



July 12, 2013

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**Re: Minimum Criteria for Direct Participation (CFTC Exemption)
Docket No. ER13-____-000**

Dear Secretary Bose:

The California Independent System Operator Corporation (“ISO”) submits revisions to its tariff to implement new minimum criteria for direct participation in the ISO markets. These tariff revisions are necessary so that transactions in the ISO markets will be exempted from regulatory oversight by the Commodity Futures Trading Commission (“CFTC”), in accordance with a final order issued by the CFTC on March 28, 2013. The ISO requests that the Commission accept the tariff revisions effective September 16, 2013.

I. Background

A. The CFTC Final Order

The Dodd-Frank Wall Street Reform and Consumer Protection Act¹ expanded the authority of the CFTC to include regulation of “swaps,” which are defined in a way that could be construed to include certain transactions in markets operated by Independent System Operators and Regional Transmission Organizations, including the ISO. In response, the ISO and a group of other Independent System Operators and Regional Transmission Organizations jointly petitioned the CFTC to exempt transactions and related agreements in their markets from the CFTC’s regulatory oversight under the Commodity Exchange Act. On March 28, 2013, the CFTC issued a final order granting the requested exemption, subject to certain conditions and limitations.²

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² *Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or*

The ISO has satisfied all but one of the requirements set forth in the CFTC Final Order.³ The remaining requirement is to limit participation in the ISO's market to entities that qualify as "appropriate persons," as defined by the CFTC. The CFTC's exemption is limited to agreements, contracts, or transactions to which each party is an "appropriate person," defined as an entity that qualifies as one or more of the following:

- (1) an "appropriate person," as defined in sections 4(c)(3)(A)-(J) of the Commodity Exchange Act;
- (2) an "eligible contract participant," as defined in section 1a(18)(A) of the Commodity Exchange Act and in CFTC regulation 1.3(m) (*i.e.*, 17 C.F.R. § 1.3(m)); or
- (3) a "person who actively participates in the generation, transmission, or distribution of electric energy," which is defined in the CFTC Final Order as a person that is in the business of (i) "[g]enerating, transmitting, or distributing electric energy" or (ii) "providing electric energy services that are necessary to support the reliable operation of the transmission system."⁴

A no-action letter issued by CFTC staff on March 29, 2013, stated that the CFTC would not commence an enforcement action for any transaction in an Independent System Owner or Regional Transmission Operator market through September 30, 2013 for failure to satisfy the CFTC condition discussed above.⁵ Thus, as of October 1, 2013, all entities that transact in the ISO's market must

Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, 78 Fed. Reg. 19879 (Apr. 2, 2013) ("CFTC Final Order").

³ See *Draft Final Proposal: Minimum Criteria for Direct Participation* at 1-2 (May 24, 2013) ("Draft Final Proposal"). The Draft Final Proposal is provided in Attachment C to this filing and is available on the ISO website at <http://www.caiso.com/Documents/DraftFinalProposal-MinimumCriteria-DirectParticipation5242013.pdf>.

⁴ CFTC Final Order, 78 Fed. Reg. at 19913-14. For ease of reference, the provisions of the Commodity Exchange Act and the Code of Federal Regulations cited above are provided in Attachment E to this filing.

⁵ *Extension of Staff No-Action Relief with Respect to Certain CEA Provisions that May Apply to Certain RTOs, ISOs, and/or Their Participants* at 2 (Mar. 29, 2013). This CFTC no-action letter is provided in Attachment D to this filing and is available on the ISO website at http://www.caiso.com/Documents/CFTCNoActionLetterThroughSep30_2013.pdf.

satisfy the requirements established by the CFTC in order for the transactions to be exempted from CFTC regulatory oversight. If market participants that do not meet the CFTC's criteria were to transact in the ISO markets after September 30, they could potentially be subject to enforcement action by the CFTC, as could the ISO.

B. Stakeholder Process

On May 24, 2013, the ISO issued a draft final proposal and draft tariff language reflecting new minimum criteria for direct participation in the ISO markets to satisfy the CFTC's condition. Written stakeholder comments on the draft ISO documents were due by June 3, 2013. One stakeholder, Olivine, Inc., submitted written comments, and those expressed support for the ISO's proposal. The ISO held a conference call with stakeholders on June 7, 2013 to discuss the proposal and to address any questions.⁶ At its July 11, 2013 meeting, the ISO Governing Board authorized the ISO to submit the tariff revisions contained in this filing.⁷

II. Tariff Revisions

The ISO proposes to augment the minimum participation criteria already set forth in its tariff⁸ to require that each market participant with a direct financial relationship with the ISO must at all times satisfy the criteria to be one or more of the following:

- (1) an "appropriate person," as defined in specified provisions of the Commodity Exchange Act;
- (2) an "eligible contract participant," as defined in specified provisions of the Commodity Exchange Act and the CFTC's regulations; or
- (3) "in the business of generating, transmitting, or distributing electric energy," as defined in the CFTC Final Order.⁹

⁶ Materials relating to this stakeholder process are available on the ISO website at <http://www.caiso.com/informed/Pages/StakeholderProcesses/MinimumCriteria-DirectParticipation.aspx>.

⁷ Materials related to the ISO Governing Board's approval are posted on the ISO website at <http://www.caiso.com/informed/Pages/BoardCommittees/BoardGovernorsMeetings.aspx>.

⁸ The tariff revisions contained in this filing will supplement, but not replace, the currently applicable minimum participation criteria set forth in tariff section 12.1.

⁹ Proposed ISO tariff sections 12.1(b)(i)(5), 12.1(b)(iv).

Alternatively, an entity that participates in the ISO's physical markets only – i.e., as a scheduling coordinator but not as a congestion revenue rights (“CRR”) holder, candidate CRR holder, or convergence bidding entity – may participate in the ISO markets if it is in the business of providing electric energy services that are necessary to support the reliable operation of the transmission system, which could include demand response.¹⁰ These proposed tariff provisions track the language of the CFTC Final Order.¹¹

The ISO also proposes to add procedures to the tariff to ensure that each market participant satisfies these new minimum criteria for direct participation and that it will immediately cease participating in the ISO markets if it ever fails to meet the criteria. Specifically, the market participant must submit to the ISO an officer's certificate stating under penalty of perjury that (i) the market participant is in compliance with the criteria, and (ii) if the market participant no longer satisfies the criteria, it will immediately notify the ISO and cease all participation in the ISO markets.¹²

A market participant that fails to submit the officer's certificate by the deadline specified in the ISO's business practice manual will not be entitled to participate in the ISO markets.¹³ The ISO plans to revise its business practice manual to state that each market participant must submit its initial officer's certificate by September 16, 2013. During the last two weeks of September, the ISO will review and process the officers' certificates and will terminate the transacting authority of market participants that have not complied. Market participants that fail to submit their officers' certificates by September 16 will not be entitled to participate in the ISO markets starting October 1, 2013, the date specified in the CFTC staff's March 29, 2013 no-action letter for compliance with the CFTC Final Order. In each subsequent year, the market participant must timely submit a new officer's certificate as part of the ISO's currently effective process for certifying compliance with minimum participation criteria.¹⁴

¹⁰ Proposed ISO tariff section 12.1(b)(iv).

¹¹ See CFTC Final Order, 78 Fed. Reg. at 19897, 19913-14, and the discussion in Section I of this transmittal letter.

¹² Proposed ISO tariff section 12.1(e).

¹³ Proposed ISO tariff section 12.1(e).

¹⁴ ISO tariff section 12.1(b)(i) (requiring the annual submission of an officer's certificate as detailed in the Business Practice Manual); Draft Final Proposal at 5-6.

The ISO has no reason to believe that any market participant will either decline to submit an officer's certificate or fail to meet the deadline.

