

United States Senate

WASHINGTON, DC 20510

January 20, 2016

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Comments on Swap Dealer *De Minimis* Exception Preliminary Report

Dear Mr. Kirkpatrick:

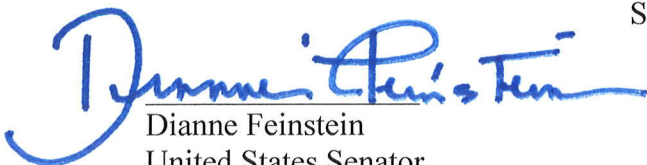
We urge you not to weaken the threshold for swap dealer registration. We are concerned that any weakening could negatively impact oversight of the U.S. energy market.

Prior to the publication of the Commodity Futures Trading Commission's (CFTC) Swap Dealer *De Minimis* Exception Preliminary Report (Preliminary Report), we twice wrote to the CFTC to voice our concerns and ask critical questions about determining the appropriate threshold for exemption from registration with the CFTC. However, these concerns were not considered in the Preliminary Report. We have attached our past letters as we still believe that these questions are critical to understanding the impact of exempting some participants from additional oversight and registration.

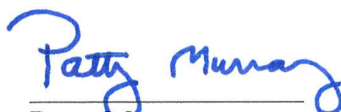
The Western Energy Crisis made clear the importance of adequate regulation and oversight of energy markets. The Preliminary Report did not provide sufficient information to establish that weakening the rules would provide adequate oversight in the energy market. Therefore, we urge you not to leave the threshold at \$8 billion or raise it higher.


Please consider these comments in any further actions on this issue.

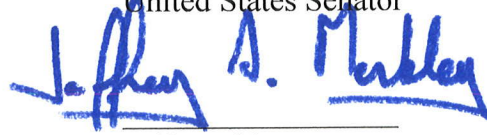
Sincerely,

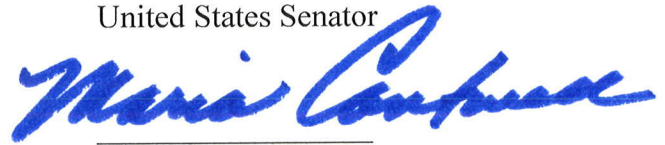

Dianne Feinstein
United States Senator


Ron Wyden
United States Senator


Patty Murray
United States Senator


Barbara Boxer
United States Senator


Jeff Merkley
United States Senator


Maria Cantwell
United States Senator

Enclosures (2)

United States Senate

WASHINGTON, DC 20510

July 23, 2015

The Honorable Timothy Massad
Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Massad:

Two years ago, we voiced concern that the de minimis threshold for swap dealer registration may be so high that a significant portion of the U.S. energy markets is exempt from appropriate regulation by the Commodity Futures Trading Commission (CFTC). Today, we write to reiterate our concerns and to ask you to respond in writing, describing how you will ensure that consumers and the energy markets are adequately protected.

The Western Energy Crisis made clear the importance of adequate regulation and oversight of energy markets. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) included provisions to significantly improve oversight of the energy swaps markets, including through the requirement that “swap dealers” register with the CFTC and comply with enhanced regulation. However, an exemption was provided for entities who only engage “in a de minimis quantity of swaps dealing” (7 U.S.C. § 1a(49)(D)).

In May 2013, we expressed concerns that the de minimis threshold could be so high that more than a truly de minimis portion of energy swaps activity would be exempt from oversight. Establishing a de minimis threshold should exempt only a negligible portion of a market from new regulations.

According to the Bank for International Settlements, commodity swaps, which include energy products, account for about a quarter of one percent of the global swaps market. Considering that energy swaps are an even smaller percentage of the global market, we want to ensure that the de minimis threshold is accurately and adequately set to provide for proper oversight. For example, what may be considered de minimis in the \$505.454 trillion interest rate swap market could be substantial in the \$1.868 trillion commodity swap market, or the energy portion of the market. The CFTC should ensure that the de minimis threshold is appropriate for all categories and types of swaps activities, so that significant

portions of industries that make up a smaller percentage of the overall market are not functionally exempt from oversight.

The de minimis level is currently set at \$8 billion, and it will automatically be reduced to \$3 billion at the end of 2017. This is a significant increase from the initial proposed threshold of \$100 million. It is striking that in response to specific comments from industry, the de minimis threshold was increased 3,000 percent from the initial proposal and increased 8,000 percent for the phase-in period. We believe it is important that the \$8 billion threshold automatically be reduced to \$3 billion as planned and that the CFTC examine whether it should be lowered further in light of the economic impact that manipulation can have in markets, including energy and commodities markets.

