U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of Swap Dealer and Intermediary Oversight

Joshua B. Sterling
Director

Re: No-Action Position for Excluding Certain Commodity Swaps from Major Swap Participant Registration Threshold Calculation of an Insured Depository Institution

Ladies and Gentlemen:

This letter is issued by the Division of Swap Dealer and Intermediary Oversight ("**DSIO**") of the Commodity Futures Trading Commission ("**Commission**" or "**CFTC**") in response to a request from an insured depository institution ("**IDI**"), "X".[1] "X" requests conditional, time-limited no-action relief from the requirement to include certain swaps when calculating whether it exceeds a certain threshold specified by Commission regulations and thereby triggering a requirement to register with the Commission as a major swap participant ("**MSP**").

I. Regulatory Background

Pursuant to the requirements of section 1a(33) of the Commodity Exchange Act ("**CEA**"), Commission regulation 1.3 further defines certain terms, including the term "major swap participant" (the "**MSP Definition**"). Paragraph (1) of the MSP Definition requires registration as an MSP of any person that is not a swap dealer and meets or exceeds one or more thresholds of swap activity set forth in the rule. One such threshold in paragraph (1)(ii)(A) states in relevant part that any person will be an MSP if such person "maintains a substantial position in swaps for any of the major swap categories, excluding … positions held for hedging or mitigating commercial risk."[2]

The "major swap categories" for purposes of the MSP Definition are defined in Commission regulation 1.3 as rate swaps, credit swaps, equity swaps, and other commodity swaps.[3] As relevant for this letter, a "substantial position" in "other

[1] Letter from "X" dated March 17, 2020.

[2] 17 CFR 1.3, definition of MSP, paragraph (1)(ii)(A).

[3] 17 CFR 1.3, definition of "Category of swaps; major swap category."

commodity swaps" is defined in Commission regulation 1.3 to mean (a) $1 billion in daily average aggregate uncollateralized outward exposure; or (b) $2 billion in (i) daily averaged aggregate uncollateralized outward exposure, plus (ii) daily average aggregate potential outward exposure.[4] "Aggregate uncollateralized outward exposure" ("**AUOE**") is calculated with respect to each swap counterparty in a given major swap category by:

> [D]etermin[ing] the dollar value of the aggregate current exposure arising from each of its swap positions with negative value (subject to [permitted netting]) in that major category by marking-to-market using industry standard practices; and deduct[ing] from that dollar amount the aggregate value of the collateral the person has posted with respect to the swap positions. The aggregate uncollateralized outward exposure shall be the sum of those uncollateralized amounts across all of the person's swap counterparties in the applicable major category.[5]

"Current exposure" under the AUOE calculation is based on daily averages over all business days (as of close) in a fiscal quarter.[6]

II. Summary of Request for Relief

Based on the request for relief and other communications with "X" and its counsel, we understand the relevant facts to be as follows. Neither "X", nor any affiliate of "X", is currently registered with the CFTC as a swap dealer. However, as part of its commercial banking business "X" enters into swaps with loan customers to permit such customers to hedge or mitigate the risks of such loans. The majority of swaps "X" enters into with commercial loan customers qualify for the exception from counting such swaps toward the de minimis swap dealer registration threshold for swaps entered into by an IDI with a customer in connection with the originating a loan with that customer.[7]

As an IDI, "X" offers, through its commercial banking business, a wide range of financing solutions to domestic commercial end-user customers that are oil and natural gas exploration and production ("**E&P**") companies. These E&P customers are small, medium and large oil and natural gas E&P companies with footprints across many of the oil and natural gas producing regions of the United States that rely on "X" as a source of funds for their operations. Additionally, "X" offers risk-management products (*e.g.*, commodity swaps) to those E&P customers to hedge the volatility of commodity prices inherent to oil and natural gas production and exploration. These ancillary services "X" offers to its customers provide the E&P companies with the certainty of future cash-

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[4] 17 CFR 1.3, definition of "substantial exposure."

[5] *Id.*

[6] *See* 17 CFR 1.3, definition of "major swap participant," paragraph 3.

