

**From:** Sarah Gainer  
**To:** [Leonova, Irina S.](#)  
**Subject:** Re: [EXTERNAL] RE: [EXTERNAL MESSAGE] Chesapeake Energy - Addition to February 15th SA-CCR comments  
**Date:** Wednesday, May 15, 2019 12:44:49 PM  
**Attachments:** [image001.png](#)

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That is correct.

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**From:** Leonova, Irina S. <[ileonova@fdic.gov](mailto:ileonova@fdic.gov)>  
**Sent:** Wednesday, May 15, 2019 12:38 PM  
**To:** Sarah Gainer  
**Subject:** [EXTERNAL] RE: [EXTERNAL MESSAGE] Chesapeake Energy - Addition to February 15th SA-CCR comments

Dear Sarah,

To confirm, you are not seeking confidentiality protection for this?

Warmly, Irina

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**From:** Sarah Gainer [mailto: ]  
**Sent:** Wednesday, May 15, 2019 12:23 PM  
**To:** Leonova, Irina S.  
**Cc:** Erik Fares; Patrick Heringer  
**Subject:** [EXTERNAL MESSAGE] Chesapeake Energy - Addition to February 15th SA-CCR comments

Classification: DCL-Internal

Dear Irina,

Thank you for your time to meet with us last Thursday. Per our discussion, Chesapeake Energy would like to submit the following information as an addition to our February 15<sup>th</sup> comments on the Proposed Rule-making related to SA-CCR. Please let me know if we can provide anything else and as always, feel free to contact me with any questions.

First, we wanted to more clearly demonstrate one important point regarding the collateral coverage for our hedging counterparties with the following table. As you will see, over the past two years, the hedges have been vastly over collateralized with 17 to 104 times coverage—on average 126,000,000 barrels of oil equivalent hedged at any given point in time. Therefore, we feel that our hedging counterparties have more than adequate collateral through their security interest in our pledged reserves and no additional collateral (in the form of cash, or otherwise) is necessary. Transactions with derivatives end-users should be explicitly exempted from SA-CCR calculations. An exemption, is consistent with congressional intent behind the end-user clearing and margin exemption and ensures that capital charges (which would increase 4-5x under the new calculation) would not flow down to end-users and American consumers.

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Lastly, per our discussion on Thursday, we wanted to follow up with the materials below.

1. Please find an excerpt from Chesapeake Energy's hedging policy that sets forth our Board of Directors' approvals and requirements that the company is prohibited from hedging more than 100% of the company's budgeted production in any given year and from establishing a net long position.
2. Following that, please find materials from our form ISDA agreement(s), which include the relevant provisions of security for our hedging counterparties: specifically, our Credit Agreement and related Mortgage. I have provided a link to our Credit Agreement as filed with EDGAR. (As you will see, the Credit Agreement specifically prohibits speculative hedging, and the related section is included and highlighted below). We have also attached a form copy of our Mortgage as filed in Texas, but it mirrors the form filed in all other jurisdictions where we operate and have pledged collateral.

Of note:

- The Credit Agreement requires we pledge 85% of the company's proved reserves at any given time.
- The Mortgage specifies how the proceeds will be applied in a foreclosure, and points to Article XI of the Credit Agreement
- Article XI of the Credit Agreement stipulates that fees and expenses will be paid first as they relate to the Obligations under the loan, and second to all other Obligations which includes borrowings under the facility and Lender Hedging Obligations
  - It is important to note that those proceeds will be distributed pro rata to lenders and hedging counterparties owed money, but it would be hard to find a scenario where we owe money both on the facility we couldn't repay and to hedging counterparties. The amounts owed by Chesapeake to our lenders and hedging counterparties (also Lenders or Affiliates of Lenders) would generally move in opposite directions.

### **Board of Directors' Approved Hedging Policy Excerpt**

#### 3.1 Policy Statement

In conjunction with the Company's Commodity Hedging Philosophy, it is the Company's policy to actively monitor the commodities markets and mitigate its exposure to commodity price fluctuations that management reasonably believes could negatively impact the Company's ability to achieve its future business and financial objectives.

