February 14, 2019

Department of Treasury
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Washington, DC 20219

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/RIN 3064-AE80, Federal Deposit Insurance Corporation
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Ms. Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
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VIA ONLINE SUBMISSION AND E-MAIL
Department of Treasury Office of the Comptroller of the Currency ("OCC")
Board of Governors of the Federal Reserve System ("FRB")
Federal Deposit Insurance Corporation ("FDIC") (collectively with the above, the "Prudential Regulators")

RE: Standardized Approach for Calculating the Exposure Amount of Derivative Contracts, Notice of Proposed Rulemaking (OCC Docket ID OCC-2018-0030, RIN 1557-AE44; FRB Docket R-1629, RIN 7100-AF22; and FDIC RIN 3064-AE80)

The National Corn Growers Association ("NCGA") and the Natural Gas Supply Association ("NGSA") submit the following comments in response to the Notice of Proposed Rulemaking regarding a Standardized Approach for Counterparty Credit Risk ("SA-CCR").

While NCGA and NGSA support the underlying goal of ensuring financial system integrity, we are concerned that the SA-CCR will have serious unintended consequences for the economy. **As proposed, the SA-CCR significantly undermines the economically vital end-user protections** provided by the Commodity Exchange Act (the "CEA") as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or the "Act"). [1]

The practical effect of the proposed SA-CCR bank capital requirements is akin to imposing a "clearing mandate" on commodity risk management derivatives. Similar to a clearing mandate, capital requirements raise the cost of derivative transactions by requiring capital to be set aside to protect the transaction counterparties from mutual credit exposure.

Capital requirements are a common part of risk management protocols in bilateral transactions and are inherent in business. But, capital requirements *per se* are not the issue. Instead, the issue is how much and how are they met. The SA-CCR misses the mark on both.

By unnecessarily raising risk management costs and increasing the risk of lower market liquidity, the SA-CCR will centralize risk that would have otherwise been diversified, *increasing* systemic risk and unnecessarily removing productive capital from the economy if it is implemented as proposed. The unintended consequences of the proposed changes will come with a high price tag on the economy and *increased* systemic risk.

For this reason, the proposed capital requirements should not apply to commodity risk management derivatives. If the Prudential Regulators continue down this path, two modifications are critical.

I. Capital requirements must be appropriately sized.

While there may be some instances where simple approaches are better, the SA-CCR proposed asset class supervisory factors are far too generic. The SA-CCR's blanket approach does not properly account for risk differences among sectors and counterparties, leading to

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[1] Founded in 1957, the National Corn Growers Association represents nearly 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 49 affiliated state associations and checkoff organizations work together to create and increase opportunities for their members and their industry.

NGSA represents integrated and independent companies that supply natural gas. Founded in 1965, NGSA is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA maintains a deep focus on the regulatory issues that affect natural gas producer-marketers and has been involved in a substantive manner in every one of the Federal Energy Regulatory Commission's significant natural gas rulemakings since FERC's creation in 1977.

Because of the potential for the Dodd-Frank Act to unnecessarily limit the hedging tools available to corn producers and to impede what is and has been a healthy, competitive, and resilient natural gas market, NCGA and NGSA played an active role in the shaping of the Act during its passage and wish to continue this role in ensuring the Act's successful implementation.

disproportionate impacts on the market. This is particularly true for firms with substantial assets to back transactions and activities supportive of hedging as opposed to speculation.

