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May 29, 2020

Filed Electronically at www.cftc.gov and by email delivered to Members of the Commission Staff designated in the 2020 Recordkeeping and Reporting NOPR

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

Re: Commodity Futures Trading Commission’s Notice of Proposed Rulemaking: *Amendments to the Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 21578 (published April 17, 2020) in RIN 3038-AE31

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 Swap Data Recordkeeping and Reporting Requirements, as set forth in the above-captioned notice of proposed rulemaking (“2020 Recordkeeping and Reporting NOPR”).

The IECA apologizes for the delay in submitting these Comments after the due date of May 22, 2020. The IECA is an all-volunteer organization and we primarily focused our efforts on preparing and vetting our comments on the 2020 Position Limits NOPR, filed on May 15, 2020, and our comments on the 2020 SEF NOR, filed on May 22, 2020. As a result of those efforts, we did not have time as a group to complete drafting and vetting of these Comments on the 2020 Recordkeeping and Reporting NOPR until today, May 29, 2020. We respectfully request that you review and consider these Comments, which have been submitted after the applicable filing deadline.

I. The Commission's No-Action Relief Regarding the Reporting of Inter-Affiliate and Intra-Group Swaps Should Be Clarified and Codified.

In CFTC Letter No. 13-09,[1] the CFTC’s Division of Clearing and Risk and Division of Market Oversight (“Divisions”) provided no-action relief to non-swap dealers/major

^[1] CFTC Letter No. 13-09, Division of Clearing and Risk and Division of Market Oversight (“Divisions”) Grant *No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers Nor Major Swap Participants from Certain Swap Data*

swap participants ("non-SDs/MSPs") from the Part 45 and Regulation 50.50(b) reporting requirements for "intra-group swaps" between certain corporate affiliates. The IECA agrees that this relief is warranted and useful. As the Commission acknowledged in the letter, "such intra-group swaps are used only for managing risk within a corporate group, and therefore do not increase overall systemic risk or warrant the same reporting requirements as external swaps."

However, with respect to non-SDs/MSPs that enter into intra-group swaps with foreign affiliates, the sixth condition in CFTC Letter No. 13-09 undermines the relief granted by the Divisions arguably requiring such foreign affiliates to report to an SDR certain swaps that they enter into with unaffiliated foreign counterparties:

All swaps entered into between either one of the affiliated counterparties and an unaffiliated counterparty (regardless of the location of the affiliated counterparty) must be reported to an SDR registered with the Commission, pursuant to, or as if pursuant to, parts 43, 45, and 46 of the Commission's regulations.

Such swaps would otherwise be non-jurisdictional and outside the scope of the Commission's reporting requirements. To keep all market participants on a level playing field and avoid inadvertently imposing what amount to additional and non-jurisdictional requirements on certain market participants, we submit that the Commission should clarify that the sixth condition only applies to swaps that are otherwise reportable under the Commission's reporting requirements.

In addition, the IECA believes the Commission should codify the no-action relief with respect to the reporting of inter-affiliate swaps granted by the CFTC Staff in CFTC Letter No. 13-09, as well as CFTC Letter No. 14-144^[2] and other letters that have been relied upon in the marketplace for long periods of time without ill-effects. Codification into formal rules will provide helpful regulatory certainty to market participants and clean up what has become an archaic hodge-podge of regulations and no-action letters in which market participants must become and remain versed in order to ensure regulatory compliance with respect to their commercial hedging transactions, which represents a daunting learning curve for new end users or those expanding their business into new hedging activities.

II. The IECA Fully Endorses the Commission's Proposed Elimination of Quarterly Valuation Reporting by Non-SDs/MSPs as Reporting Counterparties.

The Commission is proposing in the 2020 Recordkeeping and Reporting NOPR to remove the current requirement for non-SD/MSP reporting counterparties to report

Reporting Requirements Under Parts 45, 46, and Regulation 50.50(b) of the Commission's Regulations (Apr. 5, 2013).

^[2] CFTC Letter No. 14-144, Division of Clearing and Risk Announces *No-Action Relief from the Clearing Requirement for Swaps Entered into by Eligible Treasury Affiliates* (Nov. 26, 2014).

valuation data in Commission Regulations § 45.4(d)(2)(ii). The Commission is also proposing not to require non-SD/MSP reporting counterparties to report margin and collateral data." 85 Fed. Reg. 21590-91. The IECA fully supports the Commission's proposed amendments. Two parties that do not ordinarily enter into long-term swaps are required to agree between them which of the two is the reporting party, and that reporting party is forced by the valuation reporting requirement to contract for expensive third party services to perform quarterly valuations of transactions, which valuation analyses offer tangential, at-best, value to the two parties, and do not mitigate systemic risk. The requirement is therefore appropriately eliminated.

III. Correspondence Regarding These Comments

Please direct correspondence concerning these Comments to:

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CONCLUSION

The IECA appreciates the opportunity to submit these Comments in response to the Commission's 2020 Recordkeeping and Reporting NOPR proposing revisions to the existing regulations. The IECA respectfully requests that the Commission consider these Comments as the Commission 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

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