



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5430  
Facsimile: (202) 418-5547  
[aradhakrishnan@cftc.gov](mailto:aradhakrishnan@cftc.gov)

Division of Clearing and Risk

Ananda Radhakrishnan  
Director

April 26, 2013

Paul J. Pantano, Jr.  
Cadwalader Wickersham & Taft LLP  
700 Sixth Street, N.W.  
Washington, D.C. 2001  
[paul.pantano@cwtt.com](mailto:paul.pantano@cwtt.com)

On March 28, 2013, the Commission approved a final order pursuant to 4(c)(6) of the Commodity Exchange Act (“CEA”) (the “Final Order”) in response to a consolidated petition from certain Independent System Operators and Regional Transmission Organizations (collectively, the “Requesting Parties”) to exempt specified transactions from the provisions of the CEA, and Commission regulations.<sup>1</sup> The Final Order was issued pursuant to certain conditions, in particular, paragraph 6(b)(1) of the Final Order conditions the exemption set forth therein upon the

submission and acceptance of a legal opinion or memorandum of outside counsel that is satisfactory to the Commission, in the Commission’s sole discretion, and that provides the Commission with assurance that the netting arrangements contained in the approach selected by ERCOT to satisfy the standards that are the same as those contained in FERC regulation 35.47(d) will, in fact, provide the ERCOT with enforceable rights of set off against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant.<sup>2</sup>

Pursuant to paragraph 7 of the Final Order, the Commission delegated the authority to accept or reject any legal memorandum required by paragraph 6(b)(1).<sup>3</sup>

On March 29, 2013, the Division of Clearing and Risk, the Division of Swap Dealer and Intermediary Oversight, and the Division of Market Oversight (collectively, the “Divisions”), issued a limited extension of no-action relief to the Requesting Parties and their market

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<sup>1</sup> 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 the Act, 78 FR 19880 (April 2, 2013).

<sup>2</sup> 77 FR 19914.

<sup>3</sup> *Id.*

participants (the “No-Action Extension”).<sup>4</sup> In order to give the Requesting Parties time to take steps necessary to satisfy the conditions of the Final Order, the No-Action Extension provides the Requesting Parties until April 30, 2013 to comply with paragraph 6(b)(1) of the Final Order.

The Commission received the submission of The Electric Reliability Council of Texas, Inc. (“ERCOT”) pursuant to paragraph 6(b)(1) of the Final Order, which included

(1) Memorandum of Outside Counsel entitled “Legal Basis for Setoffs by Electric Reliability Council of Texas, Inc. as Central Counterparty,” signed by Cadwalader, Wickersham, & Taft, LLC, dated March 20, 2013 and

(2) Officer Certificate signed by Bill Magness, Vice-President, General Counsel & Corporate Secretary, dated March 20, 2013.

ERCOT’s submission has been reviewed and found satisfactory, in that it provides adequate assurances with respect to ERCOT’s set off rights in the event of the bankruptcy of ERCOT’s market participants. Thus, the memorandum is accepted and ERCOT has complied with the condition set forth in paragraph 6(b)(1) of the Final Order.

As discussed with Commission staff, the Memorandum of Outside Counsel and Officer Certificate will be published on the Commission’s website.

Very truly yours,



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Ananda Radhakrishnan  
Director, DCR

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<sup>4</sup> CFTC Letter No. 13-05 (March 29, 2013) (extension of relief provided pursuant to CFTC Letter No. 12-11 (October 11, 2012)).