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Re: Response of the International Energy Credit Association ("IECA") to Commodity Futures Trading Commission ("CFTC") Notice of Proposed Rule ("NOPR" or "Proposed Rule") respecting Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (17 CFR Part 23, RIN 3038-AC96, Federal Register February 8, 2010) pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Ladies and Gentlemen:

The CFTC by the above-referenced NOPR requests public comment on the proposed rule and other matters. This letter responds to the NOPR.

I. Introduction.

The IECA, founded in 1923, is the leading global organization focused on credit-related issues in the energy industry. The IECA and its members have wide and deep expertise and experience in developing improved metrics, documentation, and tools to assess, manage, and mitigate credit risk. Its members come from more than 500 companies, representing every facet of the energy complex from producers and processors to generators, transporters and end-users. Most of these companies execute privately negotiated over-the-counter ("OTC") derivatives in commodities, interest rates, or currencies.

Derivatives are essential to the business of many of these companies, as well as their suppliers, customers and counterparties. Among other things, derivatives are used to:

- Protect against increases in costs;
- Protect against a decline in the value of inventory;
- Manage cash flow, working capital, and liquidity;

- Maximize the value of assets;
- Meet the needs of customers; and,
- Comply with the terms of financing arrangements, which frequently require hedging of interest rate, foreign exchange, and commodity price risk to ensure the borrower's ability to pay its debt.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") will have an enormous impact on working capital requirements, the costs of hedging, and earnings volatility - all critical credit-related issues.

In view of these concerns, the IECA, for the first time in its almost ninety-year history, is commenting in a series of rule-making proceedings. The purpose of these comments is to shape the rules in a way that will achieve more certainty for market participants, maximize the potential for bilateral credit relationships, limit the scope of mandatory clearing, and preserve as much competition and flexibility as possible.

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II. Comments on the Proposed Rule.

The IECA's comments on the Proposed Rules are organized in a manner that we hope will maximize their usefulness for the CFTC. In a General Comments section, we identify unifying themes and ideas that drive our specific comments and suggestion on several key aspects of the Proposed Rules. In so doing, we will attempt to provide the CFTC with the context and background that informs our comments and suggestions. This is followed by the appropriately named Specific Comments section; a section setting forth responses to specific questions asked by the CFTC in the NOPR about the Proposed Rules and other matters; and a section with comments addressing the CFTC's Regulatory Flexibility Act and Paperwork Reduction Act analyses.

A. General Comments.

1. Overview of the IECA's Comments.

There are four main themes in these IECA comments to the NOPR. Two or more will often overlap in any particular comment.

The first is the presumption stated several times in the NOPR that problems that were endemic in markets in credit default and housing derivative instruments during the 2008 crisis are present in all markets, which presumption does not apply to energy markets.

The second is that the NOPR assumes that transactions are typically conducted in OTC swap markets in a manner similar to how they are conducted on exchanges, which is not the case. OTC swap contracts are not private futures contracts. On exchanges, every transaction is (a) an independent, and independently fungible, transaction with a single clearinghouse counterparty and (b) documented as a standard contract owned by the clearinghouse and approved by the CFTC. In OTC swap markets, every transaction is (x) typically just one part of an overall relationship and (y) documented as one of a number of transactions under a single master agreement between two parties. That master agreement and the relationship it embodies is not fungible or, other than theoretically, transferable, even if individual transactions under the master agreement may be cancelled with one party and entered into anew with a different party as a means of transferring the individual trade. The NOPR seems to seek to apply, *mutatis mutandi*, the exchange regime to the OTC swap markets. This conflation of two completely different markets leads the NOPR to impose what would be highly disruptive and unduly burdensome requirements with a goal of achieving a condition of agreement fungibility for OTC swaps that is simply not possible.

The third is that the NOPR does not internalize the effect of the Dodd-Frank Act and other rulemakings that seek to move onto exchanges the fungible and transparently valuable "low-hanging fruit" [1] to which the NOPR refers. To the extent this occurs, transactions remaining in OTC swap markets will be less possessed of the characteristics that enable them to be transparently valued as is sought to be required in the NOPR.

The fourth is the Dodd-Frank Act's imposition of heavy administrative and regulatory compliance costs on the use of OTC swaps in the United States as an incentive to move such transactions onto exchanges.[2] Several provisions of the NOPR would increase those costs both in excess of what is required under the Dodd-Frank Act and in excess of any benefit. As will be demonstrated in the Specific Comments section below, several provisions would render use of

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1 p. 6718, col. 3.

2 According to the Congressional Budget Office:

> Another approach to regulating the OTC market ... would be to increase the cost of OTC transactions in the hope that participants would shift them to exchanges or clearinghouses. The Dodd-Frank law does this by raising capital requirements ... and by increasing margin requirements for institutions that trade in OTC contracts. Specifically, the law requires the CFTC to impose higher capital and margin requirements ... . The resulting increase in compliance costs for OTC transactions is designed to serve as an incentive to standardize contracts and move them onto exchanges or clearing houses [sic]. ... Historical evidence suggests that higher capital requirements cause banks to shift toward riskier investments ... [and] sometimes reduce[] their lending to small businesses and individuals ... .

Congressional Budget Office, Evaluating Limits on Participation and Transactions in Markets for Emissions Allowances, Dec. 2010, available at http://www.cbo.gov/ftpdocs/120xx/doc12006/12-10-LimitsAllowanceMarkets.pdf

OTC swaps practically unavailable to end-users, would stifle creativity and innovation, and would be anti-competitive, a consequence that will ultimately be felt by the general consumer.

The IECA reserves further comments on all aspects of the NOPR, to the extent the CFTC's definition of "swap," which is not yet published, changes the meaning and application of these Proposed Rules.

2. Standard Agreement Documentation is Different from Product Standardization.

The NOPR alleges "a risk that inadequate documentation of open swap transactions could result in collateral and legal disputes, thereby exposing counterparties to significant counterparty credit risk."[3] The NOPR then goes on to say that standardized documentation enhances standardized products, which are more likely to be cleared on exchanges.[4] However, the standardizing of the products that firms trade under their agreements- product standardization- is very different from agreement documentation standards. The NOPR is promulgating standards that are applicable to agreements that serve, as the NOPR notes, as "a framework" by which products are traded.[5] A standardized framework across market participants will not necessarily result in the trading of the same products across such market participants. No matter what the degree of standardization sought to be imposed on parties, absent a single form of agreement, as is the case with contracts on futures exchanges, and for which we do not advocate for OTC swap markets, the bilateral contracting nature of the relationship of OTC swap counterparties will lead to customization. Therefore, imposing standard terms in OTC swap documentation will not create product standardization or fungibility in OTC swaps. Regulating master agreements to achieve swap product standardization is akin to regulating closets to ensure that the clothes are the same size, even while the clothes that are the same size are being moved out of the closet (onto an exchange).