The ISO proposes that a market participant that no longer satisfies the new minimum criteria for direct participation will be subject to the ISO enforcement authority already set forth in the tariff, including the ISO's authority to restrict or suspend participation in the ISO markets by non-compliant market participants. The ISO may take these enforcement actions as soon as the market participant no longer satisfies the criteria.¹⁵ This ability to take immediate enforcement action is just and reasonable because the market participant is required to satisfy the criteria at all times and to immediately cease participation in the ISO markets if it no longer meets them.

III. Effective Date

The ISO requests that the Commission accept the tariff revisions contained in this filing effective September 16, 2013. As discussed above, the ISO will require market participants to submit initial officers' certificates stating that they satisfy the new minimum criteria for direct participation by September 16. The requested effective date is also essential to allow the ISO to ensure compliance in advance of the September 30 deadline specified in the CFTC staff's March 29, 2013 no-action letter. Therefore, it is appropriate to make the tariff revisions effective as of that date.

IV. Communications

Communications regarding this filing should be address to the following individuals, whose names should be placed on the official service list established by the Secretary with respect to this submittal:

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V. Service

¹⁵ Proposed revisions to ISO tariff section 12.5.1.

The ISO has served copies of this filing on the California Public Utilities Commission, the California Energy Commission, and all parties with Scheduling Coordinator Agreements under the ISO tariff. In addition, the ISO has posted a copy of the filing on the ISO website.

VI. Attachments

In addition to this transmittal letter, this filing includes the following attachments:

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|--------------|---|
| Attachment A | Clean ISO tariff sheets incorporating this tariff amendment |
| Attachment B | Red-lined document showing the revisions contained in this tariff amendment |
| Attachment C | Draft Final Proposal |
| Attachment D | CFTC no-action letter (Mar. 29, 2013) |
| Attachment E | Relevant provisions of the Commodity Exchange Act and the Code of Federal Regulations cited in the CFTC Final Order |

VII. Conclusion

For the reasons set forth in this filing, the ISO respectfully requests that the Commission accept the tariff revisions proposed in the filing effective September 16, 2013.

Respectfully submitted,

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Attachment A - Clean

CFTC Exemption

California Independent System Operator Corporation

July 12, 2013

12. Creditworthiness

12.1 Credit and Minimum Participation Requirements

- (a) The creditworthiness and minimum participation requirements in this section apply to the CAISO's acceptance of any transaction in a CAISO Market, to the payment of charges pursuant to the CAISO Tariff (including the Grid Management Charge), and to establish credit limits for participation in any CAISO auction of CRRs and to CRR Holders for the holding of CRRs. Each Market Participant that has a direct financial relationship with the CAISO (including each Scheduling Coordinator, UDC, MSS, CRR Holder, or Candidate CRR Holder) shall secure its financial transactions with the CAISO (including its participation in any auction of CRRs and for the holding of CRRs) by maintaining an Unsecured Credit Limit and/or by posting Financial Security, the level of which constitutes the Market Participant's Financial Security Amount. For each Market Participant, the sum of its Unsecured Credit Limit and its Financial Security Amount shall represent its Aggregate Credit Limit. Each Market Participant shall have the responsibility to maintain an Aggregate Credit Limit that is at least equal to its Estimated Aggregate Liability.
- (b) In order to participate in the CAISO Markets, each prospective Market Participant or existing Market Participant with a direct financial relationship with the CAISO must satisfy all of the following minimum participation requirements:
- (i) Provide the CAISO annually, as detailed in the Business Practice Manual, a certified statement executed by an officer of the prospective or existing Market Participant certifying that the prospective or existing Market Participant has met the following criteria and relevant requirements consistent with these criteria set forth in the Business Practice Manual:
 - (1) Has undergone training commensurate and proportional in sophistication, scope, and frequency to the volume of transactions and the nature and extent of the risk taken by the prospective or existing Market Participant, including but not limited to any applicable CAISO training requirements as specified in Sections 4.5.1.1.10.1 and 36.5.2;

- (2) Has and maintains written policies, procedures, and controls approved by the appropriate officer or corporate authority of the prospective or existing Market Participant's governing body which provide an appropriate, comprehensive risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the prospective or existing Market Participant is exposed, including, but not limited to, legal risk, credit risk, liquidity risk, risk of loss of financial security amounts held and invested by the CAISO, investment risk, concentration risk, default risk, operation risk, market risk, and business risk;
 - (3) To the extent the Market Participant engages in the CRR market, the Market Participant must demonstrate that it has policies in place that are consistent with generally accepted industry risk management standards;
 - (4) Has appropriate personnel resources, operating procedures and technical abilities to promptly and effectively respond to all CAISO communications and directions, including, but not limited to, the CAISO's issuance of invoices and collateral requests to the prospective or existing Market Participant; and
 - (5) Satisfies the requirements of Section 12.1(b)(iv).
- (ii) Provide annually for CAISO review and verification, as detailed in the Business Practice Manual, the risk management policies, procedures, and controls applicable to the CRR trading activities of the prospective or existing Market Participant, if the prospective or existing Market Participant has a CRR portfolio that meets the applicable risk criterion set forth in the Business Practice Manual.
- (iii) Satisfy the following capitalization requirements:
- (1) Pursuant to Sections 12.1 and 12.1.1, the prospective or existing Market Participant or its guarantor must have at least \$1 million in Tangible Net Worth or \$10 million in total assets, or post Financial Security using one

or more of the forms specified in Section 12.2 (a) through (e) in the amounts set forth below. In the event the prospective or existing Market Participant must post Financial Security, that financial security will not be added to Market Participant's Aggregate Credit Limit and, therefore, cannot be used to meet Market Participant's minimum credit requirements to participate in a Congestion Revenue Rights auction or to offset any market obligations as reflected in Market Participant's Estimated Aggregate Liability. However, all Financial Security in any form may be used to satisfy any financial obligation of the Market Participant.

- (2) \$500,000 for a prospective or existing Market Participant with fewer than six (6) months of CAISO Market activity; \$100,000 for an existing Market Participant with six (6) months or more of CAISO Market activity and whose highest Estimated Aggregate Liability for the preceding six (6) months is less than or equal to \$100,000; or \$500,000 for an existing Market Participant with six (6) months or more of market activity and whose highest Estimated Aggregate Liability for the preceding six (6) months is greater than \$100,000.
- (3) The CAISO will review whether the prospective or existing Market Participant continues to satisfy the capitalization requirements set forth in Section 12.1(iii)(a). The CAISO will conduct such a review every six (6) months, when new financial statements are posted for the prospective or existing Market Participant, or when an increase in CAISO Market activity causes the Market Participant's Estimate Agreement Liability to exceed \$100,000.
- (iv) At all times satisfy the requirements to be one or more of the following:
 - (1) An "appropriate person" as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act;

- (2) An “eligible contract participant,” as defined in section 1a(18)(A) of the Commodity Exchange Act and in 17 CFR 1.3(m); or
- (3) In the business of generating, transmitting, or distributing electric energy as defined in the Final Order of the Commodity Futures Trading Commission at 78 Fed. Reg. 19879.

As an alternative to satisfying (1), (2) or (3), a Market Participant that participates as a Scheduling Coordinator only, and not as a CRR Holder, Candidate CRR Holder or a Convergence Bidding Entity, satisfies this Section 12.1(b)(iv) if it is in the business of providing electric energy services that are necessary to support the reliable operation of the transmission system, as defined in the Final Order of the Commodity Futures Trading Commission at 78 Fed. Reg. 19879.

