March 18, 2019

VIA ELECTRONIC SUBMISSION

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments/RIN 3064–AE80
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: COMMENT LETTER RE STANDARDIZED APPROACH FOR CALCULATING THE EXPOSURE AMOUNT OF DERIVATIVE CONTRACTS [DOCKET NO. R–1629 AND RIN 7100–AF22; RIN 3064–AE80; DOCKET ID OCC–2018–0030]

Dean Foods Company ("Dean Foods") would like to take this opportunity to respond to the Notice of Proposed Rulemaking regarding revisions to the standardized approach for calculating counterparty credit risk ("SA-CCR") of derivatives contracts entered into by financial holding companies (the "NPR"), issued by the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC") and the Office of the Comptroller of the Currency (the "OCC", together with the Board and FDIC, the "Prudential Regulators").[1]

I. DEAN FOODS IS A DOMESTIC COMMERCIAL BUSINESS EMPLOYING DERIVATIVES TO MITIGATE ITS COMMERCIAL RISKS

[1] Notice of Proposed Rulemaking, *Standardized Approach for Calculating the Exposure Amount of Derivative Contracts*, 83 FR 64660, published December 11, 2018.

Dean Foods depends on cost-effective access to ordinary commercial derivatives instruments to support our business and manage commercial risks. We are concerned that the NPR would impose substantially higher capital requirements on our financial holding company counterparties, which would likely increase the costs of our risk mitigation program and reduce our access to tailored commercial hedging solutions.

Dean Foods is the largest processor of fluid milk and other dairy products in the United States, and a top 5 producer of ice cream and orange juice. We are headquartered in Dallas, TX and employ more than 15,000 people across the United States.

- Our manufacturing network consists of 58 facilities in 29 states, which produce product under national brands, regional brands, and private label brands.
- Our privately owned direct-to-store delivery fleet consists of approximately 9,500 assets with distribution capability in all 50 states and consumes approximately 32 million gallons of diesel fuel annually.

To serve our customers and help manage our complex business, Dean Foods depends upon commodity derivatives markets. These markets assist Dean Foods in conducting our day-to-day business, and also are effective mechanisms to manage commercial risks.

Dean Foods is exposed to commodity price fluctuations, including, in the price of raw milk, butterfat, sweeteners and other commodity costs used in the manufacturing, packaging, and distribution of our products, such as natural gas, resin, and diesel fuel. For several of these commodities, Dean Foods purchases commodity derivatives from qualified financial institutions to hedge associated price risk. Depending on the commodity, Dean Foods will typically purchase swap tenors ranging from one month to one year, but, in some cases, the tenor may be longer.

For purposes of illustrating how SA-CCR and the NPR would disrupt our business, consider the following example: a one year $30 million diesel fuel swap contract. Traditionally, current regulations would impose a 10% potential future exposure risk weighting to the notional value of the contract, equal to approximately $3 million. However, under the NPR, oil contracts would be subject to a 56% potential future exposure risk weighting on the notional value of the contract, equal to approximately $16.8 million, which represents a 257% increase in the exposure at default amount for which our counterparty must retain capital.[2]

II. THE PROPOSED RULE WOULD INCREASE THE COSTS OF OUR RISK MITIGATION PROGRAM

Deep and competitively priced derivatives markets are crucial to Dean Foods' ability to adequately address our commercial hedging needs. The NPR, as currently proposed, threatens to undermine the derivatives marketplace by increasing transaction costs and reducing market liquidity. We are concerned that we would ultimately bear these costs, which would detract from commercial growth and job creation.

[2] For more information related to our calculations, please refer to Appendix A herein

We are particularly concerned that the proposed metrics and formulation of SA-CCR would lead to an inefficient, unnecessarily costly derivatives marketplace. As noted by the Prudential Regulators, the "exposure amount of unmargined derivative contracts [under SA-CCR] . . . would increase by approximately 90 percent"[3], costs which would likely be passed on to Dean Foods through higher transaction pricing. While we are aware of and sensitive to the need for effective regulation and reduction in systemic risks, we are concerned that the NPR's current treatment of derivatives does not adequately reflect their purpose. In the context of Dean Foods, we are not using derivatives for speculative purposes, but rather to hedge commercial risks. Additive costs associated with the NPR would undermine our risk mitigation practices and increase the overall costs of doing business.

In addition to pass-through costs, we are also concerned with the rigidity of the NPR's offset recognition, in particular, the inability to recognize asset pledging or letter of credit-based collateralization. We believe that such an approach needlessly hinders Dean Foods' ability to collateralize trading lines by providing no offset recognition and, further, has the potential to create a marketplace reliant on cash-margining. This potential scenario would reduce our ability to prudently manage our business risk and would ultimately harm our commercial operations.

Consequently, we ask that the Prudential Regulators reevaluate the NPR's treatment of those hedging transactions entered into by commercial end-users like Dean Foods.

III. THE NPR CIRCUMVENTS CONGRESSIONALLY ENACTED RELIEF FOR OUR BUSINESS

The current statutory framework exempts Dean Foods and other commercial end-users' hedging transactions from the clearing and margin requirements to which our counterparties are subject. Congress enacted these exemptions so that commercial businesses in the United States can adequately and cost-effectively hedge their commercial risks.[4] As noted in our concerns above, we believe that the NPR would undermine the policy objectives of the current statutory framework by imposing additive capital requirements on our counterparties through the proposed SA-CCR calculations. Counterparty costs associated with increased capital requirements may lead to fewer banking institutions offering market liquidity, thus reducing Dean Foods' access to an efficient market. We therefore request that the Prudential Regulators reconsider the metrics and formulation of SA-CCR to better align with the policy objectives of the current statutory framework and to protect the risk mitigation tools used by commercial end-users like Dean Foods.

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[3] Proposed Rule at 64685.

[4] "Forcing businesses to post margin not only ties up capital, but also makes it more expensive for firms to utilize the risk management tools that they need to protect their businesses from uncertainty. Today's bill clarifies in statute that Congress meant what it said when it exempted end users from margin and clearing requirements Specifically, it ensures that those businesses which are exempt from clearing their hedges are also exempt from margining those hedges " Statement of Rep. Mike Conaway (R-TX) in support of the end-user exemption

Increased costs and less liquid markets threaten our ability to efficiently and safely grow our business. For the foregoing reasons, we request that the Prudential Regulators generally reconsider the appropriateness of imposing SA-CCR calculations on transactions that would otherwise qualify for the end-user exception, as well as the downstream costs on commercial businesses like Dean Foods.

Sincerely,

Dean Foods Company

[redacted]

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Appendix A

Illustrative Dean Foods Diesel Swap

	CEM (Existing)	SA-CCR (Proposed)	Percent Change
Notional	$30,000,000	$30,000,000	0%
Effective PFE (alpha adjusted)	$3,000,000	$16,800,000	460%
PFE Percentage	10%	56%	460%
RC (alpha adjusted)	$2,800,000	$3,920,000	40%
EAD	$5,800,000	$20,720,000	257%