Additionally, the statement that poor documentation creates significant credit risk[6] is not correct. Poor documentation is less a source of credit or market risk, than it is of legal risk. Inadequate documentation of credit and collateral provisions could inhibit the ability of the parties to mitigate credit risk. A counterparty does not become any less able to pay (credit risk), as opposed to less willing to pay (legal risk), because it has signed poor documentation. Inadequate documentation of open transactions, to the extent that exists, is different from inadequate master agreements.

Parties to OTC swaps generally enter into a single master agreement, but may enter into multiple transactions that incorporate the provisions of the master agreement by reference. The master agreement contains the terms and conditions common to all transactions, and agreement on the process for entering into transactions, but the master agreement is not itself a transaction.

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3 p. 6717, col. 1.

4 p. 6717, col. 1.

5 p. 6717, col. 1.

6 p. 6717, col. 1.

There is no market in master agreements and only limited ability for a party to transfer existing transactions entered into under one party's master agreement to another party's master agreement . Transactions that have been entered into under master agreements are transferred between parties, if at all, by an offsetting transaction or a termination with the original counterparty, and a new transaction with the new counterparty. Standardized documentation may make it easier for parties to sell portfolios, but a sale of an agreement position is relatively rare. A master agreement position is sold by a "novation" that cancels the old trades and enters into new trades; the credit terms with the seller under the old master agreement are generally irrelevant (other than as an incentive) to the fungibility of the position to an assignee.

Transactions in uncleared products are often engaged in by counterparties in the OTC swap markets because they are not readily available in cleared markets or a business or credit provision makes the uncleared product unique and not easily cleared, but nevertheless invaluable to a counterparty. For example, an OTC swap secured by a lien on an asset would also require for transfer the normal requisites of the transfer of a loan agreement.

In fact, other CFTC rulemakings under the Dodd-Frank Act make it clear that the goal of the rules is to force onto exchanges all products that are capable of standardization, and that therefore one of the purposes of OTC swaps is for the remainder. This will even further reduce the likelihood of trades in existing transactions under master agreements. Absent the purchase of an overall trading subsidiary at the corporate level, the master agreements themselves, with all transactions are simply not purchased and sold.

Finally, no matter what the degree of standardization sought to be imposed on parties, absent a single form of agreement, as is the case with contracts on futures exchanges, and for which we do not advocate for OTC swap markets, the bilateral contracting nature of the relationship of OTC swap counterparties will lead to customization, always making portfolio sales rare. Therefore, imposing standard terms in OTC swap documentation will not create fungibility in OTC swaps.

3. Issues in Credit Derivatives Market Are Not in Energy Markets.

Several passages in the NOPR indicate that markets in credit derivatives largely influenced the CFTC's development of the Proposed Rule. For example, the NOPR states, "The failure of the market to set a price for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage backed securities (especially collateralized debt obligations). Such wide disparities led to large collateral calls from dealers on AIG, hastening its downfall."[7] This crisis in a relatively new exotic financial instrument should not be generalized to all markets, most notably physical energy markets. Energy markets rarely lack the data and methodologies necessary for valuation of swaps in energy commodities.[8] Historically, energy markets have very rarely lost pricing inputs.

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7 p. 6717, col. 3 at fn. 21.

8 Note also that it is unlikely that the disputes in the value of the collateral, as opposed to the raw amount of the collateral required, "hastened the downfall" of AIG, as claimed at p. 6717 col. 3. Additionally, the government funding of AIG's collateral requirements was less a bailout of AIG than a bailout of the systemically important

The NOPR also discusses various reforms implemented in the CDS market.[9] Energy markets had their own crisis in 2001 with the bankruptcy of Enron and the disruption of several other major market participants, and the Federal Energy Regulatory Commission had a docket with respect to natural gas and electricity price transparency, to which the industry responded well; so energy markets in general did not experience the documentation infirmities listed for the CDS markets. In the energy industry, the asset operation and related trading activities of a market participant are largely independent of other participants in the same product markets. A default in these markets is typically limited to a single firm, even if that firm is high profile, and these markets have a successful history of working through these issues. In the single largest instance in which electricity market pricing data source became abruptly unavailable in 2001, when the California PX abruptly ceased trading electricity in February 2001, the attendant valuation disputes were generally successfully managed by energy industry participants using pricing disruption fallbacks specified in their documentation. Similarly, there are few, if any, reported decisions on disputes between parties to OTC gas swaps over valuations during Hurricane Katrina, which caused considerable disruption in availability of natural gas market pricing data.

Certainly, if two swap dealers are transacting and have not provided between them the most basic credit and default provisions, they have engaged in poor documentation practices. However, these practices are not prevalent in the OTC swaps markets in most American domestic industries, including the energy industry. In fact, for four generations the IECA has been promoting sound credit documentation practices to its members and hosts twice yearly conferences that are widely attended throughout the industry to help energy market participants ensure that their credit documentation is robust. The CFTC should develop a factual record as to whether there are deficient market practices in industries outside of the pre-2008 credit default markets before determining that it must set forth agreement specifics for counterparties in all OTC swap markets to address those issues. The CFTC should develop a factual record as to whether there has in fact been a failure of the several hundred swap dealers and major swap participants that are the direct subject of this rule to adequately document legal remedies and choice of law provisions before assuming that they must be required by regulation to include such terms in their contracts.

4. Valuation Formulae Are Different From Market Price Inputs to Valuation Formulae

The NOPR states "The Commission recognizes that swap valuation is not always an easy task. In some instances, there is widespread agreement on valuation methodologies and the source of formula inputs for frequently traded swaps. These swaps are the proverbial 'low-hanging fruit,' and many have been accepted for clearing (*i.e.*, commonly traded interest rate swaps and credit default swaps). However, parties often dispute valuations of thinly traded

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financial institutions that were requiring that collateral from AIG, the absence of which would have important consequences to the dealers' needs to rehypothecate that collateral to post it to their own counterparties.

