Commodity Markets Council
1300 L St., N.W. Suite 1020
Washington, D.C. 20005
Tel 202-842-0400
Fax 202-789-7223
www.commoditymkts.org

May 15, 2017

Via Electronic Submission

Chris Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: **Proposed Rule: Capital Requirements of Swap Dealers and Major Swap Participants (RIN 3038-AD54)**

Dear Mr. Kirkpatrick:

The Commodity Markets Council ("CMC") appreciates the opportunity to submit this comment letter in response to the U.S. Commodity Futures Trading Commission's (the "CFTC" or "Commission") Proposed Rulemaking on Capital Requirements of Swap Dealers and Major Swap Participants ("Capital Rule").[1]

CMC is a trade association that brings together exchanges and their industry counterparts. Its members include commercial end-users which utilize the futures and swaps markets for agriculture, energy, metals, and soft commodities. Its industry member firms also include regular users and members of such designated contract markets (each, a "DCM") as the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures U.S., Minneapolis Grain Exchange, New York Mercantile Exchange, and NASDAQ Futures, Inc. They also include users of swap execution facilities (each, a "SEF"). The businesses of all CMC members depend upon the efficient and competitive functioning of the risk management products traded on DCMs, SEFs, or over-the-counter ("OTC") markets. As a result, CMC is well positioned to provide a consensus view of commercial end-users on the impact of the Commission's proposed regulations on derivatives markets. Its comments, however, represent the collective view of CMC's members, including end-users, intermediaries, and exchanges.

CMC and its respective members write in support of the comment letter filed by Eversheds Sutherland (US) LLP on behalf of The Commercial Energy Working Group ("Working Group"). With regard to the Capital Rule, CMC shares the Working Group's concerns on the CFTC's proposed approach for capital requirements for non-financial swap dealers. CMC agrees with the Working Group that:

[1] *See* Proposed Rule: *Capital Requirements of Swap Dealers and Major Swap Participants,* 81 Fed. Reg. 91,252 (Dec. 16, 2016).

> "[t]he Commission's proposed capital paradigm might actually serve as a meaningful barrier to entry for non-financial entities considering engaging in more than a *de minimis* amount of swap dealing activity, and thus might have negative implications for liquidity, particularly if commercial firms cannot use the tangible net worth approach to meet its capital requirements. This potential detrimental impact to liquidity would be more significant if the CFTC does not address the pending drop in the swap dealer *de minimis* threshold scheduled for December of 2018."[2]

In Particular, CMC urges the Commission to consider the following requests made by the Working Group:

1. Revisiting the restrictive definition of "predominatly engaged in non-financial activities" to provide flexibility for non-financial entities to act as swap dealers in markets where their presence and expertise is needed;[3]

2. The capital rules for non-financial swap dealers should account for the use of sweep accounts;

3. The National Futures Association's capital rules adoption process should provide for formal public comment; and

4. The Capital Rule's reporting timelines should be extended.

Thank you for the opportunity to provide this letter in support of the Working Group's comment letter. If you have any questions or concerns, please do not hesitate to contact Kevin Batteh at Kevin.Batteh@Commoditymkts.org.

Sincerely,

Kevin K. Batteh
General Counsel
Commodity Markets Council

---

[2] *See* Comment Letter of the Commercial Energy Working Group on the Capital Rule dated May 15, 2017, page 3.

[3] Under the proposed Capital Rule, the tangible net worth approach is only available to entities that are predominatnly engaged in non-financial activities.