From: Paul Cicio <pcicio@carbonleaf.net>
Sent: Tuesday, February 22, 2011 10:57 AM
To: EndUser <EndUser@CFTC.gov>
Subject: IECA - End User Exemption
Attach: IECA CFTC End User Exemption 022211.pdf

Please confirm receipt.

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The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $800 billion in annual sales and with more than 750,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through research, advocacy, and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

February 22, 2011

<u>VIA ELECTRONIC DELIVERY</u>

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

RE: Proposed Rulemaking: End User Exception to Mandatory Clearing of Swaps

Dear Secretary Stawick:

On behalf of the Industrial Energy Consumers of America (IECA) please consider the following comments in response to the Commodity Futures Trading Commission's (CFTC) request for comments published in the *Federal Register* on December 23, 2010, and appearing at 75 Fed. Reg. 80747.

About IECA

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $800 billion in annual sales and with more than 750,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through advocacy, and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

IECA member companies have consistently supported increased market transparency, setting speculative position limits, and increased market oversight to prevent market abuse. IECA member companies are energy intensive and the cost of energy can determine whether they are competitive in world markets.

The Importance of Natural Gas

Manufacturing companies consume natural gas and use derivative markets to hedge their purchases and manage price risk. They do not speculate.

The manufacturing sector consumes approximately 24 percent of US natural gas. Natural gas is vital to the success of IECA member companies. Natural gas is used as both a feedstock (raw material) and a fuel. Natural gas is also a growth fuel for electric power generation by the electric utility sector. The electric utilities provide the manufacturing sector with the electricity they need to operate their facilities. As a result, if the cost of natural gas increases, manufacturers are impacted by higher costs in feedstock, fuel and electricity.

End User Exemption
IECA is opposed to increased costs of any kind, whether direct or indirect. As stated earlier, manufacturers are in competitive markets and we must keep costs low in order to create jobs and economic growth. Costs that are not imposed upon our foreign competitors give them an economic advantage. Importantly, IECA companies avoid having capital tied up in hedging activities. The purchase of natural gas is important but ancillary to a manufacturing company whose sole purpose is to serve its markets by producing finished products. We desire to utilize our capital to expand existing or new production facilities or expand growth oriented activities such as R&D. Hedging is not a growth activity. It is for this reason that many IECA companies prefer to utilize OTC swaps because of the unique customization of each swap (amounts and contract dates), and the lack of collateral and margins calls.

To the extent that OTC derivatives providers are required to clear transactions through exchanges, we are concerned that the added costs of clearing could be passed on to end users through less attractive pricing and more stringent credit terms. Additionally, the burden of mandated clearing could drive some derivative providers from the market, thereby reducing competition and liquidity. Increases to hedging costs could result in less hedging activity. It is for this reason that CFTC should exhaust all avenues to keep the costs of clearing low and its direct or indirect impact to manufacturing companies.

The “elective exception” could help to reduce the impact of the proposed regulation on end users so long as administrative requirements are not overly cumbersome. IECA supports regulatory requirements that would require swap dealers to report transactions on behalf of end users since large swap dealers have the resources and expertise to facilitate timely and efficient reporting. IECA also favors regulatory requirements that would minimize the costs of complying with other aspects of the end user exemption such as the requirement for end users to demonstrate their risk mitigation practices.

Manufacturing hedging activities
IECA companies and manufacturing companies in general, manage the risk of changes in natural gas prices through the use of derivative financial instruments. Derivatives are used to hedge price risk. The derivative instruments used are typically over-the-counter (OTC) natural gas swaps and options. These contracts settle using primarily NYMEX futures price indexes, which represent fair value at any given time. The contracts are entered into with respect to natural gas that will be consumed in the future and settlements are scheduled to coincide with anticipated natural gas purchases used to produce our products for those future time periods.

Derivatives are mostly used to lock in a margin in forward product sales or to protect against natural gas price increases during periods when prices are anticipated to change, thereby creating risk. For example, natural gas prices remain sensitive to weather conditions such as severe heat or cold or Gulf Coast hurricanes that impact production.

Mitigating Commercial Risk

Manufacturing companies are an insignificant share of the volume traded and do not pose a financial risk to, for example, the natural gas market. As such, the CFTC should not place additional regulatory burdens on bona-hedgers. Doing so would represent an expense without a benefit. Also, hedgers, like ourselves, actually consume the commodity that we are hedging and do not pose a financial commercial risk to the market.

Regulatory requirements designed to mitigate risk should be placed on parties that have large exposures and are a large share of the market and take on significant risks such as speculators.

Summary:
IECA supports use of the end-user exception. We support this option with the understanding that it will not require companies to tie up capital or be subjected to burdensome reporting requirements.

Thank you.