[9] p. 6717, col. 3.

swaps where there is not widespread agreement on valuation methodologies or the source for formula inputs. ... The inability to agree on the value of a swap became especially acute during the 2007–2009 financial crisis when there was widespread failure of the market inputs needed to value many swaps. [fn. 21:] The failure of the market to set a price for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage backed securities (especially collateralized debt obligations). Such wide disparities led to large collateral calls from dealers on AIG, hastening its downfall."[10]

In other words, the CFTC conflates complicated or opaque valuation methodologies, as well as disagreement over valuations, with a "failure of the market inputs needed". Whether or not parties agree on a valuation formula, and whether a valuation formula is simple or complicated, are each irrelevant if the price input from the underlying commodity is not available to be traded. Certain swaps referencing price indices for natural gas delivered at Henry Hub became difficult to value when the Henry Hub shut down because of Hurricane Katrina and not because of any inherent defect in how valuation formulae for these swaps used the input from Henry Hub. Prices used to value any derivative for any commodity, whether input into a simple or complicated formula, if not known, will produce a result that is not known.

The magnitude of pricing disruptions observed in the CDS markets should not be presumed to be applicable to all OTC swap markets. All markets are subject to price disruption events, and the Dodd-Frank Act was not written nor should the CFTC seek, to solve that ordinary characteristic of markets. For example, equity derivatives will be difficult to price following a terrorist attack shutting down the New York Stock Exchange. Henry Hub gas will be difficult to value if Henry Hub is closed due to a hurricane. Fortunately, at least in energy markets, absence of such fundamental price inputs is quite rare.

5. <u>The CFTC Should Affirmatively State Whether the ISDA 1992 and 2002 Master Agreement Standard Forms Meet the Requirements of Rule 504(b)(1), and Whether the ISDA 1994 Credit Support Annex Meets the Requirements of Rule 504(b)(3)</u>[11]

There are currently almost universally used forms of Master Agreements (1992 and 2002), and a Credit Support Annex (1994) that are published by the International Swaps and Derivatives Association (ISDA) for use in the OTC swap markets. It is not clear from the NOPR if these forms meet the requirements that the CFTC has in mind.

On the one hand, the NOPR says "it is believed that many, if not most, swap dealers and major swap participants currently execute and maintain trading relationship documentation of the

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[10] p. 6717, col. 3.

[11] As mentioned above, the CFTC has not yet proposed a definition of "swap." The IECA's comments assume that "swap" will be defined to capture only financially settled products and will exclude physically settled products such products as physical commodity options. In the event that the CFTC takes a broader view of "swap," agreements such as the Master Power Purchase and Sale Agreement, published by the Edison Electric Institute, and other "physical" agreements may be impacted by the Proposed Rule. As a result, IECA, again, reserves the right to submit further comments on this NOPR following the CFTC's issuance of a proposed definition of "swap."

type required by proposed § 23.504 in the ordinary course of their businesses, including documentation that contains several of the terms that would be required by the proposed rules."[12] Since most OTC swap participants use the 1992 or 2002 ISDA Master Agreement with the 1994 Credit Support Annex, it would appear on one hand that the CFTC believes these forms meet the requirement of the rules; however, the NOPR asks, "To what extent do swap dealers and major swap participants currently enter into agreements that would satisfy the requirements of proposed § 23.504?"[13]; "To what extent would swap dealers and major swap participants be able to standardize the swap trading relationship documentation required by § 23.504?"[14]; and "To what extent would swap dealers and major swap participants be required to utilize the services of outside counsel in negotiating and drafting the swap trading relationship documentation and valuation and termination rights agreements that would be required by proposed § 23.504?"[15] This implies that there is more to do to make documentation meet the envisioned requirements. Additionally, the NOPR expects significant cost per counterparty to bring the existing documents into compliance with the new rules,[16] which would also indicate a belief that documentation currently prevalent in the marketplace does not meet the requirements of the rules.

The IECA believes that both of the 1992 and 2002 ISDA Master Agreements satisfy 504(b)(1), and that the 1994 Credit Support Annex satisfies 504(b)(3),[17] and that therefore most transactions do satisfy the requirements of these rules, without the need for further amendment. To eliminate confusion, the CFTC should provide direct guidance to the market, as uncertainty in this regard would be highly disruptive to market function. In the event the ISDA forms are insufficient, the CFTC should specifically and affirmatively state what is missing or needs to be changed.[18]. In this way, the CFTC would be providing the most visible and transparent

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12 p. 6725, col. 1.

13 p. 6724, col. 2.

14 p. 6724, col. 2.

15 p. 6724, col. 2-3.

16 p. 6722, col. 3.

17 We distinguish whether the ISDA forms meet the requirements of 504(b)(1) and 504(b)(3) from the relationship of aspects of ISDA standard form documentation to 504(b)(4). For example, "Calculation Agent Determination" is a permitted step in the Disruption Fallback waterfall of Section 7.5 of the ISDA Commodity Definitions, which are often incorporated by OTC counterparties by reference into their master agreements, but this would seem to contradict Rule 504(b)(4)(i).

18 For example, depending on the final rules, the CFTC might in such a review may determine that the "Loss" election under the 1992 ISDA Master Agreement (as opposed to the "Market Quotation" election, which are the two possible elections under the agreement for the calculation of the termination payment for all transactions), and the 2002 ISDA Master Agreement definition of "Close-Out Amount" (which replaces the 1992 choice of Loss of Market Quotation) do not comport with Proposed Rule 504(b)(4), if Proposed Rule 504(b)(4) is not changed from its present form. Proposed Rule 504(b)(4) requires that the parties *shall* agree, and that "to the maximum extent practicable, the valuation of each swap *shall be based* on objective criteria … ." The "Market Quotation" election under the 1992 ISDA Master Agreement requires objective criteria before use is made of the subjective "Loss" criteria, which may well be necessary and appropriate in the case of illiquid transactions, which is not the case if "Loss" is elected. "Close-Out Amount" lists a number of tools for a "commercially reasonable" calculation from which the non-defaulting party "*may*" select and "*may*" consider.

rulemaking by stating what it wants, if anything, that is not on the forms, or if the forms already meet the requirements of 504(b)(1) and 504(b)(3), respectively.

B. Specific Comments on the Proposed Rules.

6. Safe Harbors Are Essential.

The NOPR asks, "Would a failure of swap trading relationship documentation to comply with the requirements of proposed § 23.504 create uncertainty regarding the enforceability of swaps transacted under such non-compliant documentation? If so, how should this uncertainty be addressed in the rules?"[19] Any risk of this would be disastrous, and truly frustrate the desire for financial stability.