The CFTC should clearly demonstrate that the current de minimis threshold is truly de minimis and low enough to ensure that all portions of the market receive adequate oversight. We previously requested that the CFTC closely analyze registration by energy swap dealers and propose solutions for oversight of the market and dealers as soon as possible. Over two years have passed since we sent that letter, with no response. Therefore, we would like to reiterate and update a number of our requests from two years ago:

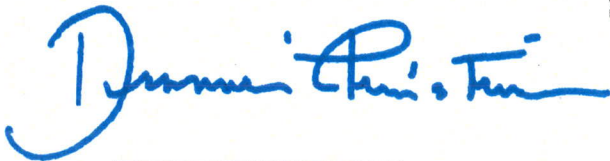
- First, please share any available data on the portion of energy swaps trading that is currently being executed by provisionally registered swap dealers and the percentage of energy swaps trading conducted by provisionally registered swap dealers if the de minimis exemption were to be lowered to \$3 billion and if it were to be lowered to \$100 million.
- Second, please provide an assessment of how many energy swap dealers have registered with the CFTC, how many are claiming an exemption from CFTC registration due to the de minimis threshold level, and how this information would change if the de minimis threshold were to be lowered to \$3 billion and if it were to be lowered to \$100 million. We are also interested in any further information regarding how the de minimis threshold affects the CFTC's ability to prevent manipulation, fraud, and excessive speculation in energy swaps markets.
- Finally, we are interested in additional details regarding the accuracy of the Quarterly Report on Bank Trading and Derivatives Activities issued by the Office of the Comptroller of the Currency as the measurement of the domestic market for swaps, which is the basis for calculating the de minimis threshold in the final rule.

Recent news reports indicate that the CFTC will miss its deadline for releasing its own study on the de minimis threshold. Five years will have passed once the automatic reduction to \$3 billion occurs, and any further change to the threshold would require additional rulemaking. Therefore, we urge you to include consideration of the concerns and questions we have raised as you move forward with analysis of the threshold.

We have appreciated the CFTC's efforts to finalize rules required by the Dodd-Frank Act in a timely manner. We strongly believe that thorough examination of the swap dealer de minimis threshold and the ability of the CFTC to provide adequate oversight of U.S. energy markets is essential to protecting the market and consumers against manipulation, excessive speculation, and systemic risk.

Thank you for your consideration of our request for additional information. We look forward to your timely response.

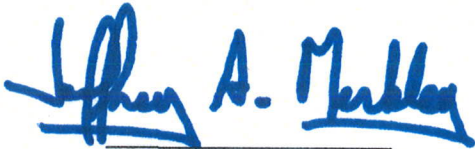
Sincerely,



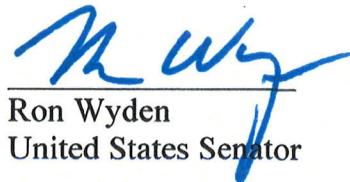
Dianne Feinstein
United States Senator



Maria Cantwell
United States Senator



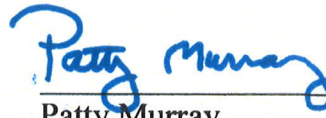
Jeff Merkley
United States Senator



Ron Wyden
United States Senator



Barbara Boxer
United States Senator



Patty Murray
United States Senator

United States Senate

WASHINGTON, DC 20510

May 20, 2013

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler:

We are writing to express our alarm that swap dealers active in American energy markets are not registering with the Commodity Futures Trading Commission (CFTC), violating both the letter and intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203). While we deeply appreciate your strong leadership implementing this important law, we are concerned that CFTC is failing to bring energy swap dealers under its oversight, which limits CFTC's ability to monitor for manipulation, excessive speculation, and systemic risk in energy markets. We request that CFTC closely analyze this matter and propose solutions that will bring oversight to energy swap dealers as soon as possible.

During the Western Energy Crisis, our nation learned that energy markets that lack real-time market oversight and effective regulation allow traders to rob from American citizens, disrupt economic activity, and darken cities. The crisis cost consumers an estimated \$45 billion in higher electricity costs, lost business due to blackouts, and a slowdown in economic growth. And the repercussions continue to be felt, as Federal courts and the Federal Energy Regulatory Commission are still adjudicating multibillion dollar cases between the buyers and sellers active in the market during the crisis.