[7] 17 CFR 1.3, definition of "swap dealer," paragraph 5.

flows in volatile markets in a cost-effective manner. Additionally, the hedging of the collateral (hydrocarbon reserves), which secure the commodity swaps and the loans offered by "X", can allow the E&P customers greater loan amounts that they can use to help grow their businesses and support the U.S. workforce, while increasing the certainty of debt repayment to "X".[8]

"X" does not post margin or otherwise provide collateral to E&P customers to secure "X"'s obligations under such swaps. Thus, "X"'s AUOE, without any deduction for collateral posted by "X", is driven by market conditions, specifically commodity prices. As commodity prices decline, "X"'s AUOE increases correspondingly.

The unprecedented drop in global demand for crude oil as a result of the COVID-19 pandemic[9] followed closely by the OPEC + supply cut disagreement[10] have resulted in the price of crude oil decreasing by approximately 48% year to date.[11] Given the nature of "X"'s lending and risk management business with E&P customers, the volatility and low oil prices associated with the above events have led to an unprecedented increase in "X"'s AUOE to the point where it is highly likely "X" will exceed the MSP registration threshold by the end of the next calendar quarter.

"X" notes that commodity swaps that are entered into in connection with originating loans to E&P customers are risk-reducing and collateralized by the underlying loan collateral (*i.e.*, hydrocarbon reserves). Such commodity swaps benefit the commercial end-user customer and "X" by protecting the underlying assets from market risk and reducing credit risk of the commercial end-user to "X". In an environment of low energy prices, such commodity swaps also provide customers with steady cash-flows. "X" wants to continue to serve the risk management needs of domestic oil and natural gas E&P companies in a period of significant stress to the U.S. energy markets.[12]

"X" represents that its AUOE for each quarter in 2019, a typical year, never exceeded 40% of the AUOE registration threshold. Given the historic level of "X"'s AUOE, a

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[8] In order to ensure that it can offer competitively priced swaps to its customers as described above, "X" generally manages the risk exposures arising from each of its customer-facing swaps by entering into offsetting swaps with registered swap dealers or exchange traded futures.

[9] *See* "WHO Responding to a Cluster of Pneumonia Cases in Wuhan," World Health Organization (Jan. 4, 2020), *available at* https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen.

[10] *See* "Oil Prices Plunge After Russia-Saudi Split," The Wall Street Journal (Mar. 6, 2020), *available at* https://www.wsj.com/articles/saudi-russian-deadlock-pushes-brent-crude-to-2-year-low-11583500044

[11] Crude Oil WTI (NYM $/bbl) Front Month contract price on March 13, 2020 closed at $31.73 compared to $61.06 on December 31, 2019.

[12] *See* "Russia Takes Aim at U.S. Shale Oil Producers," The Wall Street Journal, (Mar. 13, 2020), *available at* https://www.wsj.com/articles/russia-takes-aim-at-u-s-shale-oil-producers-11584052675

return of relevant commodity prices to previously trending levels[13] would permit "X" to de-register as an MSP, but not before incurring the costs of compliance and disruptions to trading relationships that will occur as a consequence of registration.

In the alternative, conditional, time-limited no-action relief from the MSP registration calculation would allow "X" to continue helping its E&P customers weather volatile market conditions without disrupting current lending and risk management activities by reducing customer commodity swap activity and/or redirecting resources to MSP registration efforts.

Thus, "X" requests relief that would permit "X" to exclude certain commodity swaps from its AUOE calculation until at least September 30, 2020. Assuming that the price disruption is temporary, such relief would allow "X" to avoid the costs and disruptions to customer relationships that would be entailed in MSP registration and compliance. "X" recognizes, however, that if the unprecedented commodity prices that led to "X" approaching the MSP registration threshold were to continue beyond the period of requested relief and any extension, "X" would register as an MSP or be required to make other adjustments to its business to reduce its AUOE below the applicable registration threshold.

III. DSIO No-Action Position

Based on the foregoing and the representations made by "X", DSIO believes that a no-action position is warranted. Specifically, DSIO recognizes the unprecedented nature of the decline in commodity prices that have brought "X" to the verge of the MSP registration threshold. Accordingly, for the period from the date of this letter to and including September 30, 2020, DSIO will not recommend that the Commission take an enforcement action against "X" if it fails to include any swap in its AUOE calculation that meets the following conditions (the "**Excluded Swaps**"):

1. The swap is excluded from counting towards the swap dealer *de minimis* threshold pursuant to paragraph (4)(i)(C) of the definition of "swap dealer" in Commission regulation 1.3, or from being considered swap dealing activity pursuant to paragraph (5) of the definition of "swap dealer" in Commission regulation 1.3, each of which requires such swap to be entered into by "X" with a customer in connection with originating a loan to that same customer; and

