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**FINAL**

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

**Re: Commodity Futures Trading Commission’s Notice of Proposed Rulemaking:  
*Swap Execution Facilities and Trade Execution Requirement*, 83 Fed. Reg.  
61946 (published November 30, 2018) in RIN 3038-AE25:**

Dear Mr. Kirkpatrick:

The International Energy Credit Association (“IECA”) appreciates the efforts of the Commodity Futures Trading Commission (“CFTC” or “Commission”) and its Staff as set forth in the Commission’s proposed revisions to the existing regulations relating to the trade execution requirement under the Commodity Exchange Act (“CEA”) and the proposed revisions to the existing regulations applicable to swap execution facilities (“SEFs”) and designated contract markets (“DCMs”), as set forth in the above-captioned notice of proposed rulemaking (“SEF NOPR”).

**I. Comments of the IECA in Support of Certain Provisions of the SEF NOPR.**

The CFTC described the current SEF framework in the SEF NOPR<sup>1</sup> as follows:

“The CFTC adopted Sections 37.10 and 38.12 of the CFTC’s regulations (17 C.F.R. 37.10 and 38.12) to establish a “MAT determination” process that allows SEFs and DCMs, respectively, to make swaps “available to trade” and therefore subject to the trade execution requirement [under CEA Section 2(h)(8)]. These processes enable a SEF or DCM to make a swap “available to trade” by submitting a determination to the CFTC pursuant to part 40 rule filing procedures [i.e., either a request for approval or a self-certification]. A SEF or DCM that submits a MAT determination must include an assessment of whether the subject swap has “sufficient trading liquidity” and must address at least one of six factors that serve as indicia of the swap’s trading liquidity. Swaps that become subject to

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<sup>1</sup> See SEF NOPR, 83 Fed. Reg. 61946 at 61975.

the trade execution requirement pursuant to the approval or certification of a MAT determination must, with the limited exception of block transactions, be executed by counterparties on a SEF or DCM.”

Section 37.9(a)(2) of the CFTC’s current SEF Regulations specifies that with respect to “any transaction involving a swap that is subject to the trade execution requirement in [CEA] section 2(h)(8)” (i.e., a “Required Transaction”), each Required Transaction that is not a block trade “shall be executed on a [SEF] in accordance with one of the following methods of execution: (A) an Order Book ...; or (B) a Request for Quote System.”

Section 37.9(c)(2) of the CFTC’s current SEF Regulations specifies that with respect to “any transaction not involving a swap that is subject to the trade execution requirement in [CEA] section 2(h)(8)” (i.e., a “Permitted Transaction”), “a [SEF] may offer any method of execution for each Permitted Transaction.”

In the SEF NOPR (83 Fed. Reg. at 61975), the CFTC proposes various revisions to the current regulatory framework applicable to SEFs including a revised interpretation of the trade execution requirement under CEA section 2(h)(8) to now specify that: “swaps subject to the clearing requirement [pursuant to a clearing determination made under CEA Section 2(h)(1)] and listed for trading by a SEF or DCM would be subject to the [trade execution] requirement [under CEA Section 2(h)(8) without requiring a MAT determination under CEA Section 2(h)(8)].” In other words, the CFTC proposes eliminating the “MAT determination” as an unnecessary additional regulatory approval.

In addition, “the Commission also proposes to allow greater flexibility in the trading of such swaps by eliminating the prescribed execution methods for swaps subject to the [trade execution] requirement.” In other words, the execution of Required Transactions by a SEF will no longer be restricted to execution only by the two previously prescribed methods of Order Book and Request for Quote System (“RFQ System”).

Many of the IECA members represent commercial end-users, which are eligible for, and which elect, the end-user exception to clearing under CEA Section 2(h)(7)(A) and the hedging affiliate exception to clearing under CEA Section 2(h)(7)(D). As such, their swaps are exempt from the clearing and trade execution requirements applicable to Required Transactions. Such swaps may, however, be cleared and executed on a SEF as Permitted Transactions and, pursuant to Section 37.9(c)(2) of the CFTC’s current regulations, a SEF may offer any method of execution for Permitted Transactions.

The IECA supports the proposal in the SEF NOPR to eliminate the current restriction that prohibits SEFs from executing Required Transactions using “any means of interstate commerce” other than an Order Book or a RFQ System. We support allowing SEFs to use any method of execution for Required Transactions, because allowing SEFs this flexibility will encourage SEFs to develop new and innovative trade execution methods for Required Transactions in order for SEFs to compete for a company’s swap business.

While commercial end-users and their hedging affiliates are exempt from clearing and SEF trade execution requirements, if SEFs are able to develop innovative trade execution methods for Required Transactions that will allow SEF-traded swaps to (i) be customized to address the various unique commercial risks being hedged by commercial end-users and (ii) achieve efficiencies and cost-savings that may not be available using uncleared OTC swaps, then commercial end-users and their hedging affiliates will be more likely to take advantage of such efficiencies by choosing to execute more of their swaps on SEFs as Permitted Transactions.

Accordingly, we believe that the development by SEFs of innovative and efficient alternative methods of executing swaps that are Required Transactions, which could be commercially beneficial to market participants that are otherwise exempt from mandatory clearing and trade execution, could present an attractive alternative thereby increasing the use of SEF-traded swaps by commercial end-users and hedging affiliates as Permitted Transactions. To the extent that the number of otherwise exempt swaps are executed on SEFs as Permitted Transactions, we submit that the CFTC would be advancing one of the CFTC's goals under the Dodd-Frank Act of promoting SEF trading and expanding pre-trade price transparency in the swaps market.

## **II. Correspondence Regarding These Comments**

Please direct correspondence concerning this Request to:

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## CONCLUSION

The IECA appreciates the opportunity to submit these Comments in response to the Commission's SEF NOPR, proposing modifications to the existing regulations relating to the trade execution requirement under the CEA and the existing regulations applicable to SEFs and DCMs, and respectfully requests that the Commission consider these Comments as it moves forward to improve its regulations affecting the commodity markets, market participants, and the fundamental benefits to our economy provided by well-functioning commodity markets. 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

/s/ Phillip G Lookadoo  
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/s/ Jeremy D Weinstein  
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