As a result of the Western Energy Crisis, we fought for more than a decade to enact provisions in the Dodd-Frank Act providing oversight to energy swaps and derivative markets. Specifically, the Dodd-Frank Act brings the swaps market under the oversight of CFTC by requiring "swap dealers" to register and comply with the Commodity Exchange Act. The statute broadly defines "swap dealer" to include any entity that either: (1) "holds itself out as a dealer in swaps," (2) "makes a market in swaps," (3) "regularly enters into swaps with counterparties as an

ordinary course of business for its own account,” or (4) “engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.” Congress directed CFTC to register and regulate all swap dealers, unless the entity “engages in a de minimis quantity of swaps dealing.”

Surprisingly, CFTC concluded that dealing \$8 billion or less annually amounts to a “de minimis quantity of swaps dealing” in its 2012 regulation defining “swap dealer.” CFTC proposed to lower the threshold to \$3 billion in 3-5 years, subject to a series of studies. In your statement in support of this exemption, you stated: “I believe that the final swap dealer definition will encompass the vast majority of swap dealing activity, as Congress had intended.”

We are increasingly concerned that the \$8 billion threshold fails to encompass the vast majority of *energy* swap dealing activity.

CFTC justified the \$8 billion threshold based on the size of financial swap dealers, but CFTC does not appear to have analyzed how much of the energy swap market this threshold would exempt. Bank for International Settlements data show that commodity swaps, which include energy as well as other products, are worth less than half of one percent of the global swaps market. (Interest rate swaps, currency swaps, and credit default swaps account for 91 percent of swaps market value.) If the energy swap market is almost two hundred times smaller than the financial swap market, it stands to reason that the threshold for “de minimis” dealing in energy swaps may be vastly lower than the same threshold in financial swaps markets upon which CFTC based its \$8 billion threshold.

CFTC is also now aware that numerous energy firms have avoided “swap dealer” registration and oversight. Multiple petitions and filings to CFTC by government-owned utilities clearly demonstrate that the overwhelming majority of natural gas and electric swap market counterparties are not registered as swap dealers. Furthermore, CFTC’s preliminary list of registered swap dealers excludes established energy market makers in U.S. energy commodities. For instance, BP, a firm with more than 4,000 traders on which CFTC imposed \$303 million in sanctions for propane market manipulation in 2007, has not registered as a swap dealer or major swaps participant.

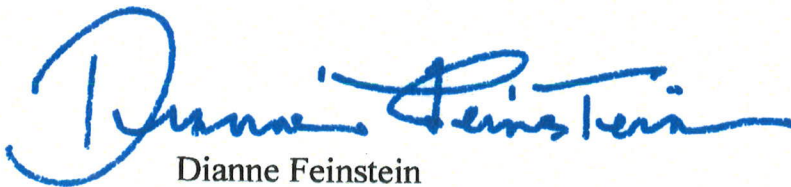
In order to address this matter, we make the following requests.

- We ask CFTC to assess how many energy swap dealers have registered with CFTC and how many energy swap dealers are claiming an exemption from CFTC’s registration requirement.

- We ask CFTC to estimate what portion of energy swaps trading is currently being executed by registered swap dealers. We also ask CFTC to estimate what percentage of energy swaps trading will come under CFTC oversight if the “de minimis” exemption threshold is lowered to \$3 billion.
- We ask CFTC to analyze how the failure of major swap dealers to register with CFTC affects the Commission’s ability to prevent manipulation, fraud, and excessive speculation in energy swap markets; and
- Finally, if these assessments show that CFTC’s definition of “swap dealer” exempts a statistically significant portion of energy swaps traders or energy swaps trading from oversight, we ask CFTC to modify its interpretation of the Dodd-Frank Act’s “swap dealer” definition in order to ensure that the vast majority of energy swaps trading is under the oversight of the Commission.

We know that you share our commitment to increasing transparent and accountability in our nation’s energy markets. We look forward to CFTC’s expeditious response to our request, and its quick action to require that significant energy swap dealers register with the Commission. If you have any questions or concerns regarding this request, please do not hesitate to contact us.

Sincerely yours,



Dianne Feinstein
United States Senator




Ron Wyden
United States Senator




Maria Cantwell
United States Senator



Jeff Merkley
United States Senator



Barbara Boxer
United States Senator



Patty Murray
United States Senator