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July 20, 2012

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Telefacsimile: (202) 418-5521 and
Email to secretary@cftc.gov and electronically to <http://comments.cftc.gov>

Re: Petition for Rulemaking to Amend and Extend the Effective Date of CFTC Regulations 1.3(m), 1.3(ggg) and 1.3(hhh) in the Commission's Final Rule to Further Define Swap Dealer, et al. (RIN 3038-AD06, May 23, 2012), and to Allow the Submission of Additional Comments/Requests for Additional Guidance/Requests for Reconsideration of such Regulations

Dear Mr. Stawick:

The International Energy Credit Association ("IECA" or "Petitioner") respectfully petitions the Commodity Futures Trading Commission ("Commission" or "CFTC") under CFTC Regulation 13.2 to amend and extend the "effective date" and the "comment date" in the preamble of the CFTC's Final Rule with respect to Regulations 1.3(m), 1.3(ggg) and 1.3(hhh),¹ which regulations contain the new definitions of "Eligible Contract Participant," "Swap Dealer" and "Major Swap Participant." The Petitioner specifically requests that the Commission amend that portion of the preamble of the Commission's Final Rule entitled "Further Definition of Swap Dealer, Security-Based Swap Dealer, Major Swap Participant, Major Security-Based Swap Participant and Eligible Contract Participant," RIN 3038-AD06, 77 Fed. Reg. 30596, May 23, 2012, (herein referred to as the "Swap Dealer Rule") to amend and extend the "effective date" until 120 days, and extend the "comment date" to allow additional comments on (requests for additional guidance or requests for reconsideration of) the Swap Dealer Rule to be submitted to the Commission until 60 days, after the publication in the Federal Register of the latest to occur of the following (referred to herein as the "Completion Date"):

- (i) the Commission's Final Rule entitled "Further Definition of Swap, Security-Based Swap, and Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping," RIN 3038-AD46 (herein referred to as the "Swap Definition Rule");

¹ 77 Fed. Reg. 30596, at 30596.

- (i) the Commission's Final Rule entitled "Further Definition of Swap, Security-Based Swap, and Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping," RIN 3038-AD46;
- (ii) the Commission's decision on the Interim Final Rule under the Swap Dealer Rule;
- (iii) the Commission's decision on the Trade Option Exemption under the Commodity Option Rule; or
- (iv) the Commission's decision on the pending petitions under CEA Section 4(c)(6) for public interest waivers filed by various RTOs, ISOs and public power companies.

, and except for CFTC regulations at 17 CFR 1.3(m)(5) and (6), which are effective December 31, 2012.

Comment date. The comment period for the interim final rule (CFTC regulation at 17 CFR 1.3(ggg)(6)(iii)) will close July 23, 2012 and the comment period for the public to submit comments on, including requests for additional guidance or reconsideration of, the definitions of "swap dealer" and "major swap participant" will close 60 days after the above-referenced Completion Date.

II. THE PETITIONERS

The IECA is a 90-year old association of several hundred energy company credit management professionals grappling with credit-related issues in the energy industry. Our members' concerns regarding the Commission's regulations implementing the Dodd-Frank Act have led us to submit comments to the Commission with respect to several of the Commission's proposed rules applicable to what previously were unregulated over-the-counter ("OTC") financial derivatives. The IECA's efforts in this regard are intended to advise the Commission of the potential practical effects of its proposed regulations on energy companies and especially on the continued use of OTC financial derivatives by energy companies.

Correspondence with respect to these comments should be directed to the following individuals:

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for the Commission to act upon the Regional Transmission Organizations (“RTOs”) and other exemption petitions under CEA 4(c)(6), and will afford the impacted parties the necessary review time after the Commission acts on all of the foregoing inter-related decisions. The 120 day extension can also be used by the Commission to review other final rules that incorporate the term Swap.

The Commission has recently recognized the benefits of reopening certain rulemakings to allow for additional comments and the same approach is appropriate in this instance. For example, on July 6, 2012, the Commission reopened the public comment period on its Notice of Proposed Rulemaking on Margin Requirements for Uncleared Swaps, nearly a full year after the end of the original public comment period.

The IECA submits that satisfaction of the standards for reasoned decisionmaking under the APA applicable to the Commission’s rulemaking procedures should cause the Commission to want to hear from members of the affected public about how the Commission’s definitions of “Swap Dealer” and “Swap” will impact the public. Not only should the Commission want to know, the APA demands that the Commission follow such procedures.

When commenting on the “Swap Dealer” proposed rule without knowing how the Commission would define the term “Swap,” members of the IECA were unable to adequately evaluate:

- whether and how many, if any, of their various transactions in the energy industry, which previously were not considered to be OTC financial derivatives, would now be considered by the Commission to be Swaps;
- whether and to what extent their routine day-to-day business activities would make such entities Swap Dealers or Major Swap Participants;
- what impacts, intended or unintended, the Commission’s Swap Dealer Rule would have on their business structures, business strategies and routine day-to-day business activities in the energy industry; and
- what steps they would need to take and what expenses they would need to incur to ensure they are in compliance with all relevant provisions of the Dodd-Frank Act.

