

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.

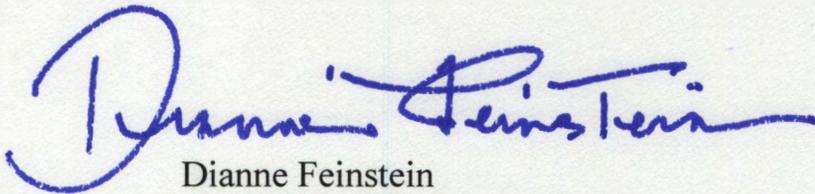
In order to address this matter, we make the following requests.

- 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.

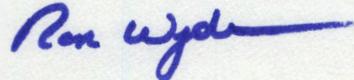
- We ask CFTC to estimate what portion of energy swaps trading is currently being executed by registered swap dealers. We also ask CFTC to estimate what percentage of energy swaps trading will come under CFTC oversight if the “de minimis” exemption threshold is lowered to \$3 billion.
- We ask CFTC to 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.

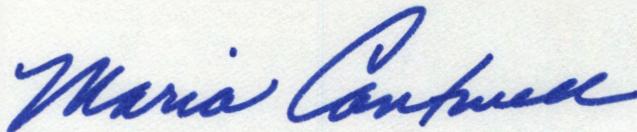
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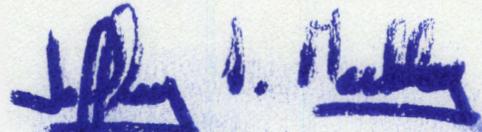
Dianne Feinstein  
United States Senator



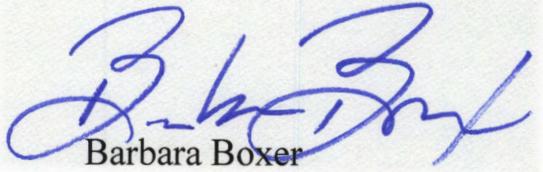
Ron Wyden  
United States Senator



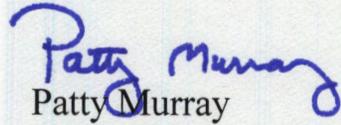
Maria Cantwell  
United States Senator



Jeff Merkley  
United States Senator



Barbara Boxer  
United States Senator



Patty Murray  
United States Senator