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Via Electronic Submission

To: Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Attn: Mr. Christopher Kirkpatrick
Secretary of the Commission

Re: RIN No. 3038-AE55, Project KISS

Dear Mr. Kirkpatrick:

I. Introduction

EDF Trading North America, LLC ("EDFTNA") submits these comments in response to the Commodity Futures Trading Commission's (the "CFTC" or the "Commission") request for information pursuant to Project Kiss.

EDFTNA is a wholly-owned indirect subsidiary of Eléctricité de France, S.A., a global leader in energy production and supply with over 140.4 Gigawatts of generation capacity and approximately 39 million customers world-wide. In addition to being the fifth largest marketer of natural gas in North America, EDFTNA is also a leading provider of energy management and a provider of retail power and gas services to large-scale commercial and industrial customers through its affiliated companies.

The intent and effect of derivative markets' regulations should have the purpose of maintaining a robust and competitive OTC derivative market without imposing undue burdens or exorbitant costs on market participants. EDFTNA supports the United States' Congress and the CFTC's collective efforts to regulate the financial markets in response to the global financial crisis, however, energy derivatives make up a very small percentage, by comparison, of derivative activity and to some extent is ensnarled in the comprehensive approach to close all financial markets' regulatory gaps. When taking into account our energy commodity framework, regulation simply cannot operate in isolation and therefore such regulations must have the least harmful impact possible to the market and market participants.

In general, EDFTNA appreciates the Commission's efforts to reduce regulatory burdens and costs in the commodity markets by seeking public comment and suggestions on how the Commission's existing rules, regulations, or practices can be applied in a simpler, less burdensome, and less costly manner. Overall, EDFTNA's comments are directed towards the best use and application of GNV thresholds, standardizing

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reporting fields while providing safe harbors for errors and omissions, and urging the Commission to re-evaluate its stance and decision to implement federal position limits in addition to exchange-set position limits.

II. *de minimis* Thresholds

EDFTNA proposes the CFTC not lower the *de minims* threshold and keep the swap dealer clearing threshold at the current $8 billion limit. A relatively low clearing thresholds would discourage activity, and lead swap/hedge providers to curtail swap transactions. Low clearing thresholds systemically hinder market performance and inversely result in a decrease in liquidity and an increase in ineffective hedging of physical price risk exposure for end-users. When implemented, low clearing thresholds harm the constituents the thresholds were designed to protect by restricting the provision of competitive hedging services in the market.

The mandated special entity threshold of $25 million serves as the best example of the negative impacts low clearing thresholds can have on the market and its participants. In reaction to Dodd-Frank's special entity threshold, many market participants implemented strict "no trading" policies with special entities in order to prevent breaching the relatively low clearing threshold and possibly resulting in registration as a Swap Dealer. The overwhelming response from special entities and others prompted the CFTC to amend the special entity threshold requirements, making an exception for utility special entities who were previously unable to secure needed hedging under the low clearing threshold.

The low special entity threshold is anticompetitive and limits special entities to transact with only Swap Dealers. Such market segmentation is counteractive to true market design and integrity with only a few energy Swap Dealers to choose from. EDFTNA recommends the Commission to maintain the $8 billion threshold, as needed, eliminate the low special entity threshold, and have one overall *de minimis*. Seemingly, there has been no added benefit in splitting the thresholds and in principal a good regulation should demonstrate a good "cost to benefit" balance. For a majority of market participants, there is a significant cost associated in monitoring special entity versus normal derivative activity. Imposition of a threshold designed to prohibit/limit derivative activity impedes the flexibility and ability to provide hedges to end-users – an inaccurate reflection of true market fundamentals. Alternatively, if the Commission decides to keep the special entity threshold then a dramatic increase in the *de minimis* threshold is in order.

Further reflection and consideration under Project Kiss regarding the clearing thresholds should include how the market and/or its participants have benefitted from having clearing thresholds.

III. Reporting

In support of the Commission's previous efforts, EDFTNA feels standardizing reporting fields is important and such uniformity will make working with counterparties simpler. Ostensibly, the previously proposed standardization will create harmonization among the industry and the various energy trade risk management systems (ETRMs) operated by firms. In the interim, the Commission may consider establishing a safe harbor for reporting errors and omissions in swap data. Because market participants use different ETRMs

and various methods of capturing energy transactions, swap data information is not always readily available and consistent, and system communications are not universally compatible and translatable. Market participants, and the Commission alike, would benefit from standardized data fields accompanied by a high level prescription of requirements and detailed guidance.

Given the need for standardized data fields, along with the daily volume of transactions, complexities of trade capture systems, and the limited sophistication of some market participants, transaction reporting requires a generous portion of latitude for unintentional reporting errors. Essentially, there is no benefit in reporting/receiving incorrect data sooner. To compliment standardized reporting fields, greater emphasis on submitting correct data by allowing reporting parties more liberty to correct errors may reduce bad data due to hurried reporting in order to meet regulatory deadlines.

Furthermore, the Commission may consider implementing robust and appropriate data validation requirements administered by the Swap Data Repositories ("SDRs"). The SDRs with CFTC assistance could implement a validation process that disallows or rejects incorrect or incomplete submitted trade reports. Then, the CFTC and SDRs may perform deeper analysis and concentration on good data, while identifying problematic and errant trade reporting for the purpose of modifying reporting behavior and implementing system enhancements.

Standardized reporting requirements and SDR validation processes taken in aggregate, are commensurate with having a robust OTC derivatives market without imposing undue burdens on market participants. The combination of a standardized reporting regime with increase latitude to correct erroneously reported trade data, would advance the Commission's campaign for better analysis using more accurate data.

IV. Position Limits

EDFTNA urges the Commission to re-evaluate its decision implementing federal position limits and consider proposing final position limits but making them inactive until the Commission determines necessary, i.e., the Commission could enact the federal limits only when it is demonstrated that existing arrangements do not provide sufficient controls on market activity. There is already extensive position limit and management arrangements implemented by exchange operators. These already provide a robust framework of controls on traded activity in the market and as such federal limits (while they can be finalized) should not be enacted (or switched on) until there is demonstrable need for additional market controls.

The industry is best served by regulations that do not disrupt liquidity or encumber internal controls and processes – of the type that are currently operated by exchanges. Federal position limit implementation should facilitate a seamless transition with minimal changes and disruption to market participants, exchanges and industry practices. If the Commission believes the concept of position limits is the best solution for reducing excessive speculation, then the best response to the financial crisis is to enhance the existing position limit regime rather than re-creating an already existing solution.

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V. Conclusion

After more than five plus years of Dodd-Frank reform it is appropriate to carefully review whether all requirements originally envisaged remain fit for purpose given the potential for impacting the efficient operation of the market and the costs borne by market participants and ultimately energy users. A careful recalibration of some of the Dodd-Frank requirements that impact commodity markets would go a long way to ensuring these markets can continue to develop while maintaining a high degree of transparency and robustness.

In conclusion, EDFTNA appreciates the opportunity to work with the CFTC in striking a better balance between ensuring continuing robustness of the U.S. derivatives markets, encouraging development of OTC markets and facilitating more flexible and efficient hedging by firms, and removing unnecessary regulation.