National Grain and Feed Association

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October 28, 2010

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

Dear Mr. Secretary:

The National Grain and Feed Association (NGFA) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (CFTC) on the Advance Notice of Proposed Rulemaking (ANPRM) concerning agricultural swaps published in the September 28, 2010, issue of the *Federal Register.*

The NGFA is the national non-profit trade association representing more than 1,000 companies that operate an estimated 7,000 facilities nationwide in the grain, feed and processing industry. Member firms range from quite small to very large, both privately owned and cooperative, and handle or process in excess of 70% of all U.S. grains and oilseeds annually. Companies include grain elevators, feed mills, flour mills, oilseed processors, biofuels producers/co-product merchandisers, futures commission merchants and brokers, and related commercial businesses.

The NGFA's comments herein will not attempt to answer specifically every question posed by the Commission in the ANPR. However, we will provide responses to the major topics into which the questions are grouped and as they are relevant and important to the commercial grain, feed and processing industry and its producer-customers.

Current Agricultural Swaps Business/Agricultural Swaps Clearing

Today, it is extremely difficult to provide a reliable estimate of the current size of the agricultural swaps marketplace; to say with confidence the percentage of ag swaps that are cleared; or to quantify the share of ag swaps that would qualify for the commercial end-user exemption. As the Large Trading Reporting regime under Dodd-Frank is implemented by the Commission, and as Designated Contract Markets (DCMs) and Swap Execution Facilities (SEFs) begin to clear agricultural swaps, the size of the market and frequency of use will become clearer.

Generally, though, most commercial firms in the grain, feed and processing industry hedge their price and inventory risk through use of exchange-traded futures and options. A relatively small, but not insignificant, number of firms engage in agricultural swap transactions as a complementary risk management strategy and/or to facilitate the offering of cash contracts and other risk management tools to agricultural producers.

Participants utilizing ag swaps tend to be larger, sophisticated entities that are well aware of the risks and opportunities presented by engaging in swap transactions. In this regard, the NGFA believes that participants in agricultural swaps are different in no essential way than participants in other types of swap transactions. We see no reason why the regulatory structure for agricultural swaps should be any different than the regulatory structure for other types of swap transactions.

To the extent that ag swaps are a relatively smaller marketplace and potentially less liquid than other swaps markets, there may be challenges to a regulatory approach that would require all OTC ag swaps to be subject to a clearing requirement. Further, by their very nature, swaps tend to be privately negotiated, customized transactions. Many swaps are designed to meet the unique risk management needs of specific companies. Rather than requiring all ag swaps to be shoe-horned into more standardized structures that can always be cleared, the NGFA recommends that ag swaps be allowed to be traded and cleared outside of DCMs/SEFs, in a manner consistent with other swaps. These transactions would still be subject to the reporting and other requirements of Dodd-Frank. Such a determination by the Commission would help preserve a broad array of risk management tools for commercial firms and U.S. agricultural producers, a goal strongly supported by the NGFA.

As contained in Dodd-Frank, it will be very important for CFTC to enunciate a robust and clearly defined commercial end-user exemption for ag swaps from clearing, capital, and margining requirements. The NGFA believes that such an exemption for commercial end-users is not only merited, but also highly needed. Clearly, Congress did not intend to label commercial end-users as swap dealers, nor to burden commercial end-users or their customers with the increased costs and regulatory burdens of exchange-clearing, margining, and capital requirements.

An issue for the Commission to consider is whether the end-user exemption in Dodd-Frank can be extended to the counterparty of the commercial end-user in a swap transaction. Increasing the regulatory requirements of the commercial end-user’s counterparty certainly will result in those costs being factored into total costs of the transaction, thereby increasing costs to the commercial end-user and ultimately to the consumer – and likely achieving little or no added protections in the marketplace. The NGFA suggests that CFTC consider extending the end-user exemption to counterparties like swap dealers to the extent the dealer is doing business with a commercial end-user. In essence, the Commission would "look through" the swap transaction and extend the end-user exemption to the commercial end-user's counterparty, thereby helping to keep costs at a reasonable level for commercial end-users and their customers to the benefit of the entire U.S. economy.

In similar fashion, there are firms that aggregate ag swaps on behalf of their owners or customers, who are end-users, and then in turn lay off the risk to third parties. These aggregators serve an important role in delivering risk management services to agricultural producers and agribusiness firms by enhancing their ability to utilize ag swaps. The NGFA submits that the firms serving the aggregating function also should be considered for treatment as end-users.

Trading

The NGFA is not aware of any significant trading problems that have been experienced by agricultural swaps participants. Ag swaps tend to be private, customized transactions specifically tailored to the needs of market participants. As such, an ag swap participant is well-positioned to ensure the transaction is structured to meet its risk management goals. Likewise, we are unaware of fraud or abuse that has occurred in the agricultural swaps marketplace.

This being the case – and because agricultural swaps pose no systemic risk to the marketplace – the NGFA sees no reason why additional regulatory restrictions should be applied to agricultural swaps. Like other swaps under Dodd-Frank, ag swaps will be subject to extensive capital and margin requirements, business conduct standards, and reporting, recordkeeping, and documentation requirements. We believe these provisions will provide more-than-sufficient safeguards to the market and to swap participants. Imposing additional requirements on ag swaps is unnecessary and would put such instruments and those who use them at a competitive disadvantage.

Agricultural Swaps Purchasers

As stated above, the NGFA believes the regulatory regime for ag swaps should mirror requirements for other types of swaps. Generally, participants are larger, sophisticated entities that do not need or want additional protections. Therefore, we do not believe that additional regulatory requirements should be imposed on ag swaps.

Concerning the ability of agricultural producers who do not qualify as eligible contract participants (ECPs) to purchase agricultural swaps, the NGFA recommends that the Commission not implement special rules or exceptions. To the extent that producers or other individuals qualify as ECPs, they should be allowed to purchase OTC ag swaps on an equal footing with any other swap. Producers who do not qualify as ECPs should be allowed to purchase ag swaps on a DCM, just as other non-ECP participants are able to purchase non-agricultural swaps on-exchange. Stipulating special rules or "carve-outs" for ag swaps simply would undermine the ability of ag swaps to operate in the same regulatory environment as other swap products and is unnecessary given the protections embedded in Dodd-Frank.

Designated Contract Markets/Swap Execution Facilities/ Trading Outside of DCMs and SEFs

The NGFA strongly recommends that ag swaps be permitted on DCMs and SEFs just like other swaps. Likewise, ag swaps should be permitted to trade outside a DCM or SEF in the same manner as other swaps. As detailed above, we see no reason to provide for disparate regulatory treatment that would only serve to limit risk management alternatives and liquidity and constrict the development of new products, without any corresponding market protection benefits.

Sincerely,

Matt Bruns

Matt Bruns
Chair, Risk Management Committee