- (c) The CAISO will review and verify that prospective Market Participants satisfy the minimum participation requirements set forth in this Section 12.1, and the CAISO will request any information from prospective Market Participants that is needed to complete the CAISO's review and verification. Further, the CAISO will annually select, on a random basis, up to ten (10) percent of the Market Participants that are not already subject to annual verification as set forth in Section 12.1(b)(ii), and the CAISO will request any information from those randomly selected Market Participants that is needed to review and verify whether the Market Participants continue to satisfy the minimum participation requirements set forth in this Section 12.1. Each Market Participant randomly selected for annual verification and satisfactorily verified will be exempted from such random verification for the subsequent two (2) years, unless within that two-year period the Market Participant undergoes a Material Change in Financial Condition as set forth in Section 12.1.1.5, in which case the Market Participant will remain subject to random verification within the two-year period. In addition, the CAISO may at any time select any Market Participant for review to determine whether the Market Participant continues to satisfy the minimum participation requirements set forth in this Section 12.1, based on identified risk factors that include, but are not limited to, the CAISO Markets in

which the Market Participant is transacting or seeks to transact, the magnitude of the Market Participant's transactions or potential transactions, or the volume of the Market Participant's open positions in the CAISO Markets. Such review by the CAISO based on identified risk factors will not be subject to the two-year period of exemption from random verification.

- (d) Each Market Participant shall respond to any CAISO request for information within five (5) Business Days. Failure to provide the requested information within the specified time period may result in the CAISO taking enforcement actions pursuant to Section 12.5. The CAISO may review and verify the information either with or without the assistance of a third party, at the CAISO's discretion, subject to confidentiality and non-disclosure restrictions, as applicable. The CAISO will provide the Market Participant with a written explanation of any deficiencies in the information provided. For purposes of Section 12, any documentation provided by a prospective or existing Market Participant in compliance with this Section shall be treated as confidential and the CAISO shall maintain the confidentiality of all such documents. Any CAISO review and verification of the Market Participant's risk management policies, procedures, and controls will be conducted according to generally accepted risk management standards that may be developed from time to time and shall include but not be limited to confirmation that:
- The Market Participant's risk management framework is documented in a risk policy addressing market, credit, and liquidity risks that has been approved by the Market Participant's risk management governance function, which includes appropriate corporate persons or bodies that are independent of the Market Participant's trading functions, such as a risk management committee, a designated risk officer, a board or board committee, or a board or committee of the Market Participant's parent company;
 - The Market Participant maintains an organizational structure with clearly defined roles and responsibilities that segregate front-, middle-, and back-office functions to as high a level as is practicable;

- Delegations of authority specify the transactions in which traders are allowed to enter;
 - The Market Participant ensures that traders have adequate training and experience relative to their delegations of authority in systems and the markets in which they transact;
 - As appropriate, risk limits are in place to control risk exposures;
 - Reporting is in place to ensure risks are adequately communicated throughout the organization;
 - Processes are in place for independent confirmation of executed transactions; and
 - As appropriate, there is periodic evaluation or mark-to-market of risk positions.
- (e) For the minimum participation requirements set forth in Section 12.1(b)(iv), each Market Participant that has a direct financial relationship with the CAISO (including each Scheduling Coordinator, CRR Holder, or Candidate CRR Holder, and any applicant seeking to become a Scheduling Coordinator, CRR Holder, or Candidate CRR Holder) must demonstrate compliance with Section 12.1(b)(iv) by submitting to the CAISO by the deadline specified in the Business Practice Manual an officer's certificate, in a form acceptable to the CAISO, stating under penalty of perjury that
- (i) the Market Participant is in compliance with this requirement, and
 - (ii) if the certifying entity no longer satisfies the requirements set forth in Section 12.1(b)(iv) it shall immediately notify the CAISO and immediately cease all participation in the CAISO Markets.

A Market Participant that fails to submit the officer's certificate by the deadline specified in the Business Practice Manual shall not be entitled to participate in the CAISO Markets until after the Market Participant submits the certificate required by this Section 12.1(e), as detailed in the Business Practice Manual.

- (f) Each prospective Market Participant that does not satisfy all of the minimum participation requirements set forth in Section 12.1 will be prohibited from participating in the CAISO Markets. Each prospective Market Participant taking part in the Scheduling Coordinator

certification process pursuant to Section 4.5.1 or the Candidate CRR Holder application process pursuant to Section 4.10.1 that does not satisfy all of the minimum participation requirements set forth in this Section 12.1 will be ineligible to become a Market Participant or CRR Holder. Each existing Market Participant that does not satisfy all of the minimum participation requirements set forth in this Section 12.1 will be out of compliance with the CAISO Tariff. Any failure of a Market Participant to satisfy the minimum participation requirements set forth in Section 12.1(b) will subject the Market Participant to CAISO enforcement actions as set forth in Section 12.5 provided that, for any failure to comply with the minimum participation requirements set forth in Section 12.1(b)(i)-(iii), the Market Participant shall have thirty (30) days to cure after CAISO notification that a failure occurred. In the event a Market Participant no longer satisfies the minimum participation requirements set forth Section 12.1(b)(iv), the Market Participant shall immediately notify the CAISO of this change and immediately cease all participation in CAISO Markets. A Market Participant that no longer satisfies the minimum participation requirements set forth Section 12.1(b)(iv) shall be subject to CAISO enforcement actions as set forth in Section 12.5.

...

12.5.1 Under-Secured and Non-Compliant Market Participants

The CAISO may take action under this Section 12.5.1 against a Market Participant if its Estimated Aggregate Liability, as calculated by the CAISO, at any time exceeds its Aggregate Credit Limit, or if a Market Participant fails to satisfy all of the minimum participation requirements set forth in Section 12.1. However, before taking action against a Market Participant based on failure to comply with Section 12.1(a) or 12.1(b)(i)-(iii), the CAISO must first notify the Market Participant of the failure and allow it thirty (30) days after notification to cure the failure. The CAISO may take any or all of the following actions:

- (a) The CAISO may withhold a pending payment distribution.

- (b) The CAISO may limit trading, which may include rejection of Bids, including Self-Schedules, rejection or cancellation of Inter-SC Trades in their entirety (i.e., both sides of the Inter-SC Trade) at any time, and/or limiting other CAISO Market activity, including limiting eligibility to participate in a CRR Allocation or CRR Auction. In such case, the CAISO shall notify the Market Participant of its action and the Market Participant shall not be entitled to participate in the CAISO Markets or CRR Auctions or submit further Bids, including Self-Schedules, or otherwise participate in the CAISO Markets until the Market Participant posts an additional Financial Security Amount that is sufficient to ensure that the Market Participant's Aggregate Credit Limit is at least equal to its Estimated Aggregate Liability.
- (c) The CAISO may require the Market Participant to post an additional Financial Security Amount in lieu of an Unsecured Credit Limit for a period of time.
- (d) The CAISO may restrict, suspend, or terminate the Market Participant's CRR Entity Agreement or any other service agreement.
- (e) The CAISO may resell the CRR Holder's CRRs in whole or in part, including any Long Term CRRs, in a subsequent CRR Auction or bilateral transaction, as appropriate.
- (f) The CAISO will not implement the transfer of a CRR if the transferee or transferor has an Estimated Aggregate Liability in excess of its Aggregate Credit Limit.

In addition, the CAISO may restrict or suspend a Market Participant's right to submit further Bids, including Self-Schedules, or require the Market Participant to increase its Financial Security Amount if at any time such Market Participant's potential additional liability for Imbalance Energy and other CAISO charges is determined by the CAISO to be excessive by comparison with the

likely cost of the amount of Energy reflected in Bids or Self-Schedules submitted by the Market Participant.