[13] For example, the price of the WTI front month contract, which as of the date of this letter is below $30, has not been below $40 since 2016 and before that since 2009. *See* https://markets.ft.com/data/commodities/tearsheet/summary?c=WTI+Crude+Oil.
Further, the average price of WTI year-to-date and for the last five years is shown below:

2015	2016	2017	2018	2019	2020
$48.72	$43.58	$50.84	$64.90	$57.05	$50.73

See https://www.macrotrends.net/2516/wti-crude-oil-prices-10-year-daily-chart.

2. The commodity underlying the swap is crude oil, natural gas, or natural gas liquids.

DSIO may extend the period of relief for additional quarterly periods depending on prevailing commodity market conditions. The relief provided by this letter is subject to the condition that "X" provides DSIO with its AUOE calculation including and excluding the Excluded Swaps:

(a) As of the end of each calendar quarter during the period of relief until its quarter-end AUOE including the Excluded Swaps exceeds the MSP registration threshold, if ever; and

(b) As of the end of each calendar month thereafter for the remainder of the period of relief.

IV. Conclusion

This letter, and the positions taken herein, represent the views of DSIO only, and does not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to DSIO. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Finally, as with all staff letters, DSIO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion. Specifically with respect to this letter, DSIO retains the authority to, in consultation with "X", revisit the relief to the extent price activity and trends in the relevant commodity markets become more stable for a sustained period.

If you have any questions concerning this correspondence, please contact Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or ffisanich@cftc.gov.

Sincerely,

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Joshua B. Sterling
Director
Division of Swap Dealer and Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

7 U.S.C. § 1a(33)
17 C.F.R. 1.3

Submitted Via Certified Mail and Electronically (*dsioletters@cftc.gov*)

March 17, 2020

Mr. Joshua Sterling
Director
Division of Swap Dealer and
Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Request for Division of Swap Dealer and Intermediary Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Excluding Certain Loan-Related Commodity Swaps from Certain Major Swap Participant Calculations

Dear Director Sterling:

As discussed with the staff of the Division of Swap Dealer and Intermediary Oversight (the "**Division**" or "**DSIO**") of the Commodity Futures Trading Commission (the "**CFTC**" or "**Commission**"), "X", an insured depository institution ("**IDI**") and a subsidiary of "Y",[1] respectfully requests conditional, time-limited no-action relief from DSIO staff from including certain loan-related swaps in the "Other Commodity" asset class in the calculation of "Aggregate Uncollateralized Outward Exposure" in Paragraph 2 of the definition of "Substantial Position" in CFTC Regulation 1.3, as discussed in more detail below.[2] This request reflects the impacts of the COVID-19 outbreak and the OPEC+ supply cut disagreement on the commodities markets and the resulting impacts on certain calculations that could trigger registration as a major swap participant ("**MSP**"), which would, in turn, disrupt "X's" lending and risk management services to U.S. commercial end-user customers.

"X" is an IDI that offers, through its commercial banking business, a wide range of financing solutions to domestic commercial end-user customers that are oil and natural gas exploration and production ("**E&P**") companies. These E&P customers are small, medium and large oil and natural gas E&P companies with footprints across many of the oil and natural gas producing regions of the United States that rely on "X" as a source of funds for their operations.

1 [REDACTED]

2 *See* 17 C.F.R. 1.3, Substantial Position, ¶2; Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," "and "Eligible Contract Participant," 77 Fed. Reg. 30,596 (May 23, 2012).

Additionally, "X" offers risk-management products (*e.g.*, commodity swaps) to those E&P customers to hedge the volatility of commodity prices inherent to oil and natural gas production and exploration. These ancillary services "X" offers to its customers provide the E&P companies with the certainty of future cash-flows in volatile markets in a cost-effective manner. Additionally, the hedging of the collateral (reserves), which secure the commodity swaps and the loans offered by "X", can allow the E&P customers greater loan amounts that they can use to help grow their businesses and create U.S. jobs, while increasing the certainty of debt repayment to "X".[3]

