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