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May 14, 2012

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades (RIN 3038-AD08)

Dear Secretary Stawick:

ICAP Energy, a division of ICAP plc, the world's premier electronic and voice interdealerbroker, is an innovative leader in commodities, providing over the counter broking and advisory capabilities to a broad spectrum of businesses throughout the world. The group has a staff of approximately 350 people located in North America, London, Amsterdam, Bergen, Singapore and Sydney. ICAP Energy offers real-time price discovery and execution services both in futures and swaps for crude oil and oil products, electricity, natural gas, coal, softs, agricultural products, commodity indexes, base and precious metals, iron ore, emission credits, freight, weather derivatives and physical products. ICAP Energy has been voted energy broker of the year by Energy Risk magazine for each of the past seven years. For more information please visit our website at www.icapenergy.com.

We appreciate the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") on the proposed rules related to the procedures to establish appropriate minimum block sizes for large notional off-facility swaps and block trades ("Proposed Rules"), pursuant to section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Our comment letter is focused solely on the Commission's Proposed Rule impact on commodities.

One of the goals of Title VII of the Dodd Frank Act is to promote central counterparty clearing ("CCP") of OTC swaps. The clearing of OTC swaps mitigates counterparty credit risk, helps increase transparency and promotes financial stability. As you know, after the collapse of Enron in 2001, the energy swaps market participants voluntarily embraced clearing. Through free market

innovation, CCP's were created and today clear an estimated 85% of all energy swaps. Energy market participants know the value of clearing their OTC energy and commodity swaps and have been doing so for nearly ten (10) years without any statutory requirement to do so.

Additionally, electronic trading of energy swaps on Exempt Commercial Markets ("ECM's) is common and has been available for many years. History has demonstrated that liquidity on the ECM's is primarily in the front of the curve (i.e., daily, weekly and prompt months) in the most liquid energy contracts with limited to zero liquidity out the curve and no liquidity in the options markets on ECM's. Market participants have chosen their brokerage venues, either electronic platforms, voice markets or in many cases hybrid markets, by their expectations of the venue's ability to provide the most efficient price discovery and execution. The free market has chosen the contracts where electronic trading is most applicable and those contracts where intermediation is necessary. One could say that the energy swaps market with its clearing of OTC energy swaps and the use of electronic trading where appropriate is the ideal template to follow.

Summary of Comments:

For ease of reference we are summarizing our comments and recommendations below:

- We believe the Commission should take a cautious approach and should not set any block limits during the initial implementation period. The Commission should utilize the information it gathers during the initial implementation period from the Swap Data Repositories ("SDR's") to analyze industry-wide market dynamics prior to imposing any block limits.
- The Commission has referenced the commodity futures block limits established under the principles-based authority granted to the respective futures exchanges. The annual block limit adjustment period for SEF's as set forth in the proposed rule appears to allow DCM's greater flexibility to change block limits to meet changing market conditions. We support a principles-based approach and would recommend that SEF's have the same authority to determine block limits to adapt quickly to changing market conditions. We believe that the swap contracts should never have more restrictive block limits than the like-kind futures contract.

In the event that the Commission decides to impose block limits during the initial implementation period, or in subsequent periods, the Commission should consider the following factors in formulating its rules:

- The proposed rule sets forth specific initial minimum block size limits for the initial implementation period. The majority of these proposed limits are based on physical quantities of the commodities related to the contract (e.g. barrels, pounds and gallons). However, the proposal also enumerates thirteen contracts with a proposed minimum block limit based on notional value. We believe that using notional values for defining block limits for cleared contracts that have never had block limits before is not the right method and could be unreasonably disruptive.
- The Commission should recognize the term structure of commodity markets. Even for the most actively traded contracts there is significantly more liquidity for near-term delivery versus longer-dated contracts and calendar strips. In crafting the block limit rules we believe

the Commission should make distinctions between "up-front" months and long dated tenors.