Attachment B - Marked

CFTC Exemption

California Independent System Operator Corporation

July 12, 2013

12. Creditworthiness

12.1 Credit and Minimum Participation Requirements

(a) The creditworthiness and minimum participation requirements in this section apply to the CAISO's acceptance of any transaction in a CAISO Market, to the payment of charges pursuant to the CAISO Tariff (including the Grid Management Charge), and to establish credit limits for participation in any CAISO auction of CRRs and to CRR Holders for the holding of CRRs. Each Market Participant that has a direct financial relationship with the CAISO (including each Scheduling Coordinator, UDC, MSS, CRR Holder, or Candidate CRR Holder) shall secure its financial transactions with the CAISO (including its participation in any auction of CRRs and for the holding of CRRs) by maintaining an Unsecured Credit Limit and/or by posting Financial Security, the level of which constitutes the Market Participant's Financial Security Amount. For each Market Participant, the sum of its Unsecured Credit Limit and its Financial Security Amount shall represent its Aggregate Credit Limit. Each Market Participant shall have the responsibility to maintain an Aggregate Credit Limit that is at least equal to its Estimated Aggregate Liability.

(b) In order to participate in the CAISO Markets, each prospective Market Participant or existing Market Participant with a direct financial relationship with the CAISO must satisfy all of the following minimum participation requirements:

- (i) Provide the CAISO annually, as detailed in the Business Practice Manual, a certified statement executed by an officer of the prospective or existing Market Participant certifying that the prospective or existing Market Participant has met the following criteria and relevant requirements consistent with these criteria set forth in the Business Practice Manual:

- (1a) Has undergone training commensurate and proportional in sophistication, scope, and frequency to the volume of transactions and the nature and extent of the risk taken by the prospective or existing

Market Participant, including but not limited to any applicable CAISO training requirements as specified in Sections 4.5.1.1.10.1 and 36.5.2;

(2b) Has and maintains written policies, procedures, and controls approved by the appropriate officer or corporate authority of the prospective or existing Market Participant's governing body which provide an appropriate, comprehensive risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the prospective or existing Market Participant is exposed, including, but not limited to, legal risk, credit risk, liquidity risk, risk of loss of financial security amounts held and invested by the CAISO, investment risk, concentration risk, default risk, operation risk, market risk, and business risk;

(3e) To the extent the Market Participant engages in the CRR market, the Market Participant must demonstrate that it has policies in place that are consistent with generally accepted industry risk management standards;

and

(4d) Has appropriate personnel resources, operating procedures and technical abilities to promptly and effectively respond to all CAISO communications and directions, including, but not limited to, the CAISO's issuance of invoices and collateral requests to the prospective or existing Market Participant; and

(5) Satisfies the requirements of Section 12.1(b)(iv).

- (ii) Provide annually for CAISO review and verification, as detailed in the Business Practice Manual, the risk management policies, procedures, and controls applicable to the CRR trading activities of the prospective or existing Market Participant, if the prospective or existing Market Participant has a CRR portfolio that meets the applicable risk criterion set forth in the Business Practice Manual.
- (iii) Satisfy the following capitalization requirements:

(1a) Pursuant to Sections 12.1 and 12.1.1, the prospective or existing Market Participant or its guarantor must have at least \$1 million in Tangible Net Worth or \$10 million in total assets, or post Financial Security using one or more of the forms specified in Section 12.2 (a) through (e) in the amounts set forth below. In the event the prospective or existing Market Participant must post Financial Security, that financial security will not be added to Market Participant's Aggregate Credit Limit and, therefore, cannot be used to meet Market Participant's minimum credit requirements to participate in a Congestion Revenue Rights auction or to offset any market obligations as reflected in Market Participant's Estimated Aggregate Liability. However, all Financial Security in any form may be used to satisfy any financial obligation of the Market Participant.

(2b) \$500,000 for a prospective or existing Market Participant with fewer than six (6) months of CAISO Market activity; \$100,000 for an existing Market Participant with six (6) months or more of CAISO Market activity and whose highest Estimated Aggregate Liability for the preceding six (6) months is less than or equal to \$100,000; or \$500,000 for an existing Market Participant with six (6) months or more of market activity and whose highest Estimated Aggregate Liability for the preceding six (6) months is greater than \$100,000.

(3e) The CAISO will review whether the prospective or existing Market Participant continues to satisfy the capitalization requirements set forth in Section 12.1(iii)(a). The CAISO will conduct such a review every six (6) months, when new financial statements are posted for the prospective or existing Market Participant, or when an increase in CAISO Market activity causes the Market Participant's Estimate Agreement Liability to exceed \$100,000.

(iv) At all times satisfy the requirements to be one or more of the following:

- (1) An “appropriate person” as defined in sections 4(c)(3)(A) through (J) of the Commodity Exchange Act;
- (2) An “eligible contract participant,” as defined in section 1a(18)(A) of the Commodity Exchange Act and in 17 CFR 1.3(m); or
- (3) In the business of generating, transmitting, or distributing electric energy as defined in the Final Order of the Commodity Futures Trading Commission at 78 Fed. Reg. 19879.

As an alternative to satisfying (1), (2) or (3), a Market Participant that participates as a Scheduling Coordinator only, and not as a CRR Holder, Candidate CRR Holder or a Convergence Bidding Entity, satisfies this Section 12.1(b)(iv) if it is in the business of providing electric energy services that are necessary to support the reliable operation of the transmission system, as defined in the Final Order of the Commodity Futures Trading Commission at 78 Fed. Reg. 19879.

(c) The CAISO will review and verify that prospective Market Participants satisfy the minimum participation requirements set forth in this Section 12.1, and the CAISO will request any information from prospective Market Participants that is needed to complete the CAISO’s review and verification. Further, the CAISO will annually select, on a random basis, up to ten (10) percent of the Market Participants that are not already subject to annual verification as set forth in Section 12.1(b)(ii), and the CAISO will request any information from those randomly selected Market Participants that is needed to review and verify whether the Market Participants continue to satisfy the minimum participation requirements set forth in this Section 12.1. Each Market Participant randomly selected for annual verification and satisfactorily verified will be exempted from such random verification for the subsequent two (2) years, unless within that two-year period the Market Participant undergoes a Material Change in Financial Condition as set forth in Section 12.1.1.5, in which case the Market Participant will remain subject to random verification within the two-year period. In addition, the CAISO may at any time

select any Market Participant for review to determine whether the Market Participant continues to satisfy the minimum participation requirements set forth in this Section 12.1, based on identified risk factors that include, but are not limited to, the CAISO Markets in which the Market Participant is transacting or seeks to transact, the magnitude of the Market Participant's transactions or potential transactions, or the volume of the Market Participant's open positions in the CAISO Markets. Such review by the CAISO based on identified risk factors will not be subject to the two-year period of exemption from random verification.

(d) Each Market Participant shall respond to any CAISO request for information within five (5) Business Days. Failure to provide the requested information within the specified time period may result in the CAISO taking enforcement actions pursuant to Section 12.5.

The CAISO may review and verify the information either with or without the assistance of a third party, at the CAISO's discretion, subject to confidentiality and non-disclosure restrictions, as applicable. The CAISO will provide the Market Participant with a written explanation of any deficiencies in the information provided. For purposes of Section 12, any documentation provided by a prospective or existing Market Participant in compliance with this Section shall be treated as confidential and the CAISO shall maintain the confidentiality of all such documents. Any CAISO review and verification of the Market Participant's risk management policies, procedures, and controls will be conducted according to generally accepted risk management standards that may be developed from time to time and shall include but not be limited to confirmation that:

- The Market Participant's risk management framework is documented in a risk policy addressing market, credit, and liquidity risks that has been approved by the Market Participant's risk management governance function, which includes appropriate corporate persons or bodies that are independent of the Market Participant's trading functions, such as a risk management committee, a designated risk officer, a board or board committee, or a board or committee of the Market Participant's parent company;

- The Market Participant maintains an organizational structure with clearly defined roles and responsibilities that segregate front-, middle-, and back-office functions to as high a level as is practicable;
- Delegations of authority specify the transactions in which traders are allowed to enter;
- The Market Participant ensures that traders have adequate training and experience relative to their delegations of authority in systems and the markets in which they transact;
- As appropriate, risk limits are in place to control risk exposures;
- Reporting is in place to ensure risks are adequately communicated throughout the organization;
- Processes are in place for independent confirmation of executed transactions; and
- As appropriate, there is periodic evaluation or mark-to-market of risk positions.

