested by the DMO, these comments by the IECA (“Comments”) focus on the Reporting Roadmap. In preparing these Comments, we are guided by the statement of the DMO in Letter 17-33 that “the Division would welcome all ideas on changes to the swap reporting regulations that could help it meet the twin goals of improving data quality while streamlining reporting obligations. In particular, the Division is looking for ways to leverage existing processes that SDRs, reporting entities, and third party providers have established.”<sup>1</sup>

In addition, the IECA appreciates that the DMO has expressed its intention in the Reporting Roadmap to “evaluate Parts 43, 45, and 49 of Commission Regulations to identify provisions that need updating or changing to meet these goals and clarify obligations for reporting counterparties and SDRs.”<sup>2</sup>

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<sup>1</sup> See Letter 17-33 on p. 2.

<sup>2</sup> See Reporting Roadmap at p. 3.

**I. With regard to the discussion of Tranche 1 in the Reporting Roadmap, regarding “which counterparty(ies) must perform reconciliations,” the IECA encourages the DMO to avoid imposing any additional burdens on commercial end-users or hedging affiliates utilizing swaps to hedge exposure to risk.**

In swaps involving commercial end-users under CEA Section 2(h)(7)(A) or hedging affiliates under CEA Section 2(h)(7)(D), the entity using the swap to hedge exposure to commercial risk essentially always, if at all possible, requires the other counterparty to be the “reporting counterparty.” The CFTC’s current swap reporting rules do not require commercial end-users or hedging affiliates to confirm the accuracy and completeness of swap data submitted by the reporting counterparty to an SDR and such end-users and hedging affiliates do not have the necessary staff or systems in place to do so. Accordingly, most commercial end-users and hedging affiliates have not established any “existing processes” for reporting data to an SDR or for “confirming the accuracy and completeness of data held in an SDR” that has been submitted by the other party to such swap as the “reporting counterparty.”

In fact, financial market reporting is not part of the core business operations for a commercial end-user or a hedging affiliate. As a result, any new regulatory reporting requirement or any change in the existing regulatory reporting requirements will involve electronic systems changes, personnel training and related unbudgeted costs, which provide no benefit to the commercial end-user’s or hedging affiliate’s business.

Alternatively, if a commercial end-user or hedging affiliate does not spend the significant sums required to install electronic reporting systems comparable to the electronic systems installed by swap dealers (“SDs”) and major swap participants (“MSPs”), then such a commercial end-user or hedging affiliate will have to confirm manually all the data that has been submitted electronically by each SD/MSP counterparty, as the reporting counterparties under such commercial end-user’s or hedging affiliate’s swaps. As a result, the burden on such commercial end-users and hedging affiliates of manually confirming the accuracy and completeness of each element of swap data that has been collected and electronically by the SD/MSP counterparties will impose a much more expensive burden on a commercial end-user or a hedging affiliate with respect to each of its swaps than the reporting burden imposed on the SD/MSP counterparty to such swap. Such a result, the IECA submits, is directly contradictory to the original swap reporting scheme devised by the CFTC under Dodd-Frank Act, which sought to impose the major burden of swap reporting on SD and MSP counterparties.

Accordingly, the IECA submits that expanding the reporting obligations required of commercial end-users and hedging affiliates, by requiring such entities to “confirm the accuracy and completeness of data held in an SDR” and “perform reconciliations” of such data will not streamline reporting obligations, nor will it leverage existing processes that SDRs, reporting entities, and third party providers have established.

Instead, if the CFTC now imposes such a burden on commercial end-users and hedging affiliates, as the counterparties to hedging swaps, to “confirm the accuracy and completeness of data” presented by the reporting counterparty to an SDR, the additional burden and expense required to establish processes to confirm the accuracy and completeness of such data will discourage commercial end-users and hedging affiliates from using swaps to hedge exposure to commercial risks.<sup>3</sup>

The IECA believes that financial derivatives markets, including futures and swaps markets, exist for the primary purpose of allowing commercial end-users and hedging affiliates to hedge exposure to commercial risks. As such, any policy that discourages commercial end-users and hedging affiliates from using swaps or futures to hedge legitimate exposure to commercial risk is a policy that the CFTC should avoid.