- In its formulation of the initial minimum block limit for those commodities that are listed as amendments to Appendix B of Part 43, the Commission should be consistent and should use physical quantities as the basis for the proposed limits. The proposed limits should take into consideration the liquidity characteristics of each market. Specifically, we propose the following limits, in those tenors where electronic trading is appropriate (i.e., near-dated tenors), for the electricity and natural gas basis contracts.
    a. Block rules for electricity should be in megawatts per hour (MW/Hr) as opposed to notional dollar value. The appropriate block size for PJM WH should be set so that any trade above 50MW/Hr for PJM and above 30MW/Hr for SP-15 and Mid-C would be treated as a block trade.
    b. Block rules for natural gas basis swaps should be in millions of British thermal units per day (MMBTU's/day). The appropriate block size for AECO, HSC, ICE Chicago, NWP Rockies, PG&E Citygate, Socal Border and Waha basis contracts should be set so that any trade above 2500 MMBTU's/day would be treated as a block trade.
- Due to the illiquid trading profile of virtually all electricity and natural gas basis swaps the Commission should apply no more than a 50% rule, as opposed to 67%, for other commodity swap asset categories for year two and beyond.
- We recommend in the case of spread transactions that the threshold for the block limit be based upon the least restrictive (i.e., the lowest limit) leg of the transaction.
- Option markets for electricity and natural gas often involve complex strategies, such as "put spreads", "call spreads" and options hedged against the underlying commodity. Due to the inherent complexity of these trades that require simultaneous negotiations of multiple option components, all such transactions should be treated as block trades.

Imposition of Mandated Electronic Trading Could Disrupt Important Markets

While fulfilling its duties to implement the provisions of the Dodd-Frank Act, the Commission should recognize that the over the counter markets for commodity swaps consists of a broad array of commodities, delivery locations and term structures. The liquidity for each of these swaps can vary greatly. While some contracts and time periods have liquidity conditions comparable to futures exchanges, most do not. Since most commodities markets are illiquid, artificial implementation of electronic trading mandates through the implementation of high block limits could interfere with efficient price discovery for a broad array of commodities that are essential to the economic recovery. These markets have already been well functioning with a high degree of central counterparty clearing without the imposition of prescriptive mandate.

Market participants currently have a variety of venues to transact, including ECM screens, exchange floors and voice brokers. Each venue performs its complimentary role based on the dynamics of liquidity in each market. Consequently, participants who use these markets choose the venue that provides the most efficient price discovery and execution for each contract. For example, Henry Hub Natural Gas Options can be traded both on the NYMEX floor and over the counter via ClearPort. Due to the complex nature of options and thin liquidity, more than 90% of the volume in these contracts is transacted over the counter via voice brokers. The Commission's proposal of using the futures related block limits would require more than 95% of these transactions to be done electronically, an execution method which has been rejected by the market because it is less efficient.

By limiting the means of execution the Commission would drastically reduce liquidity and interfere with price discovery in this important contract used to manage real risks in the real economy.

Another aspect of the block limit rules the Commission must consider is the term structure of the commodities market. In the most active contracts, while at times there is ample liquidity for the "up-front" contract months, longer-term contracts have much lower liquidity. Because of this variance in liquidity between near term and longer term contract months, market participants regularly use voice brokers to lessen execution risk for longer term contracts. Accordingly, block limits for longer dated contract months should be less than the limits prescribed for shorter term contract dates. The energy markets have maintained ECM's (soon to be SEF's) for many years and there is historical data, not just assumptions, to support this.

SEF Minimum Block Limits Versus DCM Minimum Block Limits

In setting block levels for SEF commodity blocks the CFTC should take into consideration that a SEF is analogous to a DCM, except that it is a venue where price discovery occurs for less liquid markets. In no case should the Commission set SEF block levels for swap contracts which are economically equivalent to futures contracts at a level higher than the block levels set by DCM's. The principles-based approach afforded DCM's allows them to set block limits dynamically as appropriate to changing market conditions and accommodates their customers' ability to complete transactions without price concessions. DCM's can and should be expected to monitor continuously the market and to adjust policies accordingly. SEF's, under the current proposal, would have only annual industry-wide look back rules as an adjustment mechanism. Accordingly, SEF block limits for futures equivalent swap contracts should adjust automatically to meet DCM contract limits adjustments between annual revisions of SEF block limits.