Any consequence to the legitimate expectations of the parties to a transaction that their documents would be enforced as written due to a failure of the documentation to comply with the rules would create a severe risk of uncertainty, especially if there is any consequence of assignment of "fault" of the failure to meet standards in documents entered into between two business entities, which will most certainly assure litigation. The stated purpose of the Dodd-Frank Act to assure safety and soundness of institutions would be radically undermined if rules under the Dodd-Frank Act created uncertainty by giving grounds for agreements between parties to be subject to challenge for enforceability, or creating a private right of action to be used as a collateral action or counterclaim to frustrate agreement enforcement.

Aside from the risks to enforceability, private rights of action would sharply curtail the availability of swaps to end-users who need them. For example, if a public company or its shareholders had a right of action against a swap dealer for failing to maintain the transparency of a swap valuation to that public company, or because the swap dealer's internal view of the value of the swap differed from the view set forth in the documentation, such counterclaims or collateral lawsuits would become common defenses to any lawsuit by a swap dealer seeking to enforce an OTC swap agreement against a public company.

The most important legal purpose of master agreements is to provide for a single agreement that is wholly accepted or wholly rejected by a counterparty that goes bankrupt. Otherwise, a bankrupt party could choose to reject and not perform those transactions that are unfavorable to it, and assume, requiring the non-bankrupt counterparty to perform, all transactions that are favorable to the bankrupt party, leaving the non-bankrupt party with a large performance obligation and a large unsecured claim. This would ultimately inhibit the ability of parties to grant each other credit. If requirements for new transactions vary from existing swap documentation, there is a risk to the unitary nature of the documentation under bankruptcy law that would allow a bankrupt counterparty to pick and choose which parts of a regulatorily fractured relationship it would assume or reject. In effect, a bankrupt party could choose to reject, and not perform, those transactions that are unfavorable to it, and assume, requiring the non-bankrupt counterparty to perform, all transactions that are favorable to the bankrupt party,

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[19] p. 6720, col. 3.

leaving the non-bankrupt party with a large performance obligation and a large unsecured claim, which would be very disruptive to the ability of parties to grant each other credit. This would severely increase credit risk.

A rule intended to ensure safety and soundness of institutions that actually deprived them of their contractual assets would be among the most perverse of possible outcomes. This rule is meant to protect, rather than punish, those whom it covers; it should not work like the exclusionary rule for Fourth Amendment violations.

Therefore, an explicit safe harbor stating that the failure to meet the documentation standards has no effect upon the enforceability of the documents and does not create a private right of action is essential. In fact, without the safe harbor, the claims of the CFTC in the Paperwork Reduction Act section of the NOPR[20] that the proposed rules would "decrease the likelihood of significant counterparty disputes" would be incorrect, since technical failure to comply with the rules, or what parties could argue are the rules, would dramatically increase the likelihood of significant counterparty disputes.

> **Therefore, a new Section 504(f) should be added to say: "(f) The failure of any swap documentation to meet any requirement of Rule 23.504 shall not have any effect upon the enforceability of such swap documentation, shall not constitute a breach of such swap documentation, and shall not give rise to or create a private right of action by a party to such swap documentation or any third party."**

7. <u>The Repetitive and Extreme Detail on the Requirement for a Valuation Methodology in Proposed Rule 504(b)(4) Creates an Unknowable Standard</u>

Proposed rule 504(b)(4) requires parties to document agreements upon each and all of the

- "Methods,
- Procedures,
- Rules and
- Inputs"

for determining the value of each swap at any time. It is not clear how each of "methods," "procedures," and "rules" differ from each other, or why there must be "methods" in addition to "procedures" and "rules", or how the documentation of each of these could vary from the documentation of the other.

Additionally, it is not feasible to agree on valuations in a master agreement. Simple swaps can be valued on a four-function calculator, but every risk system vendor will value more complicated instruments differently because of how they uniquely handle volatility curves, correlations, term structures, and other elements, aside from the simple disputes over underlying forward prices. Each swap dealer and major swap participant selects its own option valuation models, including some that are home-grown. A typical end-user selects just one set of option

[20] p. 6721 col. 2-3.

models to do valuations of more complicated instruments, and cannot afford to buy, install, and run daily valuations for every risk system nor to synch up valuations with each counterparties' unique option valuation/risk system. Unlike all market participants buying an industry-standard Bloomberg terminal for confirming their interest rate swap valuations, this is not feasible in the energy markets. Energy markets are unlike financial markets in this regard too.

Therefore, Proposed Rule 504(b) should replace "methods, procedures, and rules" with "procedures" each place it occurs.

8. Alternative Methods for Determining Values Should Not Confuse Unavailable Inputs with Dispute Resolution

As stated above, parties cannot determine the value of a swap when the price of the underlying commodity from which the value is derived (hence the term "derivative") is unavailable.

The parties should not be required to use something other than the commodity risk that they need to hedge in determining the value of their OTC swap. For example, an energy company seeking to hedge gas for a power plant in Los Angeles that set an "alternative" pricing methodology a few hundred miles away in order to comply with the requirement in Proposed Rule 504(B)(4)(ii), would suffer an economically undesired result if the alternative is needed. If the pricing point is unavailable, it is because gas is not being priced in Los Angeles for an important reason, such as a major interstate pipeline explosion which would lead the alternative pricing point with little correlation to the energy company's needs respecting the price of gas actually in Los Angeles.

The CFTC should not expect an always clearly and continuously visible output, because there may not be an always clearly and continuously visible input. Even though very rare in energy markets, there may indeed be moments at which a commodity is difficult to value, even if its value at that moment can be assessed later. A rule requiring an always visible output will lead directly to parties gambling on alternative inputs to use when the desired input is disrupted, either through pricing points that do not necessarily reflect what is going on at the location of the commodity (a location spread risk), or through contract mechanisms such as "Postponement"[21] that do not reflect actual market conditions (a time and price spread risk[22]), simply to avoid an absence of an ever-present output. The CFTC should rather presume that the parties to transactions can set pricing points that do meet their requirements, and that the parties can

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[21] The "Postponement" standard in the ISDA Commodity Definitions forces the parties to take the price of the commodity when the affected market reopens later, even though it does not reflect the value at the commodity at the time, this is in contrast to the ["Dealer Fallback"] standard in the ISDA Commodity Definitions which requires the parties to select an umpire if they cannot work out the values themselves.

