U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

Market Participants
Division

Amanda Olear
Acting Director

Jai R. Massari
Davis Polk & Wardwell LLP
901 15th St NW,
Washington, DC 20005

RE: No-action Relief from Registration as a CPO and/or a CTA for the Directors and the Manager of the Company, Royalty Pharma plc

Dear Ms. Massari:

This letter is in response to your letter dated January 13, 2021, to the Market Participants Division (the "Division"), formerly known as the Division of Swap Dealer and Intermediary Oversight, of the Commodity Futures Trading Commission (the "Commission"), as well as additional extensive conversations with staff over several months. You request on behalf of the Royalty Pharma plc (collectively with its subsidiaries, the "Company"), RP Management, LLC (the "Manager"), or any member of the Company's board of directors (the "Directors"), confirmation that the Division would not recommend enforcement action against the Manager or Directors for failure to register as a commodity pool operator ("CPO") or against the Manager for failure to register as a commodity trading advisor ("CTA") with respect to their activities managing the Company.

Based upon the representations in your letter, we understand the relevant facts to be as follows. The Company acquires biopharmaceutical royalty interests, which obligate others to pay royalties to the Company that are directly based on the sales price of certain biopharmaceutical products.[1] The Company finances its biopharmaceutical royalty investment activities through

[1] Pharmaceutical royalties are typically created when an owner of intellectual property, often a research institution or small biotech company, licenses that intellectual property to a licensee, typically a small biotech or large pharma company, in exchange for the right to receive a percentage of the net sales of biopharmaceutical products based on that intellectual property. The Company purchases biopharmaceutical royalties from licensors and, as a result, licensees generally become obligated to make their royalty payments to the Company rather than to the original licensor.

secured floating rate debt. In the past, it has hedged the interest rate risk associated with this floating rate debt by entering into interest rate swaps.[2] Due to the Company's recent initial public offering, you explain that it can no longer rely upon the exemption from CPO registration contained in Commission regulation 4.13(a)(3) and therefore, the Company determined to cease entering into interest rate swaps while seeking no-action relief from the Division.

In your letter, you represent the following:

1) The Company would use this relief to hedge interest rate risks associated with the floating rate debt used to finance the Company's operations.
2) If the relief is granted, the Company's derivatives activities will continue to be conducted in a manner consistent with the thresholds set forth in Commission regulation 4.13(a)(3), the exemption upon which the Company had always relied until becoming publicly traded.
3) The terms and conditions of the swaps would be consistent with those generally available in the traditional swaps market or listed derivatives markets and the Manager and the Directors do not intend to enter into interest rate swaps to generate profits or otherwise speculate on price movements.
4) The swaps will not introduce any new risks to the Company other than counterparty credit risk associated with the swaps.
5) The Manager and the Company will update risk management policies and procedures to reasonably ensure compliance with the terms of relief provided by this letter and such policies will also be consistent with the restrictions on the Company's interest rate swap activities.

Based on your representations, the Division believes that the Company's swap activities as described are for interest rate risk management purposes in connection with the operation of its business of acquiring biopharmaceutical royalties. As represented in your correspondence, the Company is using interest rate swaps to hedge interest rate risks associated with the floating debt used to finance the Company's operations. Moreover, the Company's hedging activities would be secondary to its biopharmaceutical royalty investment activities and shareholders would not look to the Company, the Manager, or the Directors to gain exposure to derivatives trading.

The Division has granted similar no-action relief from registration as a CPO and CTA to the manager of an entity that owned mineral interests and royalty interests in crude oil and natural gas producing and non-producing properties and, in connection with those activities, entered into commodity interest transactions, such as futures, options or swaps, intended to hedge its exposure to commodity price risk.[3] In that letter, the derivatives used were limited to

[2] Because of the inclusion of swaps as a commodity interest within the definition of a commodity pool under Section 1(a)(10) of the Commodity Exchange Act, the Company may meet the definition of a commodity pool.