Proposed Initial Block Sizes for Certain Electricity and Natural Gas Basis Contracts During the Post-Implementation Period:

Electricity

Where electronic trading is appropriate, we believe the most appropriate method of measuring the size of block trades should be the underlying commodity's volume. This approach is consistent with the majority of the Commission's proposal and is consistent with the approach that DCM's have taken in setting block sizes for futures. While using a notional amount might be appropriate for other markets, it is not appropriate for the energy and commodity markets. Using notional dollar amounts for block levels could result in unnecessary confusion. Prices for commodities can vary widely due to factors such as season peak usage or delivery location. As a result, some swap transactions could be considered block eligible while a very similar transaction may not be eligible.

Additionally, it is not clear how the notional value of block levels for options would be calculated. For example, if notional value is calculated based upon the premium of the option, then low premium options, such as out-of-the-money calls and puts would be adversely affected while at-the-money options, which have higher premiums, would more likely be blocks. Since participants can easily convert calls into puts, and vice-versa, there could be confusion in the market if notional dollar amounts are applied to options.

The Commission should follow industry convention and establish block levels for electricity swap contracts and natural gas basis swap contracts based on megawatts per hour (MW/Hr) and million British thermal units per day (MMBTU's/day), respectively. Market participants execute their electricity and natural gas trades in MW/Hr and MMBTU's/day, not in notional dollars. Using the

industry accepted reference units of MW/Hr and MMBTU's/day for establishing block levels, as opposed to notional dollar amounts, will promote consistent treatment of identical sized contracts.

Electricity and natural gas basis markets are relatively illiquid markets. That being said, the most liquid of these illiquid markets are (for electricity) PJM WH, SP-15 and Mid-C. All three delivery points have an "on peak" and "off peak" contract. The proposed block limits of $25 million per transaction would require more than 94% of electricity swaps and options executed by ICAP Energy to be transacted via a central limit order book. In today's environment market participants already have the option to transact via an electronic, central limit order book on ECM screens. For these contracts, participants choose to use the services of voice brokers because these markets have less liquidity and may require negotiations prior to consummation of a transaction. Imposition of high block limits would dictate a method of execution that market participants have deemed less efficient by evidence of their day to day choices in today's market.

We recommend that the Commission set the initial block level for PJM WH so that any trade above 50MW/Hr would be treated as a block trade. We arrived at this level based upon our knowledge of the market, our transaction history and our analysis of the publicly avaialable ICE Power Index data. This index data tracks deals for day ahead electricity transactions. This market is among the most liquid of all the over the counter electricity contracts. For 2011 the average transaction size for this market was between 50 and 60 MW/Hr. Further, we recommend that the Commission set the initial block level for SP-15 and Mid-C so that any trade above 30MW/Hr would be treated as a block trade based on a similar analysis for PJM WH.

These limits are based upon ICAP's transactional data and market knowledge. We believe that any higher block limits would require market participants to accept substantial price concessions to fill their orders completely. We recommend that the Commission aggregate data from the existing commodity ECM's to verify our comments.

We support the Commission's recommendations that all other delivery points for electricity swaps contracts should be treated as block trades.

Natural Gas Basis

The Commission has deemed seven natural gas basis contracts to be Significant Price Discovery Contracts ("SPDC's"): AECO Financial Basis Contract, HSC Financial Basis Contract, ICE Chicago Financial Basis Contract, NWP Rockies Financial Basis Contract, PG&E Citygate Financial Basis Contract, SoCal Border Financial Basis Contract and the Waha Financial Basis Contract. If the Commission plans to prescribe block limits with regard to these contracts, we recommend that the Commission set the initial block level for all seven financial basis contracts so that all trades above 2500 MMBTU's per day be treated as blocks.

These limits are also based upon ICAP's transactional data and market knowledge. As with electricity contracts, we believe that any higher block limits would require market participants to accept substantial price concessions to fill completely their orders. We recommend that the Commission aggregate data from the existing commodity ECM's to verify our comments.