[22] For example, the NAESB (National Energy Standards Board) Base Contract for Sale and Purchase of Natural Gas, a standard form commonly used in short-term physical gas trading, in 2006 was amended to add a disruption fallback provision which does not have a postponement in its waterfall.

establish contract mechanisms for resolving disputes as to the values at those pricing points at a given point in time, as well as take recourse to the court system, when they disagree.

> **Therefore, Proposed Rule 504(b)(4)(ii) should read: "Such methods~~, procedures, and rules~~ shall include ~~alternative~~ methods for (A) determining, emending, or resolving disputes respecting the value of the swap in the event of (B) the interruption, unavailability or other failure of any input required to value the swap, provided that the alternative methods for valuing the swap comply with the requirements of this section."**

9. It Is Not Clear Whether Orally Executed Transactions are Prohibited.

Proposed rule 504(b)(1) states "The swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the swap dealer or major swap participant and its counterparty." Proposed Rule 504(b)(2) states "The swap trading relationship documentation shall include all confirmations of swap transactions under § 23.501." The NOPR says: "... proposed § 23.504(a) would require that swap dealers and major swap participants establish, maintain, and enforce written policies and procedures reasonably designed to ensure that each swap dealer or major swap participant and its counterparties have agreed in writing to all of the terms governing their swap trading relationship and have executed all agreements required by proposed § 23.504. ... Proposed § 23.504(b)(2) would establish that all confirmations of swap transactions, as required under previously proposed § 23.501, would be considered to be part of the required swap trading relationship documentation."[23]

If all confirmations are part of the swap trading relationship, all documentation of which must be in writing, this seems to be stating that all transactions must be in writing, which would be highly disruptive to current OTC swap markets, in which many transactions are of a term that is shorter than the period that would be reasonable to exchange, review, and agree to written confirmations. This may also be inconsistent with the CFTC's proposed compression rule;[24] which says "[e]xecution means, with respect to a swap transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law."[25]

Most transactions by most OTC market participants, especially short term transactions, are entered into orally, often with a tape recording the transaction and usable by agreement of the parties in evidence in the event of a dispute. In fact, New York and California have provisions in their respective Civil Codes amending their statutes of frauds to allow "qualified financial

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23 p. 6717, col. 3.

24 CFTC, Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 17 CFR Part 23, RIN 3038–AC96, Federal Register / Vol. 75, No. 248 / Tuesday, December 28, 2010.

25 p. 81530, col. 3.

contracts" to be enforceable without being signed by the party to be charged.[26] Many transactions, especially those with a longer term, are confirmed in writing, but it is not unusual for parties to provide in their master agreements that confirmations are not provided for transactions below a certain term or tenor.[27]

Proposed Rule 23.504(b)(2) should therefore read: "The swap trading relationship documentation shall include all confirmations of swap transactions under § 23.501, <u>which confirmations need not be in writing</u>."

10. <u>It Is Not Clear Whether Long-Form Confirmations Are Prohibited</u>.

It is a relatively common practice in OTC swap markets for new trading relationships to be established by the use of "long-form" confirmations. These confirmations set forth the terms of a transaction and incorporate by reference the ISDA Master Agreement form with relatively few amendments. They often relate to a single initial transaction and may not set forth credit provisions. This is done so that parties that are new to each other, but wish to transact expeditiously in a desired product and establish a relationship, can do so. The IECA believes that such long-form confirmations should be sufficient for purposes of satisfying §23.504(a). Does 504(a) prohibit long-form confirms? The flexibility and ability to establish new trading relationships via the long-form confirmation advances competition. Inhibiting long-form confirmations would be anti-competitive since it would limit a parties choice for a transaction to their existing trading relationships.

Proposed Rule 23.504(a) requires parties to have the executed "swap trading relationship documentation" in place with counterparties prior to entering into a swap transaction. It is not clear if this would require the master agreement to be executed prior to the parties entering into a swap such that a long-form confirmation would not be allowed. Long-form confirmations typically refer back to the specific provisions of the master agreement. The incorporation of the master agreement terms such as events of default, netting of payments, and termination events, should be sufficient for purposes of satisfying §23.504(a).

Proposed Rule 23.504(b)(1) should therefore read: "(1) The swap trading relationship documentation shall be in writing and shall include<u>, or incorporate by reference,</u> all terms"

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[26] New York Uniform Commercial Code Section 2-201(4); New York General Obligations Law §5-701(b) and California Civil Code §1624(b)(2), respectively.

[27] Tenor is the time between the execution of the transaction and the end of the term, and can be longer than the term if the term is to start sometime after the transaction is executed.

11. Parties Should be Permitted to Enter Into Unsecured Transactions; "Initial Margin" and "Variation Margin" are not OTC Swap Terms.

Rule 504(b)(3) states "The swap trading relationship shall include credit support arrangements, which shall include "initial and variation margin requirements." The rule should not provide for margin if there is no legal requirement for margin. The Dodd-Frank Act does not prohibit the extension of unsecured trading credit by one party to another. A requirement for margin leaves open the question of whether the requirement can be set to "not applicable," which would be the case for unsecured trading credit.

The NOPR states: "Swap trading relationship documentation under proposed § 23.504(b)(3)(i) and (ii) also would include credit support arrangements containing initial and variation margin requirements at least as high as those set by the Commission (for swap dealers and major swap participants that are not banks) and by prudential regulators (for entities that are banks)."[28]

Under Proposed Rule §23.600: "'*Initial Margin*' means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position." and "'*Variation Margin*' means a payment made by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market." (emphasis supplied). In contrast to the Proposed Rule, the introductory matter in the NOPR for Proposed Rule 23.600 states: "The distinction between 'initial margin' and 'variation margin' ... is temporally-based: ... 'Initial margin' is defined as an amount calculated based on anticipated exposure to future changes in the value of a swap. ... 'Variation margin' is defined as an amount calculated to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market." (emphasis supplied)

Although "margin" is a term used in OTC swap markets, "initial margin" and "variation margin" are exchange concepts, not OTC swap market concepts. Neither "initial margin" nor "variation margin" is used in OTC swap markets, although the terms might be analogized to "Independent Amount" and "collateral securing mark-to-market exposure," respectively, in OTC parlance. If it is that simple, there would be far less risk if the regulation used the terms the marketplace uses. The term "performance bond" is not used in the OTC swap market. The disconnect between what the regulation purports to call what occurs in the market versus what the market itself calls what occurs, creates ambiguity and uncertainty, and hence risk and cost, without any identifiable benefit. It would be prudent to avoid use of terms that apply at best by analogy to the markets the rules using such terms seek to regulate.