I. Discussion

A. Regulatory Background

The definition of "Major Swap Participant" in CFTC Regulation 1.3, which further defines Section 1a(33) of the Commodity Exchange Act ("**CEA**"), sets forth three alternative statutory tests that determine whether a person that is not a swap dealer or security-based swap dealer is an MSP and therefore required to register as such:

1. The person maintains a "substantial position" in swaps or security-based swaps for any of the major swap categories, excluding positions held to hedge or mitigate commercial risk and certain hedging positions held by an employee benefit plan (as defined in ERISA) ("**Substantial Position Test**");

2. The person has outstanding swaps that create "substantial counterparty exposure" that could have serious adverse effects on the financial stability of the United States banking system or financial markets ("**Substantial Counterparty Exposure Test**"); or
3. The person is a "financial entity" that is "highly leveraged," is not subject to capital requirements by a Federal banking entity and has a "substantial position in one or more of the major swap categories ("**Highly Leveraged Test**").[4]

We focus on the Substantial Position Test[5] which provides that a person has a "Substantial Position" with respect to the Other Commodity swap category if it has: (1) "Aggregate Uncollateralized Outward Exposure" greater than $1 billion ("**Test 1**"); or (2) "Aggregate Uncollateralized Outward Exposure" plus "Potential Future Exposure" greater than $2 billion ("**Test 2**").[6] The exposures under Test 1 and Test 2 are based on daily averages

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3 In order to ensure that it can offer competitively priced swaps to its customers as described above, "X" generally manages the risk exposures arising from each of its customer-facing swaps by entering into offsetting swaps with registered swap dealers or exchange traded futures.

4 *See* 17 C.F.R. 1.3, Major Swap Participant, ¶1.

5 The Substantial Counterparty Exposure Test and the Highly Leveraged Test are not the subject of this request for relief.

6 *See* 17 C.F.R. 1.3, Substantial Position, ¶1(iv).

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over all business days (as of close) in a fiscal quarter.[7] If a person exceeds the thresholds in Test 1 or Test 2 such person must register as an MSP within two months,[8] subject to a one fiscal quarter re-evaluation period if the calculation does not exceed the threshold by more than twenty percent for the first breached quarter.[9]

The relief sought in this request is solely focused on the calculation of Aggregate Uncollateralized Outward Exposure for the purposes of the definition of Substantial Position.[10] To calculate the Aggregate Uncollateralized Outward Exposure, a person determines the value of its swap positions with negative value in each swap category with respect to each counterparty by marking-to-market using standard industry practices and applying netting provisions. The person then deducts from that amount the aggregate collateral it posted with respect to the swap positions.[11] It should be noted that assets pledged as loan collateral and that secure such swaps are not permitted to be deducted or otherwise accounted for in the Aggregate Uncollateralized Outward Exposure calculation. Accordingly, because "X" does not post collateral to its E&P counterparties with respect to Other Commodity swaps, the Aggregate Uncollateralized Outward Exposure is driven by market conditions, specifically commodity prices, and as commodity prices decline, "X's" Aggregate Uncollateralized Outward Exposure for Other Commodity swaps correspondingly increases.

The calculations set forth under the MSP definition, including the Aggregate Uncollateralized Outward Exposure calculation, do not provide an exclusion for swaps that are entered into by IDIs with a customer in connection with originating a loan with that customer; however, such swaps are excluded from counting toward the swap dealer *de minimis* threshold calculation set forth in Paragraph 4(i)(A) of the definition of "Swap Dealer" in CFTC

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7 *See* 17 C.F.R. 1.3, Major Swap Participant, ¶3.

8 *See id.*

9 *See* 17 C.F.R. 1.3, Major Swap Participant, ¶4.

10 We are not aware of prior publicly available letters issued by Commission staff in response to similar circumstances, as the circumstances and U.S. market impacts that are the subject of this request are unprecedented. However, Commission staff has previously issued no-action relief to address market uncertainty, as well as for not including certain swaps in the MSP calculations. *See, e.g.*, CFTC Letter No. 19-08, No-Action Relief in Connection With Certain Previously Granted Commission Determinations and Exemptions, in Order to Account for the Anticipated Withdrawal of the United Kingdom From the European Union (Apr. 5, 2019); CFTC Letter 19-09, Extension to UK Entities of Regulatory Relief Previously Granted to European Union Entities in CFTC No-Action Letters: 12-70, 13-45, 17-64, 17-66, and 17-67 (Apr. 5, 2019); CFTC Letter No. 12-20, Time-Limited No-Action Relief: Swaps in Agricultural and Exempt Commodities Not to be Considered in Calculating Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant (Oct. 12, 2012); and CFTC Letter 12-21, Time Limited No-action Relief: Foreign Exchange Swaps and Foreign Exchange Forwards Not to be Considered in Calculating Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception or in Calculating Substantial Position in Swaps or Substantial Counterparty Exposure for Purposes of the Major Swap Participant Definition; Time-Limited No-action Relief for persons that meet the definitions of Commodity Pool Operators and Commodity Trading Advisors Solely as a Result of their Foreign Exchange Swap and Foreign Exchange Forward Activities (Oct. 12, 2012).

