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March 9, 2012

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

**Re: Support for Working Group of Commercial Energy Firms Petition for Order to Exempt Owned Non-Financial Entities from Aggregation for Compliance with Position Limits and Order to Broaden and Clarify Rule 151.7(i).**

Dear Secretary Stawick:

On behalf of our Members, the Commodity Markets Council ("CMC") hereby submits this letter of support for the above-referenced petitions. CMC is fully supportive of both exempting owned non-financial entities from aggregation for compliance with position limits, and broadening and clarifying Rule 151.7(i).

CMC respectfully requests the Commission, in considering these petitions, to additionally consider the following:

#### **Threshold for Independence**

If the Commission opts to provide relief from aggregation in the form of a rule change, it should consider raising the current 10 percent threshold above which an entity's direct and indirect ownership interests must be combined. CMC believes that it would be entirely appropriate to raise this threshold to situations in which an entity's direct and indirect ownership interests are more than 25 percent.

As a matter of course, minority ownership interests below an even higher threshold (i.e. 50 percent) generally do not give rise to actual control of a subordinate entity, except in situations where a minority interest owner is specifically authorized to manage and/or control trading. Indeed, minority ownership levels below 50 percent are usually predicated on a minority owner not having any managerial control by virtue of its minority ownership level.

CMC believes that the critical element in determining when aggregation is appropriate is control: regardless of a company's direct and indirect minority ownership percentage, the relevant factor in determining whether aggregation is appropriate is whether such company exercises management and control over the subordinate entity's activities. Without actual authority to control, minority ownership levels are, by themselves, irrelevant.

If the Commission grants relief via rule from aggregation for owned non-financial entities, CMC would urge the Commission to concurrently raise this threshold to more than 25 percent. Since relief from aggregation will be predicated on a company satisfactorily establishing to the Commission that it exercises no control nor shares any trading information with a subordinate entity, once that lack of control/lack of sharing information is established, the ownership level—whether 10 percent or 25 percent—is irrelevant. Further, since the Commission already receives information from registrants regarding all ownership interests in subordinate entities, the Commission can request information in specific circumstances using its special call authority.

### Violation of Federal Law - Anti-Trust Considerations

CMC concurs with commentary of the Working Group petition relative to forcing competing market participants to share information and coordinate trading. Further, CMC wishes to amplify the importance of competitors in the marketplace not sharing information. Improper sharing of information in the marketplace can create not only the appearance of anti-trust activity, but in some cases the activity itself. Many participants in this marketplace have been subject to anti-trust investigations and are routinely subject to anti-trust review during the course of normal business activities associated with business investment, acquisition and divestiture. Compliance with anti-trust laws is of paramount concern to the industry. It would be antithetical to companies' strict adherence to complying not only with the letter, but also the spirit, of anti-trust laws if the aggregation rule results in a de facto mandate of information sharing, especially when such sharing would be strictly scrutinized by anti-trust officials absent such regulation.

### Form of Relief

CMC concurs with the Working Group petitions relief request by order or rule, as determined by the Commission, with appropriate interim relief if the Commission opts to address aggregation via rule. As noted above, should the Commission opt to address aggregation through a rule, CMC urges the Commission to consider modifications to the 10 percent threshold.

Ultimately, however, CMC urges the Commission to complete its consideration of these petitions as quickly as possible. Specifically, CMC urges the Commission to consider these petitions and provide appropriate relief prior to any final action on the definition of "swap" so that the affected industry participants can minimize unnecessary costs of modifying their respective business organizations and processes.

Sincerely,



Christine M. Cochran  
President

Cc: Chairman Gary Gensler  
Commissioner Jill Sommers  
Commissioner Bart Chilton  
Commissioner Scott O'Malia  
Commissioner Mark Wetjen  
Dan Berkowitz, General Counsel  
Kenneth Danger, Division of Market Oversight