(e) For the minimum participation requirements set forth in Section 12.1(b)(iv), each Market Participant that has a direct financial relationship with the CAISO (including each Scheduling Coordinator, CRR Holder, or Candidate CRR Holder, and any applicant seeking to become a Scheduling Coordinator, CRR Holder, or Candidate CRR Holder) must demonstrate compliance with Section 12.1(b)(iv) by submitting to the CAISO by the deadline specified in the Business Practice Manual an officer's certificate, in a form acceptable to the CAISO, stating under penalty of perjury that

- (i) the Market Participant is in compliance with this requirement, and
- (ii) if the certifying entity no longer satisfies the requirements set forth in Section 12.1(b)(iv) it shall immediately notify the CAISO and immediately cease all participation in the CAISO Markets.

A Market Participant that fails to submit the officer's certificate by the deadline specified in the Business Practice Manual shall not be entitled to participate in the CAISO Markets until after the Market Participant submits the certificate required by this Section 12.1(e), as detailed in the Business Practice Manual.

(f) Each prospective Market Participant that does not satisfy all of the minimum participation requirements set forth in ~~this~~ Section 12.1 will be prohibited from participating in the CAISO Markets. Each prospective Market Participant taking part in the Scheduling Coordinator certification process pursuant to Section 4.5.1 or the Candidate CRR Holder application process pursuant to Section 4.10.1 that does not satisfy all of the minimum participation requirements set forth in this Section 12.1 will be ineligible to become a Market Participant or CRR Holder. Each existing Market Participant that does not satisfy all of the minimum participation requirements set forth in this Section 12.1 will be out of compliance with the CAISO Tariff. Any failure of a Market Participant to satisfy the minimum participation requirements set forth in ~~this~~ Section 12.1 ~~(b) that is not cured within thirty (30) days of CAISO notification that a failure occurred~~ will subject the Market Participant to CAISO enforcement actions as set forth in Section 12.5 provided that, for any failure to comply with the minimum participation requirements set forth in Section 12.1(b)(i)-(iii), the Market Participant shall have thirty (30) days to cure after CAISO notification that a failure occurred. In the event a Market Participant no longer satisfies the minimum participation requirements set forth Section 12.1(b)(iv), the Market Participant shall immediately notify the CAISO of this change and immediately cease all participation in CAISO Markets. A Market Participant that no longer satisfies the minimum participation requirements set forth Section 12.1(b)(iv) shall be subject to CAISO enforcement actions as set forth in Section 12.5.

...

12.5.1 Under-Secured and Non-Compliant Market Participants

~~If~~The CAISO may take action under this Section 12.5.1 against a Market Participant if it's Estimated Aggregate Liability, as calculated by the CAISO, at any time exceeds its Aggregate Credit Limit, or if a Market Participant fails to satisfy all of the minimum participation requirements set forth in Section 12.1. However, before taking action against a Market Participant based on

failure to comply with Section 12.1(a) or 12.1(b)(i)-(iii), the CAISO must first notify the Market Participant of the failure and allow it and does not cure that failure within thirty (30) days after notification of the failure by the CAISO to cure the failure. ~~;~~ The CAISO may take any or all of the following actions:

- (a) The CAISO may withhold a pending payment distribution.
- (b) The CAISO may limit trading, which may include rejection of Bids, including Self-Schedules, rejection or cancellation of Inter-SC Trades in their entirety (i.e., both sides of the Inter-SC Trade) at any time, and/or limiting other CAISO Market activity, including limiting eligibility to participate in a CRR Allocation or CRR Auction. In such case, the CAISO shall notify the Market Participant of its action and the Market Participant shall not be entitled to participate in the CAISO Markets or CRR Auctions or submit further Bids, including Self-Schedules, or otherwise participate in the CAISO Markets until the Market Participant posts an additional Financial Security Amount that is sufficient to ensure that the Market Participant's Aggregate Credit Limit is at least equal to its Estimated Aggregate Liability.
- (c) The CAISO may require the Market Participant to post an additional Financial Security Amount in lieu of an Unsecured Credit Limit for a period of time.
- (d) The CAISO may restrict, suspend, or terminate the Market Participant's CRR Entity Agreement or any other service agreement.
- (e) The CAISO may resell the CRR Holder's CRRs in whole or in part, including any Long Term CRRs, in a subsequent CRR Auction or bilateral transaction, as appropriate.
- (f) The CAISO will not implement the transfer of a CRR if the transferee or transferor has an Estimated Aggregate Liability in excess of its Aggregate Credit Limit.

In addition, the CAISO may restrict or suspend a Market Participant's right to submit further Bids, including Self-Schedules, or require the Market Participant to increase its Financial Security Amount if at any time such Market Participant's potential additional liability for Imbalance Energy and other CAISO charges is determined by the CAISO to be excessive by comparison with the likely cost of the amount of Energy reflected in Bids or Self-Schedules submitted by the Market Participant.

Attachment C – Draft Final Proposal

CFTC Exemption

California Independent System Operator Corporation

July 12, 2013



**Draft Final Proposal:
Minimum Criteria for Direct Participation**

May 24, 2013

This paper explains and seeks stakeholder feedback about a tariff amendment that will restrict direct participation in the ISO's markets in accordance with criteria established by the Commodity Futures Trading Commission (CFTC). Effective October 1, 2013, an entity may participate directly in the ISO's market – for example as a scheduling coordinator or CRR holder – only if it satisfies certain requirements related to its capitalization, nature, or activities. The amendment is necessary to ensure compliance with an order of the CFTC that exempts the ISO's market from regulatory oversight under the Commodity Exchange Act.

1. Background: Dodd-Frank and the CFTC's Exemption for ISOs

In the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress expanded the authority of the CFTC to include regulation of "swaps," which are defined broadly in a way that might be interpreted to cover certain transactions in the ISO market. In February 2012, the ISO, together with a group of other ISOs and RTOs, filed consolidated petitions with the CFTC to exempt transactions in their markets from the CFTC's regulatory oversight. The CFTC issued a final order granting the requested exemption on March 28, 2013. See 78 Fed. Reg. 19880, a copy of which is available at <http://cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister032813b.pdf>. This final order is subject to the conditions and limitations as described below.

To allow ISOs and RTOs enough time to comply with these conditions and limitations, CFTC staff issued a "no-action" letter on March 29, 2013, linked here: http://www.caiso.com/Documents/CFTCNoActionLetterThroughSep30_2013.pdf. Under that letter, staff will not recommend enforcement action until after September 30, 2013, for transactions entered pursuant to an ISO or RTO tariff.

Exemption Limited to "Appropriate Persons"

For purposes of the proposed tariff amendment, the important limitation of the CFTC's order is that it exempts only transactions entered by market participants that qualify as "appropriate persons," as defined by the final order. Consequently, the exemption does not cover transactions entered by other market participants that do not meet the criteria. If such market participants were to transact in the ISO market after September 30, 2013, they could be subject to penalties for violating the Commodity Exchange Act, as could the ISO.

The ISO Has Satisfied the Other Conditions of the Final Order

The exemption and the "no action" letter depend on the ISO meeting certain other conditions of the final order. The following summary may be useful to stakeholders.