Futures market nomenclature, although it is the language to which the CFTC is used to, is not the language of the OTC swap markets. The CFTC should seek efficiencies, clarity of communication, and effective enforcement by using the terms of the market it now newly regulates.

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[28] p. 6718, col. 1

Therefore, proposed rule 504(b)(3)(ii) should read: "(ii) ~~Initial and variation~~ applicable margin requirements;"

12. Rule 504(e) Creates an Unlevel Playing Field

Proposed Rule 504(e) requires that "Each swap dealer and major swap participant shall promptly notify the Commission and any applicable prudential regulator, or with regard to swaps defined in section 1a(47)(A)(v) of the Act, the Commission, the Securities and Exchange Commission, and any applicable prudential regulator, of any swap valuation dispute not resolved within: (1) One (1) business day, if the dispute is with a counterparty that is a swap dealer or major swap participant; or (2) Five (5) business days, if the dispute is with a counterparty that is not a swap dealer or major swap participant."

This reporting is not required by the Dodd-Frank Act, and will give leverage in any dispute to the party least sensitive to being reported to a government agency. Counterparties do not know the consequences of being reported for having a dispute over collateral valuation, and therefore may seek to avoid being "reported" by conceding. This will not lead to transparent and fair valuation, but rather quite the opposite, with the party least impervious to a report of the collateral dispute to its regulators having the upper hand in any dispute over valuation. This would leave the party most fearful of being reported potentially undercollateralized, at least as calculated by that party. The prospect of reporting creates further uncertainties, .such as whether the CFTC plans to involve itself directly or ultimately in any such contractual dispute or its resolution process.

Therefore, Proposed Rule 504(e) should be deleted.

13. The "5%" Audit Standard of Rule 504(c) is Vague and Represents a Potentially Enormous Cost That Would be Passed on to End-Users

This 5% requirement is not appropriate, since "5% of the swap trading relationship documentation" is an indeterminate, and potentially enormous, number. Is this 5% by notional value, mark to market value, number of transactions, number of counterparties, or number of pieces of paper? Auditing any of these thresholds would present enormous compliance cost, which if imposed on a swap dealer or major swap participant, will be passed on to end-users and ultimately consumers. Even if a lower threshold is specified, the lack of clarity of how a company gets to a compliant 5% will present substantial uncertainty. This audit does not determine whether financial statements are true and correct, or otherwise serve as a check on the information that a public company makes available, but rather is a paternalistic review of whether the swap dealer or major swap participant has good lawyers, credit professionals, and contract administrators, a cost of review that is best allocated by the swap dealer and major swap participant in hiring its own professionals, as opposed to an external cost that will be very expensive.

Therefore, Proposed Rule 504(c) should replace "no less than 5%" with "a random sample of".

14. Swaps Documentation Should Permit Parties to Waive Their Rights Under Proposed 23.601.

The NOPR states that "[t]he Commission anticipates that documentation of the foregoing matters [23.600 and 23.601 rules concerning documentation of initial and variation margin] would be included in the trading relationship documentation required pursuant to proposed 23.504(b)(3)(iii)."[29]

The ability to rehypothecate posted collateral is critical to economical hedging. It costs a swap dealer and major swap participant much less to use rehypothecated collateral to fund the collateral requirements of the offsetting side of its trade than it does for the dealer to separately raise the capital if there is segregation. A swap dealer and major swap participant cannot transact if it does not know its cost for the deal, and it cannot know the cost of its deal without knowing the liquidity requirements, which change if a party that had allowed rehypothecation suddenly changes its mind. A swap dealer or major swap participant will pass on to end-users in pricing its risks of having to borrow money to provide collateral to its counterparty to hedge the other side of its trade with an end-user.

End-users benefit significantly by waiving the right to the notice requirements of 23.600 and 23.601, and not only with regard to pricing. Even if the rule only required one notice per counterparty per year, if, as is required by the current draft rule, a CEO spent only two hours a year dealing with the paperwork for this rule alone, each end-user company would be deprived of 0.1% of its CEO's annual productivity, with no economic benefit.

In OTC swap markets, as stated above, parties hang multiple trades on the framework of a single master agreement that they usually negotiate before trading starts. Generally, parties address rules concerning rehypothecation, as well as the setting of collateral threshold, margin, and independent amount matters,[30] in the master agreement, rather than on a trade by trade basis. Therefore, parties should be able to choose to knowingly waive the right to require segregation under 23.601.

Therefore, the following should be added to the end of Proposed Rule 504(b)(3): "(v) any waivers of rights to receive any notice or require any segregation under § 23.600 or§ 23.601 must be knowingly made and signed by the Chief Executive Officer or Chief Risk Officer."

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[29] p. 6718, col. 2.

[30] It is not unusual for parties that have not granted each other collateral thresholds above $0 to also agree that they could require an independent amount for a particular transaction, with levels to be determined on a trade by trade basis or at the master agreement level.

III. Responses to Commission Requests in the NOPR.

A. Parties Should Have an Extended Phase-In Period to Amend Existing Swap Documentation So As Not to Give an Advantage to Swap Dealers and Major Swap Participants Over End-Users

The CFTC asks for comments on the implementation of §23.504, "recognize[ing] that amending all existing trading relationship documentation would present a substantial undertaking for the market."[31] The Commission asks "will compliance take less time for existing documentation between such registrants and longer for existing documentation between registrants and non-registrants?"[32] The period for the requirements applicable to swap dealers and major swap participants would apply equally to their end-user counterparties; and that period should be long, as a short period would give a pronounced marketplace advantage to the swap dealers and major swap participants over end-users, who do not generally have as many resources necessary to review amendments to all of their agreements. A form of amendment that could be agreed upon that was sponsored by an industry group might help expedite the amendment process, but the most logical sponsor of such an industry group, ISDA, primarily represents and sponsors the interests of swap dealers, rather than end-users, and so the end-user marketplace at large should be afforded a suitable time to digest and respond to any proposed standard form of amendment sponsored by such a trade association if a standard form of amendment needing to be divined by industry from CFTC rules, was required to be used because of the necessity imposed by a short time frame.

