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October 22, 2010

Mr. David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Agricultural Swaps ANPRM

Dear Mr. Stawick:

The Futures Industry Association (the "FIA")<sup>1</sup> submits these comments in response to the Advanced Notice of Proposed Rulemaking (the "ANPRM")<sup>2</sup>, in which the Commodity Futures Trading Commission (the "CFTC") solicited comments on the regulation of agricultural swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). FIA appreciates the opportunity to provide its comments on the ANPRM and encourages the CFTC to take this opportunity to determine if the different regulatory regimes for agricultural commodities and exempt commodities should be eliminated, ensuring that all swap transactions on physical commodities are regulated the same under Dodd-Frank.

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<sup>1</sup> FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants ("FCMs") in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States designated contract markets.

<sup>2</sup> Agricultural Swaps, 75 Fed. Reg. 59670 (Sept. 28, 2010).

Treatment of Agricultural Swap Transactions

FIA believes that agricultural swap transactions should be subject to the same regulatory regime as other categories of swaps; in our view, there is no basis for imposing a separate system of regulation on agricultural swaps. As discussed below, therefore, we recommend that the CFTC confirm that agricultural swaps (including options) are encompassed within the definition of “swaps” under the Dodd-Frank Act, make a separate determination as to the agricultural swaps that should be subject to the clearing and execution requirements under Dodd-Frank, and extend all of the regulatory requirements under Dodd-Frank, such as reporting, to agricultural swaps. Dodd-Frank expressly authorizes the CFTC to permit trading in agricultural swaps under terms and conditions prescribed by the CFTC. As a result, the CFTC has plenary authority to permit the trading of agricultural swaps on the same terms as other types of swaps, and we urge it to do so.

We are not aware of any evidence that agricultural swaps have caused problems in the market or exposed market participants, or the market or financial system generally, to any significant or unusual risks, nor have agricultural swap products themselves created any systemic risks for the markets. We do not believe that more stringent restrictions are needed with respect to such instruments relative to other categories of swaps. While we are aware that there are certain historical concerns associated with over-the-counter agricultural derivatives and that these have led in the past to prohibitions or more stringent limitations on the trading of such instruments, therefore, many types of agricultural derivatives have been employed as commercial hedging tools for many years without those concerns having been realized. At present, agricultural derivatives are traded on the full range of agricultural commodities, the markets have become quite substantial and encompass a broad range of market participants and the transactions have functioned largely without incident. To be clear, we are not arguing for agricultural swaps to be subject to any lesser degree of regulation than other swaps and, under Dodd-Frank and the regime being designed by the CFTC, agricultural swaps would hardly be “unregulated.” To the contrary, we believe that agricultural swaps should be subject to all of the same requirements and restrictions as other types of swaps. Under Dodd-Frank and the CFTC’s regulations, virtually all derivatives that were previously traded over-the-counter will in the future be traded on regulated platforms and cleared through regulated clearing houses, subject to public reporting, disclosure and other protections. As a result, any concerns that might previously have existed with respect to agricultural swaps should not prevent them from being regulated in the same manner as other types of swaps.

We also note that agricultural swaps are important and, in some cases essential, hedging and risk management vehicles for a wide variety of agricultural entities, including farmers, processors, manufacturers, storage facilities and distributors and that these entities have long depended on agricultural swaps to meet their hedging needs. The markets for these instruments have become highly developed and efficient and have functioned without significant problems. In addition, agricultural products are not limited to U.S. markets and exchanges. They are widely sold and traded by U.S. and non-U.S. market participants in a global commodity marketplace.

We therefore urge the CFTC to confirm that all agricultural swaps (including options) are within the definition of “swaps” for purposes of the Commodity Exchange Act (“CEA”), as amended by Dodd-Frank. This would then allow the CFTC to make the same determinations with respect to agricultural swaps that it will be making with respect to other categories of swaps, most notably as to whether they will be subject to the execution and clearing requirements under Dodd-Frank. Consequently, those market participants that are eligible contract participants (“ECPs”) should be permitted to enter into transactions on a swap execution facility (“SEF”) or, if a particular swap is not required to be cleared, or the non-financial end-user exemption is applicable, in the over-the-counter market.

