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

Re: Commodity Futures Trading Commission’s Proposed interpretation; request for comment, *Retail Commodity Transactions Involving Virtual Currency*, 82 Fed. Reg. 60335, December 20, 2017, in RIN 3038-AE62

Dear Mr. Kirkpatrick:

The International Energy Credit Association (“IECA”) appreciates and supports the efforts of the Commodity Futures Trading Commission (“CFTC” or “Commission”) and its Staff undertaking the Commission’s various initiatives to accommodate and advance the development of financial technology (“FinTech”) innovations, while simultaneously protecting market integrity and ensuring the safety and soundness of commodity markets for the benefit of all market participants. While our members do not presently have any particular position they wish to take with respect to virtual currencies, our members do anticipate becoming regular users of distributed ledger technology (“DLT” or “blockchain”) platforms, which have the potential to achieve substantial commercial efficiencies and economies, as well as numerous other reporting and recordkeeping benefits for market participants and regulators with respect to energy commodity transactions. It is in this context that the IECA offers these comments (“Comments”) in response to the above-captioned Proposed Interpretation – Retail Commodity Transactions Involving Virtual Currency (“Proposed Interpretation”).

First and foremost, we applaud the Commission and its Staff for taking steps to understand and regulate the complex and rapidly evolving FinTech innovations involving virtual currencies and DLT platforms. Ensuring that the Commission’s regulations applicable to retail commodity transactions under Section 2(c)(2)(D) of the Commodity Exchange Act (“CEA”) “do no harm” to such FinTech innovations, all the while protecting the commodity markets and market participants from fraud and manipulation, is no easy task. For your efforts in that regard, we applaud you and encourage you to keep moving forward on the task set by Chairman Giancarlo and Commissioners Quintenz and Behnam.

We also wish to express our support for the comments on the Proposed Interpretation (“CEWG Comments”) submitted to the Commission today by The Commercial Energy Working Group (“CEWG”). We endorse the CEWG’s efforts in this proceeding and urge the Commission to consider the CEWG Comments as you consider producing a “final” Interpretation from this Proposed Interpretation.

I. IECA Comments.

In particular, we urge you to consider the CEWG’s comment that “Application of the CFTC’s [Proposed] Interpretation Should Be Limited to the Evaluation of Retail Commodity Transactions.” In considering the concerns raised by the CEWG in that portion of its CEWG Comments, the IECA is also concerned with the potential for initial elementary definitions formed in the Proposed Interpretation becoming foundational definitions that could present a hindrance or regulatory hurdle to be overcome when the Commission considers rulemakings for the various regulations that will need to be developed in the future with respect to DLT or blockchain platforms.

For example, in the Proposed Interpretation,¹ the Commission offers the following statement:

“The Commission interprets the term virtual currency broadly. In the context of this interpretation, virtual or digital currency: Encompasses any digital representation of value (a “digital asset”) that functions as a medium of exchange, and any other digital unit of account that is used as a form of a currency (i.e., transferred from one party to another as a medium of exchange); may be manifested through units, tokens, or coins, among other things; and may be distributed by way of digital “smart contracts,” among other structures.” (Emphasis added.)

The Commission acknowledges in the above quoted material that it is interpreting the term virtual currency “broadly.”

The IECA is concerned, however, that all sorts of “digital representations of value” could inadvertently find themselves “functioning as a medium of exchange,” such as a digital representation of the funds held in a collateral account. There are many other possible “digital representations of funds” that could be caught inadvertently by such a broad definition.

In this regard, we note favorably that the above quote from the Proposed Interpretation continues on with the following text:²

“However, the Commission notes that it does not intend to create a bright line definition at this time given the evolving nature of the commodity, and, in some

¹ See Proposed Interpretation, 82 Fed. Reg. 60335, at 60338.

² Id. at 60338.

instances, its underlying public distributed ledger technology (“DLT” or “blockchain”).”

As the Commission explained in its interpretation of Retail Commodity Transactions Under Commodity Exchange Act issued on August 23, 2013 (“2013 Interpretation”),³ CEA Section 2(c)(2)(D) “broadly applies to any agreement, contract, or transaction in any commodity that is entered into with, or offered to (even if not entered into with), a non-eligible contract participant or non-eligible commercial entity on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.” As the 2013 Interpretation explains, this provision of the CEA provides that “such an agreement, contract, or transaction shall be subject to CEA sections 4(a), 4(b) and 4b as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.”

Fundamentally, the Commission’s Proposed Interpretation is limited to addressing the Commission’s jurisdiction under CEA Section 2(c)(2)(D) over “retail commodity transactions” and the explicit exception to that jurisdiction under CEA Section 2(c)(2)(D)(ii)(III)(aa) for transactions in which “actual delivery” of the commodity occurs within 28 days.

In order to avoid any precedential hindrance or burden with respect to the development of rules and regulations applicable to DLT or blockchain applications involving eligible contract participants or eligible commercial entities, the IECA urges the Commission to make explicitly clear in its final version of this Proposed Interpretation that this interpretation, including the establishment of definitions of terms, such as “virtual currency” or “digital currency,” established and utilized in this Proposed Interpretation, is limited to retail commodity transactions under CEA Section 2(c)(2)(D).

In fact, the IECA would recommend that the Commission include, as part of any such “final” Interpretation resulting from this Proposed Interpretation, an explicit list of circumstances to which any such “final” Interpretation does not apply. Such list could follow the format of the 2013 Interpretation,⁴ and, at a minimum, could specify that any such “final” Interpretation does not apply to: (a) transfers of digital assets between eligible contract participants or eligible commercial entities, (b) transactions for physical commodities effected through blockchain or other DLT; or (c) trading of environmental

³ 78 Fed. Reg. 52426.

⁴ See 2013 Interpretation, 78 Fed. Reg. 52426, at 52428, which stated: “This interpretation does not address the meaning or scope of new CEA section 2(c)(2)(D)(ii)(III)(bb) or any exception to new CEA section 2(c)(2)(D) other than new CEA section 2(c)(2)(D)(ii)(III)(aa). Similarly, this interpretation does not address the meaning or scope of contracts of sale of a commodity for future delivery, the forward contract exclusion from the term “future delivery” set forth in CEA section 1a(27), or the forward contract exclusion from the term “swap” set forth in CEA section 1a(47)(B)(ii). Not does this interpretation alter any statutory interpretation or statement of Commission policy relating to the forward contract exclusion.” (Emphasis added.)

commodities (e.g., renewable identification numbers (RINs) or renewable energy credits (RECs)).⁵

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.

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⁵ See pages 2 – 3 of the CEWG Comments submitted on this Proposed Interpretation.

III. Conclusion

The IECA appreciates the opportunity to submit these Comments with respect to the Commission's Proposed Interpretation. We respectfully request that the Commission consider the IECA's recommendations as the Commission proceeds to address the interpretation of "actual delivery" in the context of "retail commodity transactions" involving virtual currency. 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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