11 *See* 17 C.F.R. 1.3, Substantial Position, ¶2.

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Regulation 1.3.[12] The definition of "Swap Dealer" in CFTC Regulation 1.3, which further defines Section 1a(49) of the CEA, provides that IDIs may exclude certain swaps that are executed in connection with originating loans to customers from counting towards the $8 billion swap dealer *de minimis* threshold. More specifically, Paragraph (4)(i)(C) of the definition of "Swap Dealer" in CFTC Regulation 1.3 provides that certain IDI swaps entered into with a customer in connection with originating a loan to that customer, subject to the conditions set forth in that section, may be excluded solely for the purpose of determining whether an IDI has exceeded the $8 billion aggregate gross notional amount threshold set forth in Paragraph (4)(i)(A) of the definition of "Swap Dealer" in CFTC Regulation 1.3.[13] Additionally, Paragraph (5) of the definition of "Swap Dealer" in CFTC Regulation 1.3 provides that swaps entered into by an IDI with a customer in connection with originating a loan with that customer shall not be considered in determining whether the IDI is a swap dealer, subject to the conditions set forth in that paragraph.[14]

B. Impacts of COVID-19 and OPEC+ Supply Cut Disagreement on MSP Calculation

As discussed above, the volatility in the commodity markets, specifically, a significant decrease in crude oil prices, corresponds to an increase in "X's" Aggregate Uncollateralized Outward Exposure related to client commodity swaps. The unprecedented drop in global demand for crude oil as a result of the COVID-19 pandemic[15] followed closely by the OPEC + supply cut disagreement[16] have resulted in the price of crude oil decreasing by approximately 48% year to date.[17] Given the nature of "X's" lending and risk management business with E&P customers, the volatility and low oil prices associated with the above events have led to an increased Aggregate Uncollateralized Outward Exposure calculation because such calculation (1) is an average calculation of business days in a fiscal quarter; (2) does not consider that the swaps are entered into by "X" in connection with originating the loan to the E&P customer; and (3) does not consider that the swaps are collateralized by the collateral posted by the E&P customer to "X" in connection with the loan.[18]

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[12] *See* 17 C.F.R. 1.3, Swap Dealer, ¶4(i)(A).

[13] *See* 17 C.F.R. 1.3, Swap Dealer, ¶4(i)(C); *see also*, De Minimis Exception to the Swap Dealer Definition—Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers, 84 Fed. Reg. 12,450 (Apr. 1, 2019).

[14] *See* 17 C.F.R. 1.3, Swap Dealer, ¶5.

[15] *See* "WHO Responding to a Cluster of Pneumonia Cases in Wuhan," World Health Organization (Jan. 4, 2020), *available at* https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen.

[16] *See* "Oil Prices Plunge After Russia-Saudi Split," The Wall Street Journal (Mar. 6, 2020), *available at* https://www.wsj.com/articles/saudi-russian-deadlock-pushes-brent-crude-to-2-year-low-11583500044

[17] Crude Oil WTI (NYM $/bbl) Front Month contract price on March 13, 2020 closed at $31.73 compared to $61.06 on December 31, 2019.

[18] "X" also offers certain E&P customers natural gas swaps to hedge their related natural gas price risks. Natural gas has also seen a decrease in price during this same period with the Generic 1st 'NG' Future (NYM $/MMBtu) contract price on March 13, 2020 closing at $1.869 compared to $2.189 on December 31, 2019, a 15% decrease.