B. Swap Documentation Should Not Be A Board-Level or Senior Management Event.

The NOPR asks "Should § 23.504 require that the governing body of each swap dealer or major swap participant approve the policies and procedures for agreeing with each counterparty to all the terms governing the trading relationship?"[33] The NOPR says "The Commission would also consider it a sound practice for swap dealers and major swap participants to require senior management in the business trading and risk management units to approve all templates, and any material modifications to them."[34] We disagree. It is not a productive use of senior management's time to dig into the weeds of documentation. Moreover, it is common practice at most firms for the board to establish a risk management policy that provides a framework for establishing a trading relationship with a counterparty and delegates implementation of such task on a day-to-day basis to mid-level professionals. This process is efficient as it recognizes the value associated with senior management's time and creates a pyramid pursuant to which issues may be identified and raised to senior management, as applicable. Senior management should establish procedures for documentation and should delegate the responsibility for developing

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[31] p. 6720, col. 1.

[32] p. 6720, col. 2.

[33] p. 6720, col. 2.

[34] p. 6718, col. 2.

templates to persons with sufficient experience and expertise to know which issues warrant input and approval from senior management.

Similarly with "material modifications" to standard contracting templates, documentation procedures and proper delegation will do more to assure that senior management focuses on issues which are material to the swap dealer or major swap participant and that such issues will actually be brought to senior management's attention than a general requirement for senior management to approve material changes.

The uncertainty as to what is considered a "material modification" from the perspective of the regulation may lead persons within swap dealers and major swap participants to err on the side of seeking senior management approval, keeping senior management from addressing - or even having the opportunity to identify – significant risk management issues which they, with their experience and judgment, are uniquely positioned (and expected) to see. This will undermine the institution's risk management efforts, suffocate development, innovation and increase counterparty risks, as the market players will not be able to respond to the latest market and legal developments. Market participants should be allowed to develop their forms organically through a large network of trading parties always in the process of entering into and refining documentation for the trading relationship to best reflect those developments. This should be encouraged, as it enhances overall stability of the markets and the institutions that use them.

C. The Current Proposed Regulations Are Sufficiently Exhaustive and Specific.

The CFTC asks, "Should any other aspects of the trading relationship be required to be included in § 23.504?"[35] The proposed regulations are already sufficiently prescriptive. The CFTC should focus less on further specific contracting minutiae in documentation between sophisticated counterparties already able to fend for themselves.

The CFTC asks, "Should the requirement for agreement on events of default or termination events be further defined? For example, should parties be required to specify all cross default implications and potential claims with regard to their respective affiliates and any other present or future debt obligations or transactions?"[36] Broad language would be far more appropriate than specific language, as circumstances would vary.

The CFTC asks, "Should the valuation agreement in § 23.504(b)(4) require greater specificity? If so, what level of detail should be required?"[37] For the reasons stated above, the requirements for agreement respecting valuation should not be made more specific, but rather made permissive of more general terms for agreements respecting valuation.

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[35] p. 6720, col. 2.

[36] p. 6720, col. 2.

[37] p. 6720, col. 2.

D. Parties Should Be Free to Manage Their Own Cash Flow and Payment Terms

The CFTC asks, "Should § 23.504 specifically delineate the types of payment obligation terms that must be included in the trading relationship documentation?"[38] Mandatory terms will stymie development of documentation to meet economic needs, as well as presenting legal uncertainties regarding the consequences should the specific requirements not be documented as required. Parties should be free to manage the payment terms of their own agreements, and to make those terms address their credit requirements.

E. Parties should Be Free to Determine How to Resolve Their Disputes; the CFTC Should Respect the Constitutional Separation of Powers

The CFTC asks, "Should specific requirements for dispute resolution be included in § 23.504 (such as time limits), and if so, what requirements are appropriate for all swaps?"[39] Parties should be free to determine how they wish to resolve their disputes. Assuming the U.S. judicial system is fair, impartial, and available to both parties, setting forth requirements with respect to how disputes must be resolved could be a violation of the separation of powers under the Constitution.

F. Proprietary Data is a Necessary Input for Energy Hedging

The CFTC asks, "Should the valuation methodology provision in § 23.504(b)(4) expressly prohibit use of internal and/or proprietary inputs and methods and if not, why are inputs and methods developed and verifiable only by one party to the swap transaction acceptable given the safety and soundness and transparency objectives of the Dodd-Frank Act?"[40]

Prohibiting proprietary inputs would have a severely negative impact on the availability of hedging instruments in the energy industry. Many pricing inputs are proprietary to publishers such as Platts,[41] who develop proprietary indices with market information that is reported to them by market participants pursuant to Federal Energy Regulatory Commission Market Behavior Rules. The question then goes on to ask why inputs and methods developed and verifiable only by one party to the swap would be acceptable;[42] private index pricing can often be verifiable by neither party to the swap.

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[38] p. 6720, col. 2.

[39] p. 6720, col. 2.

[40] p. 6720, col. 2-3.

[41] Platts is a private company that provides electric power prices to subscribers, based on information it gathers from market participant. More information is available at http://www.platts.com/Products-Services/Electric-Power-Prices.

[42] p. 6720, col. 3.

Most members of the IECA operate in markets where both parties to the transaction are equally able to obtain access of the proprietary pricing information by paying subscription fees. Regulations should not require that if one party to the transaction has not bought a subscription from Platts that the other must pay for a subscription for the other. It is difficult to see how the use of proprietary inputs threatens the safety and soundness of the financial system, and it is necessary for energy price hedging.

G. Dealers May Not Perform Their Essential Service For End-Users If They Are Forced To Disclose Their Proprietary Information

The IECA supports 504(b)(iii), which establishes that "a swap dealer or major swap participant is not required to disclose to the counterparty confidential, proprietary information about any model it may use internally to value a swap for its own purposes."

The CFTC asks, "If internal and/or proprietary inputs or procedures are permitted under § 23.504(b)(4), should the swap dealer or major swap participant be required to disclose such information and the sources thereof to the counterparty and regulators in sufficient detail for them to undertake comparative analysis of such information and verify the valuation calculations?"[43]

There should be a presumption that a counterparty to a swap dealer or major swap participant who agrees on a proprietary input understands what it is doing. If swap dealers and major swap participants are required to disclose confidential and proprietary information, such as their models, as opposed to a model that could be the basis for mutually agreed upon valuation, dealers may choose not to provide swap services rather than risk losing the competitive advantage, of their model, which they may apply in other markets in which they are not required to make the disclosure.

