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May 27, 2016

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Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:  
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c/o:  
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Autorité des marchés financiers  
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Dear Sirs/Mesdames:

**RE: Comment Letter to the Republication and Request for Comment of CSA Proposed NI 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the "Proposed Clearing Rule") and Proposed Companion Policy 94-101CP *Mandatory Central Counterparty Clearing of Derivatives* (the "Proposed Clearing CP")**

The International Energy Credit Association ("IECA") hereby submits the comments contained in this letter on behalf of its members in response to the solicitation for comments made by the Canadian Securities Administrators' ("CSA") OTC Derivatives Committee (the "**Committee**") in respect of the following republished documents:

- The Proposed CSA National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the "**Proposed Clearing Rule**"); and
- The Proposed Companion Policy 94-101CP *Mandatory Central Counterparty Clearing of Derivatives* (the "**Proposed Clearing CP**")

**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.

The IECA seeks to protect the rights and advance the interests of the commercial end user community that makes up its membership. IECA membership includes many small to large energy companies, few of whom would be deemed to be derivatives dealers in Canada, but all of whom have a fundamental mission of providing safe, reliable, and reasonably priced energy commodities that Canadian businesses and consumers require for our economy and our livelihood.

Correspondence with respect to this comment letter and questions should be directed to the following individuals:

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The IECA thanks the Committee for considering and making changes to the earlier publication of the Proposed Clearing Rule of February 2015, based on comments made by market participants that included the IECA. In particular the IECA commends the CSA for the following changes from the earlier publication, some of which the Committee has summarized in the "Summary of Changes to the Proposed National Instrument" on page 2 of its Notice namely:

- i. The Proposed Clearing Rule now only applies to participants that subscribe to the services of a regulated clearing agency for a mandatory clearable derivative, and their affiliated entities, as well as to local counterparties with a month-end gross notional amount of outstanding OTC derivatives above \$500 000 000 000;
- ii. the revised scope of application of the Clearing Rule is now limited to participants defined in the Proposed Clearing Rule "referring to a person or company in a contractual relationship with a regulated clearing agency and bound by its rules", thereby addressing the concerns of market participants regarding indirect clearing;
- iii. the Committee has broadened the interpretation of an affiliated entity by adding partnerships and what it entails for a person or a company would be deemed to be an affiliated entity of another person or company<sup>1</sup>; and
- iv. the clarification of the Committee to keep Form 94-101F1 confidential in the Proposed Clearing CP.

We also applaud the Committee in the deletion of certain sections of the earlier publication of the Proposed Clearing Rule that the IECA had flagged as problematic in our "Specific Comments" in our comment letter regarding the earlier publication such as: the definition of "financial entity"; the interpretation of hedging or mitigating commercial risk; and the term "speculate". The IECA also commends the Committee on the clarification of how the intragroup exemption would be applied.

Nevertheless, the IECA still has concerns regarding certain responses of the Committee vis-a-vis the intragroup exemption; the granularity of the requirements to use exemption and Form 94-101F and offers the following specific comments below for the Committee's further consideration:

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<sup>1</sup> Section 2

- i. The IECA wishes to express concern regarding the Committee's responses in Annex A *Comment Summary and CSA Responses* regarding the concerns raised by commenters seeking "clarification as to the agreement between the affiliated entities"; and the "clarification on the level of detail of the written agreement required and whether written confirmations are required for each transaction". The Committee responded as follows in both instances: "No change. The Committee notes that the requirement that the counterparties agree to rely on the exemption provides sufficient flexibility for them to choose in which form to express their intent to rely on the exemption" and "no change. The Committee notes that the written agreement required provides flexibility".

The IECA believes and strongly urges the Committee to reconsider allowing a master agreement between the parties to satisfy the exemption. This clarification can be provided in the Companion Policy.

- ii. The concern regarding what agreement is required between affiliated entities here arises again from the Committee continued use of the word "transaction" throughout Section 7. The IECA does not believe it is industry standard or practice to require transaction confirmations (and in some cases even a master agreement) between affiliates. We believe the U.S. Commodity Futures Trading Commission's rules implementing the Dodd Frank regulations do not require this level of granularity.
- iii. The IECA also wishes again to express concern with respect to the use of the term "transaction" in Form 94-101F. In point 5 of the Form, the Committee talks about a written agreement, but the way the section is written, it does seem like transaction confirmations must be completed. As part of the Committee's response, the Committee suggests that only one Form would be needed to be filed per pair of counterparties. We recommend that the Committee in the same vein, should amend the form to remove the transaction level requirement or add further clarification that the form only needs to be delivered once per pair of counterparties for it to cover all transactions between the pair. This wording would be consistent with the wording in the Companion Policy.
- iv. Section 7(1)(b) of the Proposed Clearing Rule provides "both counterparties to the transaction agree to rely on this exemption". We urge the Committee to provide clarification on who in both affiliated entities should agree to rely on the exemption.
- v. The IECA is also requesting the Committee to further clarify what is meant by "analysis" under the Recordkeeping section of the Companion Policy. It seems the Committee is expecting market participants to have an "analysis" of how they satisfy the conditions to rely on the intragroup exemption and later on the Committee mentions "appropriate legal documentation". Could the Committee please further clarify what this requirement entails?

The Committee has sought the public's input on six questions in its Notice, and on its part, the IECA would briefly answer and affirm the Committee's statement regarding question 5 that asks the public to "discuss any significant consequences that could arise from a determination of CAD IRS as a mandatory clearable derivative absent a corresponding CAD IRS mandate in one or more foreign jurisdictions". Without an international harmonization requiring the clearing of CAD IRS, Canadian banks and counterparties would be negatively impacted if foreign counterparties withdraw from the market and reduced the ability of Canadian banks and counterparties to hedge their risks.



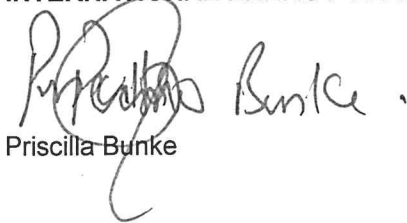
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## II. Conclusion

The IECA appreciates the opportunity to table our members' comments and concerns to the Committee. This letter represents a submission of the IECA, and does not necessarily represent the opinion of any particular member.

Yours truly,

**INTERNATIONAL ENERGY CREDIT ASSOCIATION**



Priscilla Bunke