Once the industry-wide data from swaps submitted in the post-implementation period is obtained, the Commission and the industry will be in a much better position to assess the liquidity in the most active contracts in order to propose adjustments to the initial block levels.

The Commission invited comment regarding whether a 33, 50 or 67 percent notional amount calculation would be appropriate for low, medium or high liquidity swap categories respectfully. As noted above, we believe that the energy markets are significantly smaller and less standardized than the larger swap financial related asset categories. Based on the highly illiquid nature of the electricity and natural gas basis swap markets, we believe using either a 33 or 50 percent test would be a more appropriate threshold for defining block limits rather than 67 percent. The illiquid nature of these markets does not create a normal distribution and standard statistical tests do not apply.

As with electricity swaps contracts, we support the Commission's recommendation that all other delivery points for natural gas basis swaps contracts should be treated as block trades.

Block Treatment of Spread Transactions

Spread transactions account for a large percentage of trades in the electricity markets. The PJM WH swap is almost universally used as the pricing point against which numerous other power swaps are traded. We recommend that in the case of spread transactions the threshold for the block limits be based upon the least restrictive (i.e., the lowest limit) leg of the transaction. We believe that this is consistent with the Commission's recommendation on other mixed asset class swap spread rules (Paragraph b. on page 15488 of Federal Register Vol. 77, No. 51). Further, it is our understanding that the Commission can track these spreads via the information submitted to the SDR. The Commission should be aware of the fact that a significant amount of the trading volume in PJM WH is due to the popularity of spread transactions and not necessarily to trading in the PJM outright.

In a spread transaction the pricing of the two legs is subject to negotiation. We believe it would be appropriate for spread transactions to set the price of the PJM WH leg within the current bid/ask spread for such contract so there is no violation of bids and offers. Further, we believe it would be appropriate for the PJM WH leg transaction to be reported on the tape as being part of a spread trade which would alert the market to the fact that the transaction is part of a spread and not part of an outright. This approach would avoid misleading transaction pricing in the PJM WH contract and provide important information to market participants.

Block Treatment for Options

Many option transactions for electricity, natural gas and crude oil, trade as complex strategies. Such strategies include "put spreads", "call spreads" and options being worked with delta crosses (hedged against the underlying commodity because of the complexity of their negotiation due to differing hedge calculations amongst traders) and other more complex combinations. Due to their complex nature and participants' expectations that the transaction be completed as a unit rather than as a series of individual transactions, these trades require a high degree of broker intervention.

Examples of the complexities of such transactions are option strategies that are tied to an underlying swap cross or hedge. As the transactions are negotiated, it's common for participants to disagree about the exact number of the underlying swaps to hedge. There is frequently a great deal of negotiation involved in setting the levels, agreeing upon the deltas and then frequently "rounding" the delta to the closest possible hedge quantity that can be cleared. In order to maintain liquidity in these critical hedging markets it is important for the Commission to afford participants the ability to use the services of voice brokers for these transactions. Accordingly, we believe the Commission

should treat complex strategy commodity options and the related swap hedges as block trades, regardless of the actual size of the option trade.

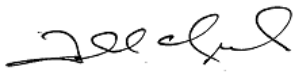
Additionally, we agree with the Commission's suggestion that for non-complex strategies, electricity and natural gas options should have a 1 to 1 delta with the underlying instrument. This approach is well-reasoned and does not disadvantage options or give them an unfair advantage. This means that the block limit for those swaps that are listed in Appendix F of Federal Register Vol. 77 No. 51 "Other Commodity Swaps" will be the same for both the swaps and the outright options, such as outright puts, calls and straddles, which are not part of a spread.

We hope that you find our comments helpful and reasonable. As an interdealer broker, ICAP Energy is committed to preserving marketplaces while addressing appropriate transparency and systemic risk.

ICAP Energy thanks the Commission for the opportunity to comment on the proposed rules.

Please feel free to contact us with any questions you may have regarding our comments.

Sincerely,



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