- *Memorandum of Counsel.* The final order requires the ISO to submit a legal opinion or memorandum providing assurance that its netting arrangements provide it with enforceable rights of set off in the event of a market participant bankruptcy. See paragraph 6(a)(1). CFTC staff accepted the ISO's memorandum, as explained in their letter dated April 29, 2013, linked here: http://www.caiso.com/Documents/CFTC_LetterAcceptingCaliforniaISONettingMemoApr29_2013.pdf.
- *Notification of Requests for Information.* The final order specifies that the ISO tariff must not require the ISO to notify market participants when providing information to the CFTC in response to a subpoena or data request. See paragraph 4(b). The ISO amended its tariff to comply with this requirement effective January 30, 2013. See 142 FERC 61,069.
- *Compliance with FERC Order No. 741.* The final order requires that ISOs and RTOs must demonstrate compliance with 18 C.F.R. § 35.47 – the regulation that implements Order No. 741 – as measured by FERC's acceptance of compliance filings. See paragraph 6(a)(2). The ISO is in compliance with Order No. 741.

Inter-SC Trades

In addition to the joint application for an exemption, the ISO and ISO New England also filed a separate petition in May 2012 seeking an exemption for inter-SC trades and their equivalent in ISO New England. Stakeholders and the ISO Board approved a tariff amendment related to that petition. The CFTC has not ruled on the petition, and thus the ISO did not file the amendment with FERC.

Shortly before the CFTC issued its final order, however, on March 14, 2013, the ISO and ISO New England submitted a supplemental comment letter asking the CFTC to modify the definition of "energy transaction" in a way that would encompass inter-SC trades. The Final Order states at page 19888 that it is amending the definition of "Energy Transaction" in the final order to more clearly account for the transactions referenced in the March 14 comment letter. Accordingly, the ISO is proceeding on the understanding that inter-SC trades fall within the meaning of the term "Energy Transaction" as defined by the amended language of the final order, and therefore, in light of the amended text of the final order, are within the scope of the exemption.

The separate petitions regarding inter-SC trades technically remain pending at this time. In light of the amended language of the final order, the ISO has been working with CFTC staff to determine what, if any, further action is warranted.

2. Stakeholder Process

Written comments on this proposal and the tariff language will be due June 3, and a stakeholder call to discuss the comments will be held on June 7 at 10:00 am. ISO staff will also use this call to answer any other questions about the exemption that has been granted from CFTC jurisdiction. If necessary, a final proposal will be published on June 12, with written comments due June 19. A stakeholder call to discuss those comments would be held June 20 at 1:00 pm.

ISO staff will take the proposed tariff amendment to the ISO's Board of Governors during its meeting on July 11 and 12.

3. Proposed Tariff Amendment

The ISO proposes to amend its tariff to limit direct participation to entities that qualify for the CFTC's exemption. In order to transact as a scheduling coordinator or CRR holder, or to qualify as a candidate CRR holder, a market participant must certify that it is an "appropriate person" or "eligible contract participant" as those terms are defined by the CFTC. Current market participants that cannot satisfy these criteria may not transact directly in the ISO market after the amendment becomes effective. The ISO is advised that this amendment is necessary to comply with the terms of the Exemption Order and thereby to avoid possible violation of the Commodity Exchange Act, which could involve substantial penalties.

A. Requirements for Direct Participation

Turning to the substance of the requirements, a market participant must qualify as an "appropriate person" including, as defined by the CFTC, an "eligible contract participant" or certain persons in the business of generating, transmitting, or distributing electric energy or providing electric energy services that are necessary to support the reliable operation of the transmission system. Most entities will satisfy the criteria if they can attest to one or more of the following:

- A net worth of \$1 million;
- Total assets of \$5 million;
- Credit support from another entity that qualifies as an "appropriate person," as described below; or
- Being in the business of "Generating, transmitting or distributing electric energy," as defined by the Final Order.

In addition, demand response providers may transact in the ISO's physical markets even though they do not otherwise satisfy these criteria.

The tariff amendment will require market participants to certify under penalty of perjury that they satisfy one of the required legal definitions for direct participation in the ISO Market and that they will notify the ISO immediately and cease transacting in the market if they at any time cease to satisfy any of them. The ISO may verify these certifications, as described below. The full definitions of “appropriate person” and “eligible contract participant,” which are more complex and encompass certain additional entities, are reproduced in the Appendix.

Some of these terms merit additional explanation.

“Net Worth” of \$1 Million or Total Assets of \$5 Million

The ISO has intentionally used the term “net worth,” in contrast to the term “Tangible Net Worth” as defined in the ISO tariff, because the latter term excludes certain assets from the calculation.

The CFTC’s order states that market participants are not required to establish compliance with this requirement “through the use of audited financial statements.” 78 Fed. Reg. 19896. This is consistent with existing ISO tariff language about the criteria for obtaining unsecured credit. See ISO Tariff § 12.1.1.3.

Credit Support from an “Appropriate Person”

The statutory definition of an “appropriate person” includes any business entity,

... the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

CEA § 4(c)(3)(F). Under this statutory definition, the credit support must be issued by certain types of entities identified in the cited subparagraphs. At the request of the petitioners, however, the CFTC clarified that the credit support issued by any other “appropriate person” would be sufficient for an ISO or RTO market participant. See 78 Fed. Reg. 19900. Moreover, “[t]he guaranteeing or supporting entity will not be required ... to demonstrate its status as an ‘appropriate person’ through the use of audited financial statements.” *Id.*

Business of Generating, Transmitting or Distributing Electric Energy

The CFTC exercised its statutory authority to determine that two additional types of entities will qualify as “appropriate persons,” even though they are not listed in the

statutory definition. The first is any entity in the business of “Generating, transmitting or distributing electric energy” as defined by the Final Order. See 78 Fed. Reg 19897 and 19914 (section 5.g). The entity “need not ... own physical transmission or generation assets,” provided that it otherwise satisfies this test.

The second is any entity that provides demand response in the ISO market. The CFTC found that “appropriate persons” included any entity “in the business of ... providing electric energy services that are necessary to support the reliable operation of the transmission system,” and that demand response providers satisfy this requirement. If stakeholders believe that any type of entity other than a demand response provider meets the CFTC’s legal test, please address the issue in your written comments.

Market participants that qualify to participate in the ISO market only by virtue of their status as demand response providers – *i.e.*, under this test – will be limited to participating in the physical markets, and may not hold CRRs or enter convergence bidding transactions. Specifically, the CFTC stated that the exemption does not extend to “transactions that are entered into by ... entities that are engaged in the business of entering into or facilitating financial transactions (such as virtual and convergence bids and offers), that

- (1) do not actively participate in the generation, distribution, or transmission of electric energy,
- (2) are not ECPs, or
- (3) do not satisfy any of the criteria” to be an appropriate person.”

78 Fed. Reg. 19897. It added that

[s]uch a person or entity that is engaged in ***purely financial transactions*** in the RTO or ISO markets, but that does not meet either the ECP or ... appropriate person criteria may be operating on inadequate resources and may pose inappropriate risks to itself and other market participants.

(Emphasis added.) The draft tariff revisions limit participation accordingly for those entities that qualify only as demand response providers.

B. Process for Establishing Compliance

The ISO proposes that market participants will verify compliance through a written representation – an officer’s certification under penalty of perjury. See Section 12.1(e) of the proposed tariff language. This certification must be provided in advance of the October 1, 2013 deadline established by the CFTC, and then annually thereafter as part of the ISO’s currently effective process for “Officer Certification.” This annual update is

due April 30 of every year, as detailed in the Business Practice Manual. In addition, randomly selected market participants are subject to verification throughout the year.