As Brian Spector put it in his web-posting, “Choosing not to hedge is inherently speculative...”<sup>4</sup> Rather than encouraging commercial end-users and hedging affiliates to engage in speculative behavior by not using swaps as financial derivatives to hedge exposure to risk, the IECA believes the CFTC should adopt policies that encourage commercial end-users and hedging affiliates to avoid speculative behavior and that encourage commercial end-users and hedging affiliates to utilize futures and swaps to hedge exposure to risk.

Accordingly, the IECA encourages the DMO to avoid imposing additional reporting burdens on commercial end-users and hedging affiliates with respect to swaps used for hedging. The IECA also urges the DMO to establish, as a guiding principle for its Reporting Roadmap, a policy of encouraging commercial end-users and hedging affiliates to utilize futures and swaps to hedge commercial risk, together with a corollary policy of avoiding rules that are likely to discourage commercial end-users and hedging affiliates from utilizing futures and swaps to hedge exposure to risk.

**II. Regarding the discussion of Tranche 2 in the Reporting Roadmap and the DMO’s proposed evaluation of real-time reporting under Part 43, the IECA encourages the DMO to clarify that timely compliance with Part 45 reporting obligations by a commercial end-user or a hedging affiliate, solely when acting as the reporting counterparty with respect to a swap between two non-SD/MSP counterparties, is sufficient to satisfy the reporting obligations of Part 43.**

The IECA endorses the efforts of the DMO in the Reporting Roadmap to “evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market.”<sup>5</sup> In that regard, IECA believes that it would

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<sup>3</sup> Moreover, some SDRs require a commercial end-user to pay an annual fee merely to access data about a swap to which it is a party, even if the commercial end-user is not the reporting party for that swap or any other swap reported to that particular SDR. This payment requirement occurs even if the commercial end-user only has one or a few swaps reported to the SDR.

<sup>4</sup> See <https://www.linkedin.com/pulse/why-should-ep-companies-hedge-brian-spector-brian-spector>.

<sup>5</sup> See Reporting Roadmap on p. 11.

streamline reporting and reduce uncertainty with respect to compliance with the Commission's reporting requirements if the CFTC were to make clear that when and if a commercial end-user or a hedging affiliate is a "reporting counterparty" with respect to any swap, between two non-SD/MSP counterparties, which is used to hedge commercial risk, the commercial end-user's or hedging affiliate's submitting any required creation data or continuation data to an SDR under, respectively, Sections 45.3 and 45.4 fully satisfies any reporting obligation that may apply with respect to such swap under Part 43.

The IECA submits that declaring no additional reporting is required under Part 43 by a commercial end-user or hedging affiliate, whenever it has satisfied the reporting requirements of Part 45 as the reporting counterparty for any swap entered into between two non-SD/MSP counterparties for the purposes of hedging commercial risk, will not reduce transparency nor will it reduce price discovery in the swaps markets.

Instead, so declaring will remove uncertainty with respect to regulatory compliance by a commercial end-user or a hedging affiliate as a reporting counterparty, without reducing the price discovery data with respect to such a swap made available to the markets by an SDR or the market transparency with respect to such a swap made available by an SDR to the CFTC and other regulators.

Accordingly, the IECA urges the Commission to make such a declaration as part of DMO's efforts to streamline the Commission's real-time swap reporting requirements.

### **III. The IECA also endorses and urges the Commission to consider and adopt the comments on the Reporting Roadmap submitted today by the Commercial Energy Working Group.**

The IECA endorses and urges the CFTC to consider and adopt the comments on the Reporting Roadmap submitted to the CFTC by the Commercial Energy Working Group ("Working Group"). The IECA submits that the Working Group's comments on the Reporting Roadmap, and specifically with respect to the Working Group's comments on Tranche 2, are well-considered and should be adopted by the DMO and the full Commission.

### **IV. 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.

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## V. Conclusion

The IECA appreciates the opportunity to submit these Comments and respectfully requests that the CFTC and the DMO consider and adopt the recommendations as more fully set forth herein. We would welcome the opportunity to discuss these Comments further should you require any additional information on any of the topics discussed herein.

Yours truly,  
INTERNATIONAL ENERGY CREDIT ASSOCIATION

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