[3] CFTC Letter No. 19-02 (Feb. 14, 2019).

instruments to hedge the underlying physical commodity assets, not to hedge the financing of the transactions. However, the Division has also granted no-action relief in other contexts where, like the Company, a business is hedging its floating interest rate exposure derived from its financing activities meant to support its primary business activities that lie outside the commodity interest markets.[4]

Based on the representations in your correspondence, it is staff's view that the Company's activities are substantially similar to the two instances described above where the Division has previously granted no-action relief to entities engaging in limited swap transactions for hedging or risk mitigation purposes, and where that activity was incidental to their primary business activities. Therefore, the Division will not recommend that the Commission take enforcement action against the Manager or the Directors for engaging in interest rate swaps to hedge the Company's floating rate debt associated with its acquisition of biopharmaceutical royalties without registering as a CPO with regard to those activities. Nor will it recommend that the Commission take enforcement action against the Manager for failure to register as a CTA with respect to the advice provided to the Company regarding the interest rate swaps described herein, provided that the Company's use of swaps satisfies the following conditions:

1. The swap(s) will have the effect of reducing risk relative to the risk of the unhedged positions;

2. The swap(s) position held by the Company will not be established, held, altered, or terminated for the purpose of speculation or trading;

3. The swap(s) will be limited to interest rate swaps that hedge interest rate risks arising from the Company's financing arrangements;

4. The swap(s) will not introduce any new risks to the Company other than counterparty credit risk;

5. The terms and conditions of the swaps will be consistent with those generally available in the traditional swaps market; and

6. The Manager and the Company will employ reasonable risk management policies and procedures to reasonably ensure compliance with the foregoing conditions, including periodic testing to confirm ongoing compliance with respect to any amendments to the interest rate swaps or the structure.

[4] *See* CFTC Letter No. 12-44, *No-Action Relief from the Commodity Pool Operator Registration Requirement for Commodity Pool Operators of Certain Pooled Investment Vehicles Organized as Mortgage Real Estate Investment Trusts* (Dec. 7, 2012) (granting no-action relief from the CPO registration requirements for operators of mortgage real estate investment trusts which may use interest rate swaps, swaptions, caps, floors, or collars to hedge interest rates or foreign exchange swaps to transform income).

7. The Company's derivatives activities will continue to be conducted in a manner consistent with the thresholds under Commission regulation 4.13(a)(3), and the Company shall promptly notify the Division if it becomes aware that its derivatives activity has exceeded such thresholds.

Based upon the facts provided to the Division in your correspondence, you have represented that the swaps engaged in by the Company will satisfy the aforementioned conditions.

This letter, and the positions taken herein, represent the view of this Division only, and do 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 the affected persons from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. This letter does not create or confer any rights or obligations on any person or persons subject to compliance with the Commodity Exchange Act that bind the Commission or any of its other offices or divisions. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed, or omitted material facts or circumstances might render this letter void. The Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided in this letter, in its discretion.

Should you have any questions, please do not hesitate to contact Pamela Geraghty, Associate Director, at 202-418-5634, or pgeraghty@cftc.gov, or Peter Sanchez, Special Counsel, at 202-418-5237, or psanchez@cftc.gov.

Very truly yours,

Amanda L. Olear
Acting Director
Market Participants Division

cc: Regina Thoele, NFA

Request for Relief:

Request relates to 7 U.S.C. § 6m(1)

New York **Paris**
Northern California **Madrid**
Washington DC **Hong Kong**
São Paulo **Beijing**
London **Tokyo**

Davis Polk

Jai R. Massari

Davis Polk & Wardwell LLP 202 962 7062 tel
901 15th Street, NW jai.massari@davispolk.com
Washington, DC 20005

January 13, 2021

Re: Request for No-Action Relief from Registration as a Commodity Pool Operator and Commodity Trading Advisor

Mr. Joshua Sterling
Director
Market Participants Division
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Director Sterling:

Royalty Pharma plc (collectively with its subsidiaries, the **Company**) submits this letter requesting confirmation that the Market Participants Division (the **Division** or **MPD**) of the Commodity Futures Trading Commission (the **CFTC** or **Commission**) would not recommend enforcement action against the manager of the Company, RP Management, LLC (the **Manager**), or any member of the Company's board of directors (the **Directors**) for failure to register as a commodity pool operator (**CPO**) or against the Manager for failure to register as a commodity trading advisor (**CTA**) with respect to their activities managing the Company, as described in this request letter.

I. Factual Background

Royalty Pharma plc is a public limited company incorporated under the laws of England and Wales. It is primarily engaged, through its subsidiaries, in the business of acquiring biopharmaceutical royalties, which are rights to receive a percentage of the net sales of biopharmaceutical products of a biopharmaceutical company. Pharmaceutical royalties are typically created when an owner of intellectual property, often a research institution or small biotech company, licenses that intellectual property to a licensee, typically a small biotech or large pharma company, in exchange for the right to receive a percentage of the net sales of biopharmaceutical products based on that intellectual property. The Company purchases biopharmaceutical royalties from licensors and, as a result,

licensees generally become obligated to make their royalty payments to the Company rather than to the original licensor.