IV. The CFTC's Regulatory Flexibility Act Analysis is Incorrect

The CFTC reviews[44] the requirements of the "Regulatory Flexibility Act (RFA) [which] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities." The CFTC states that as it has determined that swap dealers and major swap participants are not "small entities," and the proposed rules will not have significant impact on a substantial number of small entities. This is not the correct analysis. The correct analysis would be to (a) determine whether the proposed regulations increase costs for swap dealers and major swap participants, and, if so, (b) determine if there is any reason to believe that these additional costs would not be passed on by swap dealers and major swap participants to their customers, and, if not, (c) determine if these customers include a substantial number of small entities, and, if so, (d) determine if these costs passed on to substantial number of small entities would have a significant economic impact.

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[43] p. 6720, col. 3.

[44] p. 6720-6721.

The IECA has not undertaken any such analysis. We incorporate into our RFA comments our comments below on the Paperwork Reduction Act Notice.

V. The CFTC's Paperwork Reduction Act Notice Grossly Underestimates Costs

A. Negotiating New Swap Valuation Methodologies Will Take Far More than Ten Hours Per Counterparty

The CFTC states in its Paperwork Reduction Act Notice analysis, "The Commission estimates the initial annual hour burden associated with negotiating, drafting, and maintaining the swap trading relationship documentation described above that is required by proposed § 23.504(b) (excluding the cleared swap records required by proposed § 23.504(b)(6)), to be 10 hours per counterparty, or an average of 5,400 hours per swap dealer or major swap participant."[45] This is not correct, for at least two reasons.

First, this is not consistent with the proposed rules themselves, which require documentation of valuation methodology at the transaction-by-transaction, rather than counterparty-by-counterparty, basis. Therefore, the CFTC should review the aggregate number of transactions expected for uncleared swaps, determine the variety of pricing points and inputs, assign a per-transaction time value for each category of input, assign an executive decision-maker and the value of its time, as well as the time for Board of Directors or other senior officers who are required to sign off on and approve documentation forms, if applicable.

Second, if the proposed rules are not modified to state that the ISDA 1992 and 2002 forms of master agreement and 1994 Credit Support Annex meet the requirements of the rules, each counterparty will also want to review the documents against their understanding of how the new requirements bind them. Additional legal terms, if not already present in underlying forms of documents, will require legal review. The breadth of the time required could be significantly greater, however, depending on the currently unknown definition of "swap."

The NOPR's statement that "[o]nce a swap dealer or major swap participant modifies its preexisting documentation with each of its counterparties, the annual burden associated with the swap trading relationship documentation would be minimal."[46] is inconsistent with the proposed rules, since both parties will still need, on a transaction-by-transaction basis, to negotiate valuation provisions, although it is possible that once a set of counterparties agree to a valuation methodology to a particular type of commodity delivered to a particular point, they may have a standard that will serve them over a number of transactions.

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45 p. 6722, col. 3.

46 p. 6722, col. 3

B. The CFTC Fails to Account for Any Time Spent by End-Users in Complying with These Proposed Rules.

Everything that the swap dealer or major swap participant is required to do in addition to what it is currently required in its documentation will be required by the end-user on the other side of that documentation. The CFTC should consider that the counterparties will obtain their independent legal review of what is put in front of them, and not simply sign it, which is good risk management, and consistent with the systemic stability which the CFTC seeks to promote. Additionally, to the extent board member or senior management review of swap documentation forms or transactions is required, this will be a very expensive imposition on the time, and therefore be a substantial cost, on end-users, through diversion of management time.

Not only does the CFTC grossly underestimate the time per counterparty that the swap dealer and major swap participant will need to spend, the CFTC does not include the additional legal fees that would be incurred by each counterparty to a swap dealer and major swap participant to review its documentation. These are new rules that provide new uncertainty for uncleared swap transaction participants, each of which will need to conduct their own legal review of their own compliance.

The CFTC should also review whether the number of reviews times the legal hourly rate times number of counterparties times number of swap dealers and major swap participants, times a factor to state what proportion of those counterparties are "small entities", will represent a "significant economic impact" under the regulatory flexibility act. For example, using the CFTC's numbers[47] of 300 registrants with 540 average counterparties per registrant, and assuming an average of five hours of legal work at an allocated in-house and outside counsel average of $500 per hour per relationship for the counterparty, additional legal fees incurred that would be required by the rules total $405,000,000. If one fourth of these counterparties are "small entities," the CFTC should determine that over one hundred million dollars in added costs for small entities would constitute a "significant economic impact" under the RFA.

Finally, it would be highly disruptive to current swap markets for swap dealers, major swap participants and end-users to require that all market participants confirm all of their trades in writing. The additional cost of additional full time employees for each market participant is not included.

C. The CFTC Fails to Consider the Cost of the Export of Jobs and Transactions.

The NOPR does not discuss the risks and costs presented by parties seeking to avoid the additional costs of the Dodd-Frank Act and its rulemakings by entering into their transactions overseas, either directly or by creating overseas business units to do so. The extent to which jobs would be exported to London so that parties may enter into agreements that do not have the

[47] p. 6723, col. 1. These numbers seem inordinately small in light of the enormous quantity of entities that seem to be within the scope of the definition of "swap dealer" and "major swap participant" provided in the CFTC's Notices of Proposed Rulemakings respecting those definitions.

regulatory burdens, risks and costs of the proposed rules and other Dodd-Frank Act and its rulemakings, should be researched and quantified.

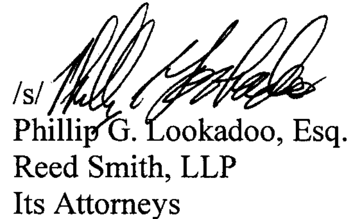
The IECA is especially concerned about this aspect of the Dodd-Frank Act rules because many of the legal and credit professional individuals who represent members to the IECA are at risk of these rules causing their jobs so exported from the United States.

VI. Conclusion.

The IECA appreciates the opportunity to provide the foregoing comments and information to the CFTC. The IECA is pleased to make available to the Commission experienced credit and derivatives professionals for further discussion and information upon request.

This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member thereof.

Yours truly,
INTERNATIONAL ENERGY CREDIT ASSOCIATION

/s/ 
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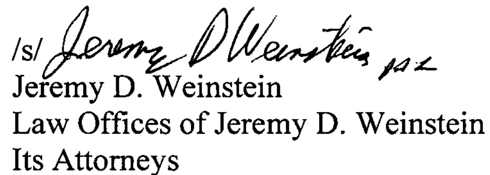
/s/ 
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