Management will regularly monitor the following:

- Management forecasts for the Company's future production of natural gas, natural gas liquids and oil (collectively "Budgeted Volumes");

- Percentage of Budgeted Volumes that are exposed to price risk;
- Effectiveness of current hedged positions to achieve the goals expressed in the Hedging Philosophy;
- Management expectations for future supply of and demand for natural gas, natural gas liquids and oil;
- Market for future supply of and demand for natural gas, natural gas liquids and oil;
- Market forecasts for future commodity price levels;
- Market forecasts for current and future economic conditions;
- Commodity market conditions, volatility and market structure;
- Credit worthiness of hedging counterparties; and
- Compliance with regulatory requirements and best practices.

Management, subject to execution in accordance with this Policy and its Delegation of Authority, has the capacity to manage commodity price exposures on behalf of the Company.

The Company is prohibited from hedging downside protection, at any one time, more than 100% of the Company's Budgeted Volumes in any given year and from establishing a net long position (measured at the time the hedges are put in place).

#### **ISDA Schedule Excerpt (Chesapeake is Party B)**

(f) Credit Support Document.

means:

(i) For so long as a Borrowing Base Trigger Period exists:

(A) With respect to the obligations of Party B, that certain Credit Agreement dated as of December 15, 2014 (as amended by that First Amendment to Credit agreement, dated as of September 30, 2015, and as further amended by the Second Amendment to Credit Agreement, dated December 15, 2015, and as further amended by that Third Amendment to Credit Agreement dated April 8, 2016, and as further amended by that certain Fourth Amendment to Credit Agreement dated May 19, 2017 and as further amended, restated, amended and restated, replaced or otherwise modified from time to time, the "Credit Agreement") among Party B, as borrower, the lenders from time to time party thereto, MUFG Union Bank, N.A., as administrative agent, co-syndication agent, swingline lender, and a letter of credit issuer, Wells Fargo Bank, National Association, as co-syndication agent, swingline lender and a letter of credit issuer and Bank of America, N.A., Credit Agricole Corporate and Investment Bank and JP Morgan Chase Bank, N.A., as co-documentation agents, and the Security Documents and Guarantees (as each is defined in the Credit Agreement), to the extent that such Security Documents and Guarantees, by their terms apply to Hedge Agreements (as defined in the Credit Agreement).

(B) With respect to the obligations of Party A, a Credit Support Annex in the form of Exhibit A attached hereto, dated the date hereof and duly executed and delivered by Party A and Party B, [and a Guarantee, dated the date hereof, made by [NAME] in favor of Party B as beneficiary thereof.]

#### **Amended and Restated Credit Agreement dated 9/12/18**

<https://www.sec.gov/Archives/edgar/data/895126/000089512618000219/ex1012018-09x10creditagree.htm>

#### **Credit Agreement Provisions Against Speculative Hedging**

10.10 Hedge Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any Hedge Agreements with any Person other than (a) Hedge Agreements not for speculative purposes entered into to hedge or mitigate risks to which the Borrower or any Restricted Subsidiary has or may have exposure (including with respect to commodity prices), (b) Hedge Agreements not for speculative purposes entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Restricted Subsidiary and (c) other Hedge Agreements not for speculative purposes permitted under the risk management policies approved by the Borrower's Board of Directors from time to time.

**Mortgage 5.14**

Section 5.14 Application of Proceeds. To the fullest extent permitted by law, the **proceeds** of any sale of the Deed of Trust Property or any part thereof and all other monies received by the Trustee or the Mortgagee as applicable in any proceedings for the enforcement hereof or otherwise, **shall be applied as set forth in Article XI of the Credit Agreement.**

**Credit Agreement Article XI**

Any amount received by the Administrative Agent from any Credit Party (or from proceeds of any Collateral) following any acceleration of the Obligations under this Agreement or any Event of Default with respect to the Borrower under Section 11.5 shall be applied:

- (i) first, to payment or reimbursement of that portion of the Obligations constituting fees, expenses and indemnities payable to the Administrative Agent in each Person's capacity as such;
- (ii) **second, to the Secured Parties, an amount equal to all Obligations** due and owing to them on the date of distribution and, if such moneys shall be insufficient to pay such amounts in full, then ratably (without priority of any one over any other) to such Secured Parties in proportion to the unpaid amount thereof; and
- (iii) third, *pro rata* to any other Obligations then due and owing; and
- (iv) fourth, any surplus then remaining, after all of the Obligations then due shall have been paid in full in cash, shall be paid to the Borrower or its successors or assigns or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may award.

Thank you,

*Sarah Gainer*

Government Affairs - Washington, D.C.

Chesapeake Energy Corporation

Office:

Mobile:

Fax:

Email:



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