The ISO anticipates adding language to the Business Practice Manual stating that the initial certification will be due September 16, 2013, which is the date when we expect the tariff amendment will become effective. ISO staff will need the two weeks to review the certifications, and to allow time for the business unit that administers the ISO master file to terminate the transacting authority of entities that do not comply. Market participants that fail to submit an acceptable certification by September 16 may not be able to transact starting October 1.

CRR holders that have already purchased CRRs effective during October must establish compliance by September 16, 2013. Otherwise, their CRRs will be subject to resale under the proposed revisions of Section 12.5.1(e) of the Tariff.

C. Changes in Status

If circumstances change and a market participant that has certified compliance no longer complies with the criteria for direct participation, the market participant must immediately notify the ISO and cease all transactions.

D. Relationship with Currently Effective Criteria for Participation

These requirements for direct participation are in addition to the current requirements described in section 12.1, which will remain in effect. Market participants must meet the proposed new requirements to participate directly in the ISO market after September 30. Once these requirements are satisfied, the ISO will apply its currently effective minimum capitalization requirements, which include a minimum tangible net worth of \$1 million or total assets of \$10 million. If neither of these requirements is met, a potential market participant must post \$500,000, which cannot be used to increase its credit limit. Likewise, a market must post \$100,000 if its estimated aggregate liability for the preceding six months was less than \$100,000; otherwise, it must post \$500,000.

4. Questions About the Proposed Tariff Amendment

The ISO wants to maximize the effectiveness of this stakeholder process and the likelihood that any questions or concerns can be resolved before the July Board meeting. To that end, the ISO encourages stakeholders to ask questions before initial written comments are due on June 3, and at any time during the process. Please submit questions to Dan Shonkwiler, dshonkwiler@caiso.com and Kevin King, kking@caiso.com.

Appendix: Proposed Tariff Language and Definitions

Definition of “Appropriate Person” from CEA Section 4(c)(3)

- A. A bank or trust company (acting in an individual or fiduciary capacity).
- B. A savings association.
- C. An insurance company.
- D. An investment company subject to regulation under the Investment Company Act of 1940.
- E. A commodity pool formed or operated by a person subject to regulation under the Act.
- F. A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.
- G. An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940, or a commodity trading advisor subject to regulation under this Act.
- H. Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.
- I. A broker-dealer subject to regulation under the Securities Exchange Act of 1934 acting on its own behalf or on behalf of another appropriate person.
- J. A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.
- K. Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

Eligible Contract Participant definition from CEA Section 1a(18)(A) and Commission Regulation 1.3(m)

Definition of “Eligible Contract Participant” from CEA 1a(18)

The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 ([15 U.S.C. 80a-1](#) et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section [2 \(c\)\(2\)\(B\)\(vi\)](#) of this title and section [2 \(c\)\(2\)\(C\)\(vii\)](#) of this title, the term “eligible contract participant” shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding \$1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset

or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1001](#) et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding \$5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 ([15 U.S.C. 80b-1](#) et seq.) or this chapter;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii) (I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II); except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section [2 \(c\)\(2\)\(B\)\(ii\)](#) of this title;

(viii) (I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 ([15 U.S.C. 78a](#) et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 ([15 U.S.C. 78o-5 \(b\)](#), [78g \(h\)](#));

(III) an investment bank holding company (as defined in section 17(i) ^[2] of the Securities Exchange Act of 1934 ([15 U.S.C. 78g \(i\)](#)); ^[3]

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) \$10,000,000; or

(II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

Definition of “Eligible Contract Participant” from CFTC Regulation 1.3(m)

Eligible contract participant. This term has the meaning set forth in Section 1a(18) of the Act, except that:

(1) A major swap participant, as defined in Section 1a(33) of the Act and paragraph (hhh) of this section, is an eligible contract participant;

(2) A swap dealer, as defined in Section 1a(49) of the Act and paragraph (ggg) of this section, is an eligible contract participant;

(3) A major security-based swap participant, as defined in Section 3(a)(67) of the Securities Exchange Act of 1934 and §240.3a67-1 of this title, is an eligible contract participant;

(4) A security-based swap dealer, as defined in Section 3(a)(71) of the Securities Exchange Act of 1934 and §240.3a71-1 of this title, is an eligible contract participant;

(5)—(6) [Reserved]

(7)(i) For purposes of a swap (but not a security-based swap, security-based swap agreement or mixed swap) used to hedge or mitigate commercial risk, an entity may, in determining its net worth for purposes of Section 1a(18)(A)(v)(III) of the Act, include the net worth of any owner of such entity, provided that all the owners of such entity are eligible contract participants;

(ii) (A) For purposes of identifying the owners of an entity under paragraph (m)(7)(i) of this section, any person holding a direct ownership interest in such entity shall be considered to be an owner of such entity; provided, however, that any shell company shall be disregarded, and the owners of such shell company shall be considered to be the owners of any entity owned by such shell company;

(B) For purposes of paragraph (m)(7)(ii)(A) of this section, the term *shell company* means any entity that limits its holdings to direct or indirect interests in entities that are relying on this paragraph (m)(7); and

(C) In determining whether an owner of an entity is an eligible contract participant for purposes of paragraph (m)(7)(i) of this section, an individual may be considered to be a proprietorship eligible contract participant only if the individual—

(1) Has an active role in operating a business other than an entity;

(2) Directly owns all of the assets of the business;

(3) Directly is responsible for all of the liabilities of the business; and

(4) Acquires its interest in the entity seeking to qualify as an eligible contract participant under paragraph (m)(7)(i) of this section in connection with the operation of the individual's proprietorship or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the individual in the operation of the individual's proprietorship; and

(iii) For purposes of paragraph (m)(7)(i) of this section, a swap is used to hedge or mitigate commercial risk if the swap complies with the conditions in paragraph (kkk) of this section; and

(8) Notwithstanding Section 1a(18)(A)(iv) of the Act and paragraph (m)(5) of this section, a commodity pool that enters into an agreement, contract, or transaction described in Section 2(c)(2)(B)(i) or Section 2(c)(2)(C)(i)(I) of the Act is an eligible

contract participant with respect to such agreement, contract, or transaction, regardless of whether each participant in such commodity pool is an eligible contract participant, if all of the following conditions are satisfied:

(i) The commodity pool is not formed for the purpose of evading regulation under Section 2(c)(2)(B) or Section 2(c)(2)(C) of the Act or related Commission rules, regulations or orders;

(ii) The commodity pool has total assets exceeding \$10,000,000; and

(iii) The commodity pool is formed and operated by a registered commodity pool operator or by a commodity pool operator who is exempt from registration as such pursuant to §4.13(a)(3) of this chapter.

Attachment D - CFTC no-action letter

CFTC Exemption

California Independent System Operator Corporation

July 12, 2013



U.S. COMMODITY FUTURES TRADING COMMISSION

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March 29, 2013

Extension of Staff No-Action Relief with Respect to Certain CEA Provisions That May Apply to Certain RTOs, ISOs, and/or Their Participants

On October 11, 2012, the Division of Clearing and Risk, the Division of Swap Dealer and Intermediary Oversight and the Division of Market Oversight (collectively, the “Divisions”) granted time limited no-action relief to certain Independent System Operators and Regional Transmission Organizations (collectively, the “Requesting Parties”) and their market participants.¹ As discussed therein, the Commodity Futures Trading Commission (the “Commission”) had proposed to grant, in part, a request from the Requesting Parties for exemptive relief for certain transactions offered or sold pursuant to their tariffs or protocols. In a letter dated March 22, 2013, the Requesting Parties requested that the Divisions extend the time limited no-action relief.