Although the Company acquires royalty interests for investment purposes, the Company is unlike typical investment vehicles in a variety of ways. Its investment activities are limited to those involving biopharmaceutical royalties, and it is not an investment company for purposes of the Investment Company Act of 1940 (the **1940 Act**) and, therefore, is not subject to regulation as such. Specifically, the Company is a holding company for subsidiaries that qualify for the exemption in Section 3(c)(5)(A) of the 1940 Act, which excludes from the definition of investment company "[a]ny person who. . . is primarily engaged in . . . [p]urchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services."[5] The staff of the Securities and Exchange Commission agreed that the Company's indirect subsidiaries fit within the Section 3(c)(5)(A) exclusion because it is primarily engaged in the business of purchasing royalty interests obligating others to pay royalties, which are directly based on the sales price of specific biopharmaceutical products.[6]

The Company finances its and its subsidiaries' biopharmaceutical royalty investment activities in part through the use of secured floating rate debt. It has, in the past, hedged the interest rate risk associated with this floating rate debt using interest rate swaps, the economic effect of which is to swap a portion of its floating rate debt exposure for fixed rate exposure. In the past, to eliminate any uncertainty regarding its status under the Commodity Exchange Act (**CEA**) and CFTC regulations governing CPOs and CTAs, the Manager has relied upon the exemption from CPO registration contained in CFTC Rule 4.13(a)(3) (the **De Minimis Exemption**), which is generally available to managers of private entities with *de minimis* commodity interest activities, for the relevant entities within the Company's group.[7] The Manager also operated under the exemption from CTA registration in Section 4m(3) of the CEA and CFTC Rule 4.14(a)(10).[8]

Royalty Pharma plc completed an initial public offering of its common stock in June 2020. As a result of this initial public offering, the De Minimis Exemption is no longer available to the Manager and will not be available to the Directors.[9] Leading up to its IPO, the Company ceased entering into interest rate swaps. So that it may hedge its ongoing interest rate risk consistent with its and its affiliates' past practice, the Company requests that the Commission staff grant no-action relief from the potential requirement that the Manager or the Directors register under the CEA as a CPO or CTA, as the case may be, to the extent that the Company engages in interest rate swaps as described below.

II. Definition of Commodity Pool, CPO and CTA

[5] 1940 Act § 3(c)(5)(A), 15 U.S.C. § 80a-3(c)(5)(A).
[6] SEC. AND EX. COMM'N, Staff Reply Letter, Ref. No 20107221321 (Aug. 13, 2010). This relief was technically provided to a predecessor entity, but it is currently relied upon by the Company.
[7] 17 C.F.R. § 4.13(a)(3).
[8] The Directors have not previously relied on an exemption from CPO registration as the Company's board of directors was established as part of the initial public offering discussed below and the related restructuring of the Company's organizational structure.
[9] 17 C.F.R. § 4.13(a)(3)(i) (requiring that "[f]or each pool for which the person claims exemption from registration under this paragraph (a)(3)…[i]nterests in the pool are exempt from registration under the Securities Act of 1933").

The terms "commodity pool," "CPO" and "CTA" are defined in the CEA and CFTC regulations as follows:

- *Commodity pool* – "any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests."[10] The Commission has interpreted the "purpose" element in the commodity pool definition broadly. For example, the Commission has stated that an investment vehicle may qualify as a commodity pool even if its principal purpose is not to trade in commodity interests.

- *CPO* – any person who is "engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise" and "in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in commodity interests," including swaps.[11]

- *CTA* – any person who, "for compensation or profit, engages in the business of advising others . . . as to the value of or the advisability of trading in" futures, swaps and other commodity interests.[12]

A person that falls within the definition of CPO or CTA must register with the Commission absent an available exemption or exclusion[13] and must comply with a number of ongoing regulatory requirements.

III. Request for No-Action Relief

Given that it is in the business of acquiring biopharmaceutical royalties, the Company does not believe that it is, or operates, a commodity pool. However, given the broad definitions of commodity pool, CPO and CTA, it is possible that if the Company were to enter into interest rate swaps as it has in the past, it could be considered a commodity pool and its Manager or Directors would be required to register as a CPO and its Manager as a CTA.[14] As a result, for the reasons discussed below, the Company is requesting no-action relief from such requirement.

