



Dodd-Frank Act Exemption Update

**Credit Working Group
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ERCOT Meetings with CFTC

- **ERCOT and representatives of other ISO/RTOs met with CFTC Chairman Gensler and Commissioner O'Malia on April 28, 2011.**
- **On April 29, 2011, ERCOT and other ISO/RTOs met with senior CFTC staff (representing Division of Clearing and Intermediary Oversight, Division of Market Oversight, and Office of General Counsel).**
- **ERCOT also met with senior CFTC staff separately to discuss ERCOT-specific issues.**
- **Positive feedback on obtaining exemption – key issues remain on terms and timing.**

Terms of Proposed Exemption

- **Scope – would exempt all ISO/RTO market products, ISO/RTO as an entity, ISO/RTO market participants based on current products in the market today.**
 - However, material changes in market structure or products would likely require additional review by CFTC
- **Term – After exemption granted, CFTC not planning ongoing process of reviewing activity or products in ISO/RTO markets.**
- **The exemption order would not include a finding that the CFTC has jurisdiction over particular products in ISO/RTO markets.**
- **CFTC considering options for conditional exemptions pending completion of required actions (e.g., establishing central counter-party status).**

Standards for Exemption Discussed by CFTC Staff

- **Statutory standard for exemption is a “public interest” test.**
- **CFTC Staff has identified key issues they expect to consider in measuring public interest standard:**
 - Establishing effective set-off in event of market participant bankruptcy, and related netting rules.
 - Demonstrated risk management capabilities by ISO/RTO and market participants and membership financial qualifications.
 - Consistency with credit standards established for FERC-jurisdictional ISOs in FERC Order 741.
 - Collaboration with Independent Market Monitors (IMM).

Bankruptcy Protection and Netting

- **FERC order calls for elimination of netting of CRR activity against non-CRR activity.**
- **CFTC will consider allowing netting between closed CRR positions and other markets; ERCOT will provide information to demonstrate this does not present same risk as between forward CRR and auction activity.**
- **Netting / Setoff Issue - CFTC will require ISOs/RTOs to provide a legal memorandum or opinion of counsel stating their setoff rights are enforceable in bankruptcy.**
- **ERCOT staff believes that becoming a central counter-party can provide additional protections in bankruptcy and is working with other ISOs to explore legal issues regarding central counter-party status, including potential impact on ERCOT's 501(c)(4) tax-exempt status.**

Risk Management Capability of ISO and Market Participants

- **CFTC staff views this as a key issue.**
- **Certification provided by market participant, by itself, will likely not be adequate, but neither CFTC nor FERC Order 741 states specifically what would be sufficient.**
- **ISO/RTOs and CFTC staff discussed several risk management concepts and possible criteria.**
- **ERCOT – either separately or together with other ISO/RTOs – will develop a proposal on this issue as soon as possible to present to CFTC for discussion.**

Other Issues Raised by Standards in FERC Order 741

Unsecured Credit

- **CFTC strongly prefers elimination of unsecured credit in CRR market for future positions and auction.**
- **CFTC will consider use of unsecured credit for closed CRR positions – ERCOT will need to demonstrate the risk basis for this.**
- **ERCOT expects that it will have to demonstrate that any differences from the standards in FERC Order 741 are not material in terms of risk.**

Other Issues Raised by Standards in FERC Order 741

Settlement Timelines

- **ERCOT Day Ahead timeline consistent with FERC Credit Rule.**
- **CFTC staff advised that ERCOT Real Time settlement timeline may differ from FERC Credit Rule (14 days – 7 days to issue invoice / 7 days to pay) without affecting CFTC exemption if ERCOT can demonstrate the difference is not material in terms of risk.**

Market Monitoring

- **Even if exemption is granted, CFTC retains authority to prevent market manipulation.**
- **CFTC interested in establishing collaborative market monitoring effort with Independent Market Monitors (IMM) in ISO/RTO markets.**
- **ERCOT is raising this issue with PUCT and IMM to facilitate discussions between PUCT/IMM and CFTC staff on the details of CFTC's request.**
- **ERCOT expects that CFTC will address market monitoring issue whether or not ERCOT market products are granted exemption.**

Next Steps / Timeline

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- **Provide ERCOT Board with requested analysis of the impact of regulation of ERCOT products by the CFTC.**
- **Work with PUCT and ERCOT stakeholder groups to develop proposals for new requirements – e.g., risk management and membership participation standards.**
- **Determine whether joint ISO/RTO filing or individual ERCOT filing with CFTC is the best approach.**
- **Continue discussions with CFTC to move towards agreement on outstanding issues and development of final exemption petition.**
- **Develop final draft application with detailed description of relevant issues - regulatory construct; market products subject to exemption.**

Timeline Proposed by CFTC Staff

June 20	Submit exemption applications
Late July	Proposed exemption order published in the Federal Register
August	30-day public comment period
October 31	Final exemption order published in the Federal Register

Questions