At the Commission meeting on the Swap Definition Rule on July 10, 2012, there was a significant colloquy between one of the Commissioners and the Commission Staff that indicated a significant level of confusion with respect to how the further definition of a “Swap” in the final rule treated embedded volumetric optionality in a forward contract, which is a key feature of many types of energy industry transactions. The determination of whether such transactions are “Swaps” could affect whether various energy industry companies are “Swap Dealers” or “Major Swap Participants.”

During this colloquy on July 10th, the Commissioner and the Commission Staff were talking with the benefit of actually seeing a final draft of the Swap Definition Rule. The IECA believes that the public, in commenting on the Swap Dealer proposed rule, would have benefited

Court held that this standard requires the agency to “articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choices made.’”

In the case of the Swap Dealer Rule, as well as the Trade Options rule, the Swap Definition Rule which has not yet been published in the Federal Register, and the other rules the Commission has published to date which by their express terms depend on a further definition of the term "swap," the Commission has begun the process of complying with the DC Circuit's standard for reasoned decisionmaking in the Second National case. The Commission has issued proposed rules, received and considered public comments, in some cases repropose rules and in others issued "interim final rules" while proposing more questions. The Commission continues to "seriously [seek] answers" by asking dozens of questions aimed specifically at understanding the transactions in the energy industry. The APA standard clearly cannot be deemed to have been met until the Commission is satisfied that it has the answers that it continues to seek, evaluates those answers and finalizes its decisionmaking process.

For the energy industry, the Commission has not, as yet, finalized the process of reasoned decisionmaking. The Commission continues to seek, and the energy industry continues to provide, answers to the Commission's questions. Until that process concludes, the energy industry remains in the dark as to whether their transactions are "Swaps" or "Trade Options," and how to determine whether a particular entity is required to register as a "Swap" dealer, or can comply with the thresholds in the "de minimis" exception.

The legal standard articulated in Second National and Motor Vehicles cannot be interpreted as merely requiring the Commission to ask questions. Surely, the Commission is required to (a) allow the public the opportunity to respond with the answers the Commission continues to "seriously seek," and (b) analyze those answers in order to glean the facts upon which the Commission can only then finalize its reasoned decisionmaking.

In this instance, the IECA submits that its members, each of which is a participant in the energy industry, do not currently know, and cannot know until the Completion Date, which and how many different types of their existing transactions with respect to a particular energy commodity will be deemed by the Commission to be a Swap.

Further, according to the information provided from the dais, the volumetric option aspect of the Swap Definition Rule is actually an interim final rule, which will be subject to further comment and will not become final for at least 60 days after publication in the Federal Register of the Swap Definition Rule. These factors should at the very least suggest a delayed compliance date with the Swap Dealer Rule for commodity based end-users.

Coupled with the clarification just provided that the pending petitions under CEA Section 4(c)(6) requested by various RTOs will not be dealt with in the Swap Definition Rule, but rather must wait for the public interest waiver process to be played out, is a further reason justifying such a delay in the effective date of the Swap Dealer Rule.

As a result, the IECA respectfully requests that the Commission amend and extend the “effective date” of its Swap Dealer Rule to allow interested members of the public an additional

For all the foregoing reasons, the IECA respectfully requests that the Commission:

- (i) amend and extend the “effective date” of its Swap Dealer Rule for a period of 120 days after the Completion Date;
- (ii) amend and extend the “comment date” of its Swap Dealer Rule for a period of 60 days after the Completion Date in order to grant the public the opportunity to submit additional comments on, including requests for reconsideration of, the impacts of the Swap Dealer Rule and/or the Swap Definition Rule;
- (iii) issue an order in response to such requests for reconsideration by no later than 90 days after the Completion Date; and
- (iv) grant any additional extensions of effective dates of other rules or statutory interpretations that may be necessary to implement any modification of the Swap Dealer Rule and/or the Swap Definition Rule the Commission may reasonably decide to make in response to such additional public input.

VI. CONCLUSION

The IECA respectfully petitions the Commission under CFTC Regulation 13.2 to amend the preamble to the Swap Dealer Rule, in order to (i) amend and extend the “effective date” of the Swap Dealer Rule and (ii) amend and extend the “comment date” of the Swap Dealer Rule, as described above. The IECA further requests that if the Commission determines that granting the relief requested in the Petition on all of the matters requested herein would not be appropriate, it grant this Petition in part as though each request were a separate petition. The IECA does not request confidential treatment of this Petition, and asks the Commission to promptly inform the IECA of where on the CFTC’s website the Petition will be posted, and of the process by which the Commission will accept comments in support of the Petition.

The IECA notes this Petition represents a submission of the IECA, and does not necessarily represent the opinion of any particular member.

Respectfully submitted,

/s/
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Reed Smith, LLP

/s/
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Law Offices of Jeremy D. Weinstein

cc: Honorable Gary Gensler, Chairman
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O’Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Dan M. Berkovitz, General Counsel