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Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-50)  
Room 5203  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

**Re: Request for Comments on Regulatory Implementation of the Inflation Reduction Act and Section 6418 of the Code Pursuant to Notice 2022-50**

Dear Sirs and Madams:

Fidelis New Energy, LLC (“Fidelis”) respectfully submits these comments in response to a request from the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) in Notice 2022-50, which solicited comments on certain energy tax provisions in Public Law 117-169, commonly known as the Inflation Reduction Act of 2022 (“IRA”).

Fidelis is an energy transition company driving decarbonization through investments in renewable fuels, low-carbon intensity products, and carbon capture and storage. Using proprietary technology, Fidelis aims to develop, invest, and deliver climate positive and carbon negative infrastructure to reach carbon reduction and climate positive targets. Specifically, Fidelis develops carbon negative sustainable aviation fuel, renewable diesel, renewable naphtha, and clean hydrogen infrastructure. Fidelis also develops and operates CO2 capture, pipelines, sequestration sinks, and infrastructure.

As discussed below, Fidelis provides these comments on certain questions posed regarding the Section 6418 Transfer of Certain Credits provision (also referred to in this comment letter as “Transferability”). We appreciate the opportunity to comment on these issues through this comment letter.

**Request for Comments on Section 6418**

Section 6418 allows taxpayers that are ineligible for the direct pay election under Section 6417 to transfer all or a portion of specified tax credits, for cash, to an unrelated party. One of the main goals of the IRA was to provide liquidity to emerging companies financing large-scale, unique, American-made projects that will support the country’s transition to a clean and decarbonized energy future. Given the traditional challenges associated with funding and liquidity with emerging companies, we believe Congress intended a flexible interpretation of Section 6418, which would in turn create a robust Transferability tax credit market between unrelated buyers and sellers. A clear and adaptable interpretation of the Transferability provision will encourage taxpayers to enter the soon-to-be established Transferability tax credit market.

Clear and flexible guidance is even more important here given that the Transferability provision is an unprecedented attempt to provide liquidity to taxpayers who may be otherwise unable to use the federal income tax credits. Fidelis believes the only way to realize Congressional

intent is through a robust transfer market with multiple buyers and sellers of credits. Such a robust transfer market will require that the IRS and Treasury Department provide administrable, clear, and flexible guidance. With the laudable policy goal of providing liquidity to these otherwise unmonetizable tax credits in mind, Fidelis provides the following specific comments to the questions posed in Notice 2022-50.

### Section 3.02 Transfer of Certain Credits (§ 6418)

*Section 3.02(4) – What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer’s eligibility to claim the credit?*

Fidelis strongly believes that excessive parameters or limitations on a transferee taxpayer’s eligibility to claim the transferred credit are not necessary. The statute itself provides restrictions that would otherwise prevent a taxpayer from transferring a credit under the Transferability provision. We do not believe additional parameters or limitations in being eligible for the credit are necessary. As noted above, the IRS and Treasury Department should provide clear and flexible rules since taxpayers may not enter the nascent market without them.

The rules and guidance can be flexible here because many of the tricky questions about implementing Transferability will become clearer once a market has been established. The main concerns about implementing the Transferability provision are likely to be concerns handled through private parties via contract law. The IRS and Treasury Department should not be overly concerned with the bargain that two unrelated parties negotiate over when Congress blessed and encouraged these types of arrangements in hopes of providing a relatively easy way to monetize such tax credits.

Furthermore, overly prescriptive rules designed to protect the interests of the fisc are not necessary. We believe that the market for these credits will be filled with sophisticated taxpayers and transferees with sophisticated tax advisors. Although unscrupulous participants might attempt to participate in the market, it seems unlikely to be a main concern given the 20% increase in tax for excessive credit transfers and the other general penalties and additions to tax imposed by the Code for improper transactions. Put differently, the IRS and Treasury Department should not focus on worst case scenarios but should instead focus on providing workable and un-burdensome rules because the Code already provides sufficient disincentives to discourage bad actors in this market.

Fidelis does request that the Treasury Department and IRS issue guidance on certain aspects of the Transferability provision, including (1) the extent to which an individual taxpayer can claim these credits and whether the new credit transfer provision overrides the passive activity rules in Section 469 and (2) the extent to which a taxpayer can transfer these credits to unrelated off-takers or suppliers for a given project. Although we do not believe that Congress intended to limit the Transferability provisions under the passive activity rules or in the context of unrelated service providers, we note that such uncertainty exists without further guidance. Making clear that these potential transferee taxpayers can claim a transferred credit without limitation will stimulate demand and make the market more efficient for taxpayers seeking to transfer eligible credits.

*Section 3.02(8) – For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?*

Consistent with the discussion above, Fidelis strongly believes that the IRS and Treasury Department should minimize the amount of documentation required by the IRS as a condition or, prior to, or after any transfer of credit under the Transferability provision. As noted above, it is clear that a flexible interpretation is necessary to create a robust Transferability market.

Accordingly, Fidelis would encourage a simplified information reporting in the form of a signed statement, signed under penalties of perjury by both the transferee and the transferor and attached to both taxpayer's tax returns indicating the name and TIN of the transferor and transferee of the credit and the type of credit transferred would be sufficient additional information to prevent duplication, fraud, improper payments, or excessive payments for purposes of Section 6418(g)(1). Fidelis would also encourage a presumption that the signed statement described in the preceding paragraph would be deemed to satisfy the reasonable cause standard in Section 6418(g)(2)(B).

Clear guidance that such a statement will be deemed to satisfy the Transferability requirements in this section should create certainty in the markets and simplify the closing documents needed for the tax credit transfer agreements. Such a statement would be similar to how withholding affidavits are commonly used in many corporate transactions under Section 1445, providing certainty for buyers and sellers about the FIRPTA consequences of a given transaction. In this case, a sample affidavit (providing, for example, name, address, TIN, location of facility, placed in service date, type of credit, and amount) would be very welcome in this new market.

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Thank you for the opportunity to submit these comments. We welcome the opportunity to meet with the Treasury Department and the IRS to discuss these issues in greater detail and to answer any questions that you may have.

Respectfully submitted,

Fidelis New Energy, LLC