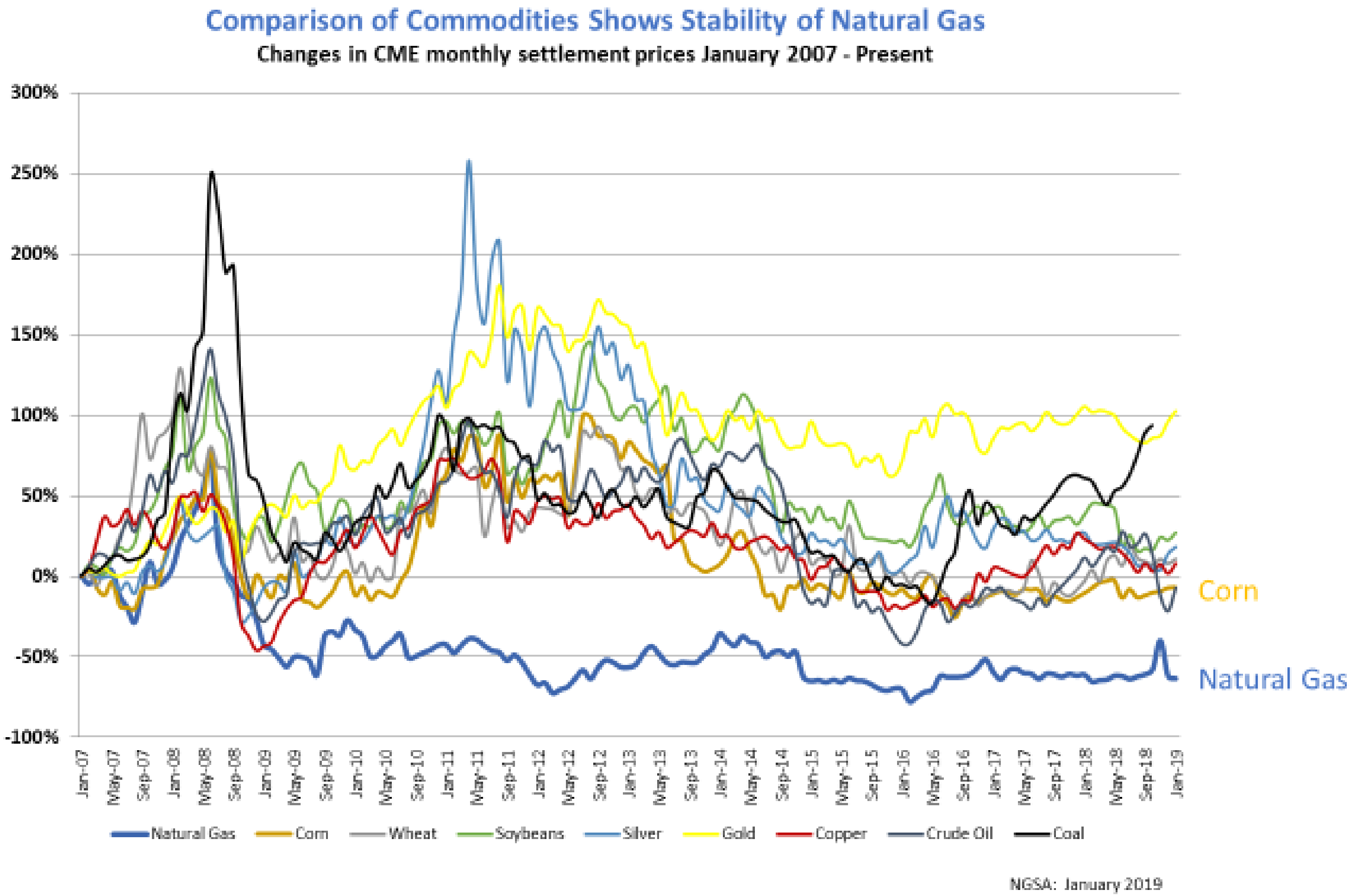
Capital requirements are intended to protect parties against market risks and counterparty credit risks. Importantly, such risks can vary depending on a variety of dynamic factors that are often unique to particular transactions, counterparties, markets and portfolios. In this case, the methods used to determine capital requirements based on such risks must also be administrable by the Prudential Regulators. Finding the middle ground between transaction-specific capital requirements and the SA-CCR proposed standardized approaches is essential for commodity producers. Every dollar unnecessarily set-aside for capital requirements is a dollar that is not available to fund the production of a commodity.

The unnecessarily high capital requirements that result from the blanket application of conservative supervisory factors based on the most volatile commodity derivatives wastes vital working capital. **Commodity-specific factors should be used to assess market risk and develop more granular supervisory factors.** [2]

The Prudential Regulators should engage commodity market participants to identify suitable metrics for assessing the risk of trading commodity derivatives, which would help ensure better alignment between risks and commodity categories.