Applying to agricultural swaps the same regulatory regime that will exist for other swaps, therefore, will necessarily require the CFTC to make a case-by-case determination as to whether a particular type of agricultural swap can and should be cleared and executed on a DCM or SEF. We expect that certain categories of agricultural swaps will be subject to these requirements. In our view, however, a number of agricultural derivative markets do not have, and are not likely to develop, the liquidity and other features that are necessary, under Dodd-Frank and as a practical matter, to allow transactions in such markets to be centrally executed and cleared. In making its determination as to those agricultural swaps that should be subject to the execution and clearing requirements of Dodd-Frank, therefore, the CFTC should permit those products, like other over-the-counter transactions, that are not capable of being centrally executed and cleared to be traded outside of SEFs and cleared outside of clearing houses. Of course, such transactions would remain subject to the reporting and other applicable requirements of Dodd-Frank. Such a determination would preserve the hedging utility of these markets and would facilitate necessary hedging activities by commercial entities.

In addition, the CFTC should not impose additional capital or financial requirements on agricultural swaps that do not exist with respect to other commodity transactions. In this regard, as discussed below, the CFTC should eliminate the onerous capital requirements for agricultural commodity options, to facilitate their availability to market participants. There is no basis for these distinctions, based either on the nature of market participants and their uses of the instruments or under Dodd-Frank. As a result, any additional restrictions or requirements that are uniquely applied to agricultural swaps will serve only to reduce the availability of these important hedging tools, effectively limit or prohibit necessary hedging activity by commercial entities and adversely affect liquidity in the market and the volatility and price levels of agricultural commodities, without any corresponding benefit to the protection of the markets or market participants.

#### Treatment of Agricultural Options

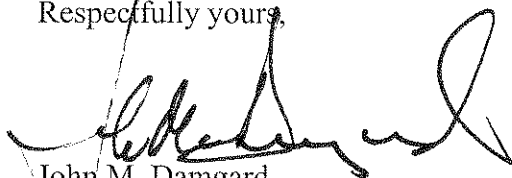
As noted, we recommend that agricultural options be afforded the same treatment as swaps and that agricultural options be regulated in the same manner as options on other types of commodities, for the reasons noted above. We understand, based on discussions with the CFTC’s staff, that the CFTC has taken the position that the provisions of the Dodd-Frank Act regarding commodity options do not take effect until July 15, 2011 and that, until that time, agricultural options that are otherwise eligible for the exemption provided under CFTC Rules 32.13(g) or 32.4 may continue to be entered into pursuant to such exemptions. We believe that this is a helpful and appropriate position and we commend the CFTC for its clarification of this issue.

With respect to the regime ultimately adopted by the CFTC in connection with agricultural options by July 15, 2011, we note that, because the definition of "swaps" under Dodd-Frank includes commodity options, the CFTC also has plenary authority under Dodd-Frank to permit the trading of options under terms and conditions specified by the CFTC. We believe that options are an important and essential component of the hedging vehicles that should be available to any commercial entities that qualify as ECPs. In particular, options may be a more efficient means of accomplishing certain hedging objectives or may be capable of achieving objectives that cannot feasibly be satisfied by swaps. Moreover, as indicated above with respect to swaps, the regulatory regime that will be applicable to all swaps should be more than sufficient to protect market participants entering into agricultural options. We therefore urge the CFTC to include options on agricultural commodities in the definition of swaps for purposes of the CEA.

Finally, agricultural options, and parties entering into such options, should not be subject to any greater capital requirements than parties to other types of swaps. Of course, the CFTC can take into account the nature and risks of the relevant markets in determining capital requirements, but it should not impose arbitrarily higher capital requirements, such as those that presently exist with respect to agricultural options, on any type of agricultural derivatives. Imposing a greater capital requirement will serve only to limit the market, increase prices, reduce liquidity and deprive commercial entities of needed hedging alternatives.

We appreciate the opportunity to comment on the ANPRM, and would be pleased to discuss any questions either regulator may have with respect to this letter. Any questions about this letter may be directed to Barbara Wierzynski, Executive Vice President and General Counsel, at 202-466-5460.

Respectfully yours,



John M. Damgard

President

Futures Industry Association

cc: Honorable Gary Gensler, Chairman  
Honorable Michael Dunn, Commissioner  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott O'Malia, Commissioner  
Daniel Berkovitz, General Counsel  
Terry Arbit, Deputy General Counsel, Office of the General Counsel  
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