



15000 Commerce Parkway, Suite C  
Mt. Laurel, NJ 08054

February 15, 2013

Melissa Jurgens, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Email to [secretary@cftc.gov](mailto:secretary@cftc.gov) and electronically to <http://comments.cftc.gov>

Re: Comments on Commodity Futures Trading Commission ("CFTC" or "Commission")  
Notice: "Agency Information Collection Activities: Proposed Collection, Comment  
Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade  
Options" (77 Federal Register 74647, December 17, 2012) (the "Information Collection  
Notice")

Dear Ms. Jurgens:

The International Energy Credit Association ("IECA") hereby submits these comments in response to the above-referenced Information Collection Notice requesting public comments on the Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options ("Form TO"). The IECA hereby endorses the following comments, which were submitted earlier today regarding the Commission's Form TO, namely: the comments of The Commercial Energy Working Group and the jointly submitted comments of the American Public Power Association, the National Rural Electric Cooperative Association, the Edison Electric Institute, and the Electric Power Supply Association. In addition, the IECA offers the comments set forth herein for your consideration regarding the proposed collection of information using the Commission's Form TO.

**I. Introduction.**

The IECA is not a lobbying group. Rather, we are an association of several hundred energy company credit management professionals grappling with credit-related issues in the energy industry. Our members' concerns regarding Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") have led us, for the first time in our almost ninety-year history, to submit numerous comments to the Commission on its rule-makings under the DFA.

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

Zackary Starbird  
Member of the Board  
International Energy Credit Association  
30 S. Wacker Drive, Suite 900  
Chicago, IL 60606  
Phone: 312-594-7238  
Email: zack.starbird@bp.com

Phillip G. Lookadoo, Esq.  
Reed Smith, LLP  
Suite 1100 East Tower  
1301 K Street, NW  
Washington, DC 20005  
Phone: 202-414-9211  
Email: plookadoo@reedsmith.com

## **II. Comments on Form TO.**

On June 26, 2012, the IECA submitted comments regarding the Commission's Interim Final Rule respecting the "Trade Option Exemption" incorporated into the Final Rule on Commodity Options (17 CFR Part 32.3, RIN 3038-AD62, 77 Federal Register 25320, April 27, 2012). In those comments, the IECA advised the Commission that physically-settled nonfinancial commodity options (i.e., Trade Options) should not be defined as "swaps" under the DFA. The IECA also took the position that "all market participants should be allowed to submit Form TO on an annual basis to report their Trade Options." Nearly eight months later, the IECA wishes to revise that comment slightly to say that "all market participants should be allowed to submit Form TO on an annual basis **as the exclusive means for non-SDs/MSPs** to report their Trade Options."

In the above-referenced Information Collection Notice, the Commission states its objective for Form TO as follows:

"The Form TO filing requirement is intended to provide the Commission a minimally intrusive level of visibility into the unreported trade options market, to guide the Commission's efforts to collect additional information through its authority to obtain books or records required to be kept pursuant to the Act should market circumstances dictate, and to enable the Commission to determine whether these counterparties should be subject to more frequent and comprehensive reporting obligations in the future."

The IECA believes that requiring all counterparties that are not Swap Dealers ("SDs") or Major Swap Participants ("MSPs") to utilize Form TO exclusively to report all their Trade Options with counterparties which are not SDs or MSPs will enable the Commission to achieve those objectives. At the same time, the requirement will avoid imposing the more intrusive burden of Part 45 reporting on those non-SDs/MSPs, including end-users.

As mentioned in the IECA's comments on the Trade Option Exemption, we find little valuable information to be obtained by the Commission in subjecting Trade Options (i.e., physically-settling nonfinancial commodity options) to the more rigorous reporting requirements for swaps under Part 45. Moreover, the fields specified for the reporting of swaps under Part 45 do not readily lend themselves to the accurate reporting of Trade Options and, as such, the

burden on any non-SD/MSP of having to report Trade Options accurately under Part 45 will be extremely onerous, if not a practical impossibility.

Moreover, if that counterparty is an end-user or other non-SD/MSP, which has agreed to be the reporting party under Part 45 in a very limited number of swap transactions during a calendar year, that end-user could have been able to meet its limited Part 45 reporting obligations for those few swaps without putting in place the costly and time-consuming reporting systems installed by SDs and MSPs for their Part 45 requirements. And yet the Commission's proposal would prohibit that end-user or other non-SD/MSP from using Form TO for a calendar year if that end-user or non-SD/MSP has agreed to be the reporting party under Part 45 in only one swap or non-Trade Option transaction during such calendar year. The IECA believes there will be a large number of Trade Options entered into among market participants in the physical energy commodity markets and, as a result, the Commission's proposal could require end-users and other non-SDs/MSPs to construct Part 45 reporting systems primarily to report their Trade Options, which seems directly contrary to the reasons that the Commission created Form TO.

In that regard, the IECA submits that the Commission's estimated annual number of respondents of "100" is extremely understated as is the estimation of "2" hours to prepare those Form TO filings to capture all the Trade Options entered into during a calendar year. Instead, there could be hundreds of respondents in the energy industry alone submitting Form TO annual filings. Accurately capturing all the unreported Trade Options for a year, particularly separating unreported Trade Options entered into with non-SDs/MSPs from reported Trade Options entered into with SDs/MSPs during a calendar year, will take much longer than two hours.

On this basis, to the extent that the Commission maintains its interpretation that physically-settled nonfinancial commodity options are "swaps" under the CFTC regulations, the IECA urges the Commission to reverse its requirement that any counterparty that has reported one or more swaps under Part 45 during a calendar year is prohibited from using Form TO for that calendar year and, instead, allow the annual filing of Form TO to be the exclusive means for all non-SDs/MSPs to report Trade Options entered into with other non-SDs/MSPs.

### **III. Conclusion.**

The IECA appreciates the opportunity to provide the foregoing comments and information to the Commission. This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member. If you would like for us to expand our discussion of any of the above-listed discussion points, please let us know.

Yours truly,  
INTERNATIONAL ENERGY CREDIT ASSOCIATION

/s/  
Phillip G. Lookadoo, Esq.  
Reed Smith, LLP

/s/  
Jeremy D. Weinstein  
Law Offices of Jeremy D. Weinstein