Industrial Energy Consumers of America

The Voice of the Industrial Energy Consumers

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January 27, 2014

The Honorable Frank Lucas
Chairman
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

The Honorable Collin Peterson
Ranking Member
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Lucas and Ranking Member Peterson:

The Industrial Energy Consumers of America (IECA) support several of the goals of Dodd-Frank, which include ending “too-big-to-fail,” reining in unregulated derivatives trading, and limiting speculation in energy commodities, which has increased prices and volatility for manufacturers, consumers and other end users of energy. However, our members are concerned that some regulations promulgated under the law could actually harm the very entities the law was designed to protect.

Former Secretary of Energy Spencer Abraham recently issued a report that addresses the impact of Dodd-Frank regulations on energy prices, entitled “Dodd-Frank and Energy Price Stability: Time To Rein In Unintended Consequences”.[1] The report highlights several unintended potential impacts on energy prices created by the Dodd-Frank Act which are of importance to industrial end users of derivatives.

In particular, we are concerned that automatically lowering the swap dealer de minimis level from $8 billion to $3 billion, with no further opportunity for public comment, will drive non-bank companies out of the swap market and limit end user counterparties to a handful of Wall Street banks. Currently, energy markets contain robust competition between energy producers and banks to provide energy users with risk management products for hedging energy price risk. Arbitrarily lowering the de minimis level, without regard to prevailing prices or market conditions will lead energy producing companies to leave the market, rather than bear regulatory costs created for financial companies.

Because the current $8 billion de minimis level amounts to a small fraction of the swap market that mostly allows for niche risk management products at competitive prices, we urge Congress to require the Commodity Futures Trading Commission (CFTC) to hold a rulemaking with opportunity for public notice and comment before the current level is lowered. Recently Congressman Richard Hudson introduced legislation to accomplish this goal, H.R. 3814, the “Risk Management Certainty Act,” and we respectfully request Congress to pass it into law.

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[1]This report can be found at http://www.abrahamenergyreport.com/wp-content/uploads/2013/11/AER-Study-Dodd-Frank-And-Energy-Markets.pdf

Separately, IECA's member companies are concerned that the CFTC definition of "swap" sweeps in physical forward transactions involve volumetric optionality, which were meant to be excluded by Dodd-Frank. It is common practice for end users of energy products to enter into contracts that allow for the optional delivery of gas, fuel or electricity depending upon the needs of the energy user at the delivery time. These contracts are meant to allow energy users to lock in their supply needs and not for price speculation. Nevertheless, under the CFTC rule such "volumetric options" are considered swaps and subject to regulations that more properly belong on financial products, not routine commercial agreements.

Therefore we urge Congress to clearly exclude options that are intended to result in the physical delivery of a commodity from the definition of "swap." We would note that if Congress chooses this route, options will still be subject to the plenary regulatory authority of the CFTC under the Commodity Exchange Act; they would simply not be treated as swaps.

Thank you for your continued leadership on matters of importance, and your attention to the needs of industrial energy users.

Sincerely,

Paul N. Cicio
President

cc: House Committee on Agriculture

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.0 trillion in annual sales, over 1,500 facilities nationwide, and with more than 1.4 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, brewing, and cement.