A. No-Action Relief Would be Consistent with Existing Relief for Oil and Gas Royalty Investment Vehicles

Most recently in CFTC Letter 19-02, MPD[15] granted no-action relief from registration as a CPO and CTA to the manager (referred to in the letter as "A") of an entity (referred to in the letter as "B") that owned mineral interests and overriding royalty interests in crude oil and natural gas producing and

[10] CEA § 1a(10)(A), 7 U.S.C. § 1a(10)(A); CFTC Rule 4.10(d), 17 C.F.R. § 4.10(d).
[11] CEA § 1a(11)(A), 7 U.S.C. § 1a(11)(A); CFTC Rule 1.3 (definition of commodity pool operator); 17 C.F.R. § 1.3.
[12] CEA § 1a(12)(A)(i), 7 U.S.C. § 1a(12)(A)(i); CFTC Rule 1.3 (definition of commodity trading advisor); 17 C.F.R. § 1.3. The definition also includes a person who "for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports" concerning such investments. CEA § 1a(12)(A)(ii), 7 U.S.C. § 1a(12)(A)(ii).
[13] CEA § 4m(1), 7 U.S.C. § 6m(1).
[14] The Company may separately engage in deliverable foreign exchange forwards to hedge foreign exchange risk associated with its royalty investments; however, those instruments are not commodity interests or other instruments that would cause the Company to be a commodity pool.
[15] This letter was issued by the Division of Swap Dealer and Intermediary Oversight (**DSIO**), which was renamed MPD effective November 8, 2020 as part of a Commission reorganization. For simplicity, this request refers to this division as MPD throughout.

non-producing properties and, in connection with those activities, entered into commodity interest transactions, such as futures, options or swaps, intended to hedge its exposure to commodity price risk.[16] Earlier MPD letters have provided similar relief.[17]

MPD based the no-action relief, in part, upon the nature of A and B's commodity interest activities. The factors cited by MPD were that: (1) A and B did not intend to trade commodity interests to generate profits or mitigate losses; (2) the commodity interests would not be established, held, altered, or terminated for the purpose of seeking to generate investment income; (3) the swaps would not introduce any new risks to B other than counterparty credit risk associated with the swaps; (4) the terms and conditions of the commodity interests would be consistent with those generally available in the traditional swaps market or listed derivatives markets; and (5) B was using commodity interests to more effectively hedge risks that are created as a byproduct of its primary business activities.[18]

CFTC Letter 19-02 also imposed a number of conditions on A and B's use of commodity interests which, in addition to the representations set forth above, included that: (1) the commodity interests will have the effect of reducing risk relative to the risk of the unhedged position; (2) the commodity interests will only hedge risks inherent in the physical assets of B, and not risks arising from the arrangement by which the assets are held or financed; and (3) A and B will have employed reasonable risk management policies and procedures to reasonably ensure compliance with the terms of this letter including periodic testing to confirm ongoing compliance with respect to any amendments to the commodity interests or the structure.[19]

The Company's use of interest rate swaps would generally be consistent with the commodity interest activities of the oil and gas investment vehicles to which MPD has previously provided relief. In particular, the Company would not enter into interest rate swaps to generate profits, mitigate losses or to otherwise speculate on price movements. Instead, the Company would enter into these swaps only for risk management purposes in connection with the operation of its business. Indeed, the Company's shareholders invest with the Company not for its skill at trading commodity interests, but rather because of the Company's acumen in identifying and purchasing biopharmaceutical royalty interests. The Company's hedging activities would be ancillary to its biopharmaceutical royalty investment activities and shareholders would not look to the Company, the Manager or the Directors as a means to gain exposure to derivatives trading. Indeed, the Company registration statement filed with the Securities and Exchange Commission in connection with its IPO states that "We only use derivatives strategically to hedge existing interest rate exposure and to minimize volatility in cash flow and earnings arising from our exposure to foreign currency risk. We do not enter into derivative instruments for trading or speculative purposes."[20]

The Company's interest rate swap activities would therefore be limited to hedging risks "that are created as a byproduct of its primary business activities" – i.e., the ownership of biopharmaceutical royalties —and not used for speculative purposes. This is evidenced in part by the fact that the

[16] CFTC Letter No. 19-02, *No-action Relief from Registration as a CPO and/or a CTA for "A", the manager of "B"* 1 (Feb. 14, 2019) (hereinafter **CFTC Letter No. 19-02**).
[17] CFTC Letter No. 17-48, *No-action Relief from Registration as a CPO and/or a CTA for "A", the operator of "B", and Subsidiaries* (Aug. 2, 2017); CFTC Letter No. 14-96, *"A" and affiliates request for exemption of Production Payment Vehicles from commodity pool regulation* (July 25, 2014) (hereinafter **CFTC Letter No. 14-96**).
[18] CFTC Letter No. 19-02, at 1–2.
[19] *Id.* at 2 – 3.
[20] Royalty Pharma plc, Registration Statement (Form S-1) (May 22, 2020)

Company's swap activities have been well below the financial tests contained in the De Minimis Exemption.[21] As of December 31, 2019, the Company's interest rate swaps (the only derivatives owned by the Company) had a notional value of approximately 33% of its total outstanding debt (i.e., the Company was only hedging 33% of its floating rate debt exposure) and 16.9% of its total assets. In addition, although the Company exchanged variation margin with its counterparties, it was not required to and did not post any initial margin, premiums or security deposits in connection with its swaps. If relief is granted here, the Company's derivatives activity will continue to be conducted in a manner consistent with the thresholds in the De Minimis Exemption.