On March 28, 2013, the Commission approved a final order pursuant to 4(c)(6) of the Commodity Exchange Act (“CEA”) (the “Final Order”)² to exempt, subject to certain conditions and limitations contained therein, contracts, agreements, and transactions for the purchase or sale of the limited electric energy-related products that are specifically described within the final order from the provisions of the CEA and Commission regulations, with the exception of the Commission’s general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, under CEA sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 of the Act and any implementing regulations promulgated under these sections including, but not limited to Commission regulations 23.410(a) and (b), 32.4, and part 180 (the “Enforcement Provisions”)

¹ CFTC Letter No. 12-11 (October 11, 2012).

² Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act, *available at*

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister032813b.pdf>

To give each Requesting Party time to enact certain tariff, protocol or rate schedule changes and take other steps necessary (a) to satisfy the conditions to the exemption contained in paragraphs 4(b), and 6(a)(1) or 6(b)(1), of the Final Order and (b) to operate within the scope of that exemption, specifically as set forth in paragraph 2(b) of the Final Order, the Divisions, to the limited extent and for the limited time periods set forth below, will not recommend that the Commission commence an enforcement action for failure to comply with any provision of the CEA or the Commission's regulations against any of the Requesting Parties or persons who participate in the Requesting Parties' markets who, in either such case, otherwise fall within the scope, and comply with the conditions, of the Final Order.

- (1) Through April 30, 2013, for Requesting Parties that have not submitted and had accepted by the Commission (or its delegate pursuant to paragraph 7) a legal opinion or memorandum of outside counsel as required by paragraph 6(a)(1) (for Requesting Parties subject to the jurisdiction of the Federal Energy Regulatory Commission ["FERC"]) or paragraph 6(b)(1) (for the Electricity Reliability Council of Texas ["ERCOT"]) of the Final Order, but only with respect to the fact that they have not yet complied with that condition.
- (2) Through September 30, 2013, for Requesting Parties whose tariffs, rate schedules, protocols (each, a "Tariff"), or other governing documents include a requirement that the Requesting Party notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation, but only with respect to the fact that they have not complied with the condition set forth in paragraph 4(b) of the Order.
- (3) Through September 30, 2013, for participants in the Requesting Parties' markets who
 - a. Are or would have been eligible to participate in the Requesting Parties markets under any Tariff that, as of October 11, 2012, had been approved or permitted to take effect by (i) in the case of ERCOT, the Public Utility Commission of Texas or (ii) in the case of all other Requesting Parties, FERC, but
 - b. are not persons described in paragraph 2(b) of the Final Order,

and for the Requesting Parties themselves, but only (in each case) with respect to the fact that such participants are excluded from the scope of the Final Order due to the limitation of paragraph 2(b) thereof.

Nothing in this staff no-action letter in any way limits the Commission's authority with respect to any person, entity or transaction pursuant to the Enforcement Provisions. Further, the no-action position taken herein is taken by the Divisions only and does not bind the Commission or any other Division or Office of the Commission's staff. As with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

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If you have any questions regarding this extension, please contact Robert Wasserman at rwasserman@cftc.gov or (202) 418-5092, or M. Laura Astrada at lastrada@cftc.gov or (202) 418-7622.



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Acting Director, DMO

Attachment E - CFTC and CFR Citations

CFTC Exemption

California Independent System Operator Corporation

July 12, 2013

Definition of "Appropriate Person" from CEA Section 4(c)(3)

- A. A bank or trust company (acting in an individual or fiduciary capacity).
- B. A savings association.
- C. An insurance company.
- D. An investment company subject to regulation under the Investment Company Act of 1940.
- E. A commodity pool formed or operated by a person subject to regulation under the Act.
- F. A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.
- G. An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940, or a commodity trading advisor subject to regulation under this Act.
- H. Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.
- I. A broker-dealer subject to regulation under the Securities Exchange Act of 1934 acting on its own behalf or on behalf of another appropriate person.
- J. A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.
- K. Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

Eligible Contract Participant definition from CEA Section 1a(18)(A) and Commission Regulation 1.3(m)

Definition of “Eligible Contract Participant” from CEA 1a(18)

The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2 (c)(2)(B)(vi) of this title and section 2 (c)(2)(C)(vii) of this title, the term “eligible contract participant” shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding \$1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity’s business or to manage the risk associated with an asset

or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding \$5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this chapter;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii) (I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II); except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2 (c)(2)(B)(ii) of this title;

(viii) (I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5 (b), 78q (h));

(III) an investment bank holding company (as defined in section 17(i) ^[2] of the Securities Exchange Act of 1934 (15 U.S.C. 78q (i)); ^[3]

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) \$10,000,000; or

(II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

Definition of “Eligible Contract Participant” from CFTC Regulation 1.3(m)

Eligible contract participant. This term has the meaning set forth in Section 1a(18) of the Act, except that:

(1) A major swap participant, as defined in Section 1a(33) of the Act and paragraph (hhh) of this section, is an eligible contract participant;

(2) A swap dealer, as defined in Section 1a(49) of the Act and paragraph (ggg) of this section, is an eligible contract participant;

(3) A major security-based swap participant, as defined in Section 3(a)(67) of the Securities Exchange Act of 1934 and §240.3a67-1 of this title, is an eligible contract participant;

(4) A security-based swap dealer, as defined in Section 3(a)(71) of the Securities Exchange Act of 1934 and §240.3a71-1 of this title, is an eligible contract participant;

(5)—(6) [Reserved]

(7)(i) For purposes of a swap (but not a security-based swap, security-based swap agreement or mixed swap) used to hedge or mitigate commercial risk, an entity may, in determining its net worth for purposes of Section 1a(18)(A)(v)(III) of the Act, include the net worth of any owner of such entity, provided that all the owners of such entity are eligible contract participants;

(ii) (A) For purposes of identifying the owners of an entity under paragraph (m)(7)(i) of this section, any person holding a direct ownership interest in such entity shall be considered to be an owner of such entity; provided, however, that any shell company shall be disregarded, and the owners of such shell company shall be considered to be the owners of any entity owned by such shell company;

(B) For purposes of paragraph (m)(7)(ii)(A) of this section, the term *shell company* means any entity that limits its holdings to direct or indirect interests in entities that are relying on this paragraph (m)(7); and

(C) In determining whether an owner of an entity is an eligible contract participant for purposes of paragraph (m)(7)(i) of this section, an individual may be considered to be a proprietorship eligible contract participant only if the individual—

(1) Has an active role in operating a business other than an entity;

(2) Directly owns all of the assets of the business;

(3) Directly is responsible for all of the liabilities of the business; and

(4) Acquires its interest in the entity seeking to qualify as an eligible contract participant under paragraph (m)(7)(i) of this section in connection with the operation of the individual's proprietorship or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the individual in the operation of the individual's proprietorship; and

(iii) For purposes of paragraph (m)(7)(i) of this section, a swap is used to hedge or mitigate commercial risk if the swap complies with the conditions in paragraph (kkk) of this section; and

(8) Notwithstanding Section 1a(18)(A)(iv) of the Act and paragraph (m)(5) of this section, a commodity pool that enters into an agreement, contract, or transaction described in Section 2(c)(2)(B)(i) or Section 2(c)(2)(C)(i)(I) of the Act is an eligible

contract participant with respect to such agreement, contract, or transaction, regardless of whether each participant in such commodity pool is an eligible contract participant, if all of the following conditions are satisfied:

- (i) The commodity pool is not formed for the purpose of evading regulation under Section 2(c)(2)(B) or Section 2(c)(2)(C) of the Act or related Commission rules, regulations or orders;
- (ii) The commodity pool has total assets exceeding \$10,000,000; and
- (iii) The commodity pool is formed and operated by a registered commodity pool operator or by a commodity pool operator who is exempt from registration as such pursuant to §4.13(a)(3) of this chapter.