As illustrated below, different commodities have different levels of volatility, even within a commodity class (e.g. energy commodities and agricultural commodities). Natural gas prices are among the least volatile of commodities. Yet, because the proposal lumps all energy derivatives together, natural gas derivatives would be subject to a higher supervisory factor than that proposed for commodities with much higher levels of volatility, exposing natural gas producers and consumers to higher hedging costs. The same is true for agricultural commodities.

[2] The Basel Committee on Banking Supervision in "The Standardised Approach for Measuring Counterparty Credit Risk Exposures" (Mar. 2014) differentiated among various energy commodities, assigning electricity a supervisory factor of 40%, while assigning oil and natural gas a supervisory factor of 18%. The Prudential Regulators' proposed rule does not explain why such differentiations are not equally applicable here.



Congress provided the end user protections to ensure that hedging does not become prohibitively expensive to end users as a tool for managing their commercial risk:

> It is imperative that the regulators do not unnecessarily divert working capital from our economy into margin accounts, in a way that would discourage hedging by end users or impair economic growth.[3]

Unnecessarily high, ill-fitted capital requirements would create a barrier to entry for smaller market participants – smaller banks and end users. Such a barrier would concentrate risk among those banks that remain and creates a disincentive for hedging.

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[3] Letter from Sen. Christopher Dodd and Sen. Blanche Lincoln to Rep. Barney Frank and Rep. Colin Peterson 1 (June 30, 2010).

II. Commercial Market Participants must be able to satisfy bank capital requirements via non-cash collateral.

Congress provided the end user protections partly so that end users in capital-intensive industries like the corn and natural gas industries could enter into uncleared swaps with customized credit support arrangements that allow for the use of noncash collateral, including the consideration of credit worthiness and the risk off-setting nature of hedging physical commodity production. Commercial end-users and non-bank swap dealers ("Commercial Market Participants") do not pose a systemic risk.

Regulatory requirements that prevent Commercial Market Participants from using noncash collateral to satisfy their capital requirements and instead impose a "one-size-fits-all" collateral requirement that requires the use of either cash or certain highly liquid debt obligations erodes Commercial Market Participants' flexibility, ignores the value of their assets and threatens to unnecessarily tie up working capital from beneficial uses.

By contrast, permitting the use of non-cash collateral by Commercial Market Participants facilitates liquidity and counterparty diversity. All of this underscores that **Commercial Market Participants must be able to tailor their credit support arrangements using noncash collateral to avoid an unnecessary drain on the economy.**

In this regard, Congress clearly intended regulations to preserve the flexibility of commercial end-users by allowing them to use noncash collateral. The Dodd-Frank Act expressly requires that:

> In prescribing margin requirements. . . , the prudential regulator[s] . . . shall permit the use of noncash collateral as the regulator[s]. . . determine[s] to be consistent with—(i) preserving the financial integrity of markets trading swaps; and (ii) preserving the stability of the United States financial system.[4]

[4] CEA § 4s(e)(3)(C).

CONCLUSION

Without modification, U.S. agriculture and energy consumers will bear the cost of the proposal in the form of higher commodity costs and fewer job-creating investments by U.S. industry. As proposed, the SA-CCR does not further the goal of ensuring financial system integrity. Instead, the proposal: (1) creates a barrier to entry that centralizes risk that would have otherwise been diversified, *increasing* systemic risk, and (2) unnecessarily removes productive capital from the economy, discouraging risk management.

Swaps market liquidity and diversity, where risk management tools are made available by both banks and non-financial swap dealers, achieves two key objectives: (1) reducing hedging costs for Commercial Market Participants by appropriately sizing capital requirements and recognizing noncash collateral; and (2) allowing for financial risk diversification which lowers systemic risk by facilitating counterparty diversity.

Keeping U.S. industry's capital at work in the economy through sound commodity end-user protections will help create jobs, energy and products for U.S. consumers without compromising the integrity of the U.S. financial system.

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We look forward to working with you to create a workable path forward. Please do not hesitate to contact us if we can provide additional information.

Respectfully submitted,

National Corn Growers Association
Natural Gas Supply Association