As with the oil and gas royalty investment vehicles, the interest rate swaps the Company would engage in would not introduce any new risks to the Company other than counterparty credit risk associated with the swaps. The terms and conditions of the swaps would be consistent with those generally available in the traditional swaps market or listed derivatives markets. The Company will update its risk management policies and procedures to reasonably ensure compliance with the terms of any relief granted.

There is one difference between the Company's use of interest rate swaps and the use described in the no-action letters for oil and gas royalty investment vehicles. In the oil and gas royalty letters, the permitted swaps were limited to those that "only hedge risks inherent in the physical assets . . . and not risks arising from the arrangement by which the assets are held or financed"[22] or risks inherent in fixed income securities issued by the investment vehicle.[23] Relief here would be used to allow the Company to hedge interest rate risks associated with the floating rate debt used to finance the Company's operations.

We believe nonetheless that the requested no-action relief would be consistent with the principles underlying prior MPD letters. We do not believe there is a policy-based reason to distinguish between the hedging of commodity-price risk and the hedging of interest rate risk. Relief granted here would similarly be for the limited use of derivatives to hedge risks for an entity that is not a traditional investment vehicle and where the use of derivatives is limited to activities supporting the Company's primary purpose and not used for speculative purposes. Indeed, the Commission staff has granted relief, either through no-action letter or interpretive guidance, for real estate investment vehicles engaged in interest rate hedging activities.[24] Therefore, the relief requested by the Company would be consistent with previously granted CFTC relief in similar contexts.

B. Conditions of Relief

For the reasons above, the Company requests confirmation that MPD staff would not recommend enforcement action against the Manager or the Directors for failure to register as a CPO or the

[21] 17 C.F.R. § 4.13(a)(3)
[22] CFTC Letter No. 19-02, at 2.
[23] CFTC Letter No. 14-96, at 2.
[24] *See* CFTC Letter No. 12-44, *No-Action Relief from the Commodity Pool Operator Registration Requirement for Commodity Pool Operators of Certain Pooled Investment Vehicles Organized as Mortgage Real Estate Investment Trusts* (Dec. 7, 2012) (granting no-action relief from the CPO registration requirements for operators of mortgage real estate investment trusts which may use interest rate swaps, swaptions, caps, floors, or collars to hedge interest rates or foreign exchange swaps to transform income); CFTC Letter No. 17-68, *Interpretation of the term Commodity Pool with respect to "A"* (Sep. 22, 2017) (providing an interpretation that a global asset manager and certain holding companies within its corporate family are not commodity pools, although they use interest rate and FX swaps to offset interest rate and currency risk associated with real estate assets).

Manager as a CTA with respect to their activities managing the Company. Consistent with previous relief granted by the CFTC, the Company will comply with the following conditions on the relief for swaps entered into by the Company or its direct or indirect subsidiaries:

1. The swaps will have the effect of reducing risk relative to the risk of the unhedged positions;

2. The swap positions held by the Company will not be established, held, altered or terminated for the purpose of speculation or trading;

3. The swaps will be limited to interest rate swaps that hedge interest rate risks arising from the Company's financing arrangements;

4. The swaps will not introduce any new risks to the Company other than counterparty risk;

5. The terms and conditions of the swaps will be consistent with those generally available in the traditional swaps market; and

6. The Manager and the Company will employ reasonable risk management policies and procedures to reasonably ensure compliance with the foregoing conditions, including periodic testing to confirm ongoing compliance with respect to any amendments to the interest rate swaps or the structure.

* * * * *

Thank you very much for your consideration of this matter. Please feel free to contact Jai R. Massari (202-962-7062 or jai.massari@davispolk.com) or Gregory S. Rowland (212-450-4930 or gregory.rowland@davispolk.com) of Davis Polk & Wardwell LLP if you would like to discuss this letter in greater detail.

Respectfully submitted,

Jai R. Massari

Cc:

George W. Lloyd
Executive Vice President and General Counsel
Royalty Pharma