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C. Impacts on Commercial End User Customers and "X's" Business

Commodity swaps that are entered into in connection with originating loans to E&P customers are risk-reducing and collateralized by the underlying loan collateral (*i.e.*, hydrocarbons). Such commodity swaps benefit the commercial end-user customer and "X" by protecting the underlying assets from market risk and reducing credit risk of the commercial end-user to "X". In an environment of low energy prices, such commodity swaps also provide customers with steady cash-flows. "X" wants to continue to serve the risk management needs of domestic oil and natural gas E&P companies in a period of significant stress to the U.S. energy markets.[19] Further, the COVID-19 pandemic is causing IDIs to adapt to a new reality of remote work, virtual meetings and rotation of employees in critical functions supporting lending and ancillary swap dealing activity, with significant uncertainty as to the scope or duration of such arrangements. Embarking on a large implementation project, such as registration as an MSP, would be particularly challenging in this environment and would detract resources from supporting the needs of clients during a time when their IDI's role is critically important.

Conditional, time-limited no-action relief from the MSP registration calculation that recognizes the unique nature of the IDI relationship with E&P customers would allow "X" to continue helping its E&P customers weather volatile market conditions without disrupting current lending and risk management activities by reducing customer commodity swap activity and/or redirecting resources to MSP registration efforts.

II. Request for Relief

A. Scope and Duration of Relief Requested

The scope of relief requested in this section is time-limited and subject to the conditions set forth below. "X" requests relief beginning on the date of the issuance of a letter by DSIO and continuing through at least September 30, 2020.[20] The specific CFTC regulation from which this request seeks relief is the definition of "Aggregate Uncollateralized Outward Exposure" in Paragraph (2) of the definition of "Substantial Position" in CFTC Regulation 1.3. The definitions of "Substantial Position" and "Aggregate Uncollateralized Outward Exposure" are referenced in Paragraphs (1)(ii)(A) and (6)(ii)(B) of the definition of "Major Swap Participant" in CFTC Regulation 1.3 for purposes of determining MSP registration requirements. The related CEA section is 1a(33).

B. Request for Relief for Not Including Certain Loan-Related Other Commodity Swaps in the Aggregate Uncollateralized Outward Exposure Calculation

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[19] *See* "Russia Takes Aim at U.S. Shale Oil Producers," The Wall Street Journal, (Mar. 13, 2020), *available at* https://www.wsj.com/articles/russia-takes-aim-at-u-s-shale-oil-producers-11584052675

[20] "X" believes that providing such relief through at least September 30, 2020 would provide a reasonable amount of time to account for commodity market volatility discussed herein and the strained and redirected resources resulting from the COVID-19 pandemic.

For the reasons discussed in this letter, we request that DSIO staff grant no-action relief to "X" through at least September 30, 2020 to confirm that DSIO will not recommend enforcement action to the Commission against "X" for not including in the calculation of Aggregate Uncollateralized Outward Exposure a swap in the Other Commodity asset class that meets the following conditions:

1. The swap is:

    a. Excluded from counting towards the swap dealer *de minimis* threshold pursuant to Paragraph (4)(i)(C) of the definition of "Swap Dealer" in CFTC Regulation 1.3; and/or

    b. Excluded from being considered swap dealing activity pursuant to Paragraph (5) of the definition of "Swap Dealer" in CFTC Regulation 1.3;

2. The swap is entered into by "X" with a customer in connection with originating a loan to that same customer; and

3. The commodity underlying the swap is crude oil, natural gas or natural gas liquids.

III. Conclusion

As a result of the COVID-19 pandemic's impact on the demand for energy commodities and the OPEC+ supply cut disagreement, U.S. small, medium and large E&P companies are under stress and require access to funding and risk management solutions offered by "X". Accordingly, without relief from DSIO staff from including certain loan-related swaps in the Other Commodity swap category in the Aggregate Uncollateralized Outward Exposure calculation, "X" may need to take measures to curtail its risk management services and/or redirect resources to register as an MSP, which could adversely impact its ability to meet the lending and risk management needs of domestic E&P customers, which would in turn lead to disruption to those E&P customers' businesses.

* * * *

Thank you for your consideration of this very important issue to "X" and its E&P customers. We look forward to discussing any part of this request with DSIO staff. Please contact the undersigned at [REDACTED] or [REDACTED] with any questions or concerns.

Yours sincerely,

[REDACTED]

cc: Frank Fisanich, Chief Counsel, DSIO, CFTC
Amanda Olear, Acting Deputy Director, Registration and Compliance, DSIO, CFTC