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October 28, 2010

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

Re: Advanced Notice of Proposed Rulemaking and Request For Public Comment on Agricultural Swaps (Federal Register Release 75 FR 59666)

Dear Mr. Stawick,

The Commodity Markets Council (“CMC”) appreciates the opportunity to comment during the process of rulemaking by the Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”).

CMC is a trade association bringing together exchanges with their industry counterparts. The activities of our members represent the complete spectrum of commercial users of all futures markets including agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange, and the New York Mercantile Exchange. CMC is uniquely positioned to provide the consensus views of commercial end-users of derivatives exchanges and the exchange markets. Our comments below represent the collective view of CMC members.

Agricultural swaps are used, to varying degrees, by our members because they provide a targeted, customized, cost-effective and efficient risk management strategy. They offer contract characteristics outside of what is generally available on regulated futures markets. These products are not used to replace regulated exchange-traded contracts. Rather, they complement exchange products and enhance the overall offering of tools available to market users to satisfy their specific risk management needs. In a world with increasing inherent volatility, the need for risk management instruments has never been greater.

Harmonious Treatment of Agricultural Swaps Is in the Public Interest

As Senators Dodd and Lincoln stated in their June 30, 2010 letter to Representatives Frank and Peterson, “derivatives are an important tool businesses use to manage costs and market volatility,” regardless of whether they are used by an airline hedging its fuel costs or a global manufacturing company hedging interest rate risk. Accordingly, we urge the Commission to treat swaps for all commodities harmoniously. We believe the comprehensive regulation of swaps should not be based on distinctions among commodity types. The generally applicable protections under the Act - such as reporting, mandatory clearing, mandatory trading of standardized swaps, minimum capital requirements, and the CFTC’s authority to impose position limits, determine which swaps are subject to clearing and trading, and to exercise emergency powers – will protect agricultural swaps from fraud and manipulation.

While we encourage the Commission to set the same requirements for eligible contract participants (“ECP”) across all asset classes, we believe there should be no ECP requirement for agricultural swaps traded on a designated contract market (“DCM”).

Historically, the Commission and lawmakers subjected agricultural commodities to a greater degree of regulation and oversight as part of a policy to protect producers. We believe the protection already embedded in the Act will provide the necessary safeguards for producers and other market participants. For example, if neither party to a swap agreement was an end-user, the Act requires the transaction to be traded on a DCM or swaps execution facility. Such transactions must be cleared. If an entity is

trading as an end-user, the Act already requires the entity to be an ECP. In either situation, we believe these safeguards are in the public interest.

Moreover, these protections embedded in the Act could be averted if the Commission were to maintain the current regulatory structure for agricultural swaps under Part 35. For example, an agricultural swap entered into under the existing Part 35 regulations would be excluded from the clearing and exchange-trading requirements of the Act. This loophole would also allow such participants to evade the swap dealer and major swap participant regulations.

Cash Forward Contracts With Embedded Options and Certain Cash Transaction Book-outs Should Not be Treated as “Swaps”

While recognizing these trades are different, CMC believes embedded options in forward contracts and, separately, book-outs from certain cash transactions should not be treated as swaps. Each of these markets has been historically recognized by the Commission as cash and we merely seek confirmation of this from the CFTC as the proposed rules affecting agricultural transactions move forward. Regardless of whether these trades are made with producers or are between commercial entities, so long as the parties to the transaction have the intention of physical delivery, they should continue to be treated as cash and not become subject to regulation as a swap. CMC believes these transactions are significant to the agricultural cash market; any change in the characterization would reduce cash contract opportunities for producers and disrupt export markets in bulk agricultural commodities.

From a producer perspective, treating embedded options as swaps would deny them access to cash contracts that allow them improved pricing opportunities. These contracts require delivery, but hold open final pricing until the producer sets his basis under the terms of the contract. The CMC requests the Commission to reaffirm its position that these transactions fit within the exclusion for cash forward transactions under the Act.

Similarly, if book-outs are treated as swaps, CMC believes it could hinder the net settlement of physical transactions and place the Commission in the position of regulating what is, in fact, a vibrant piece of the cash market between commercial participants. Senators Dodd and Lincoln in their letter to the CFTC expressly excluded from the definition of swaps the situation where “commercial parties agree to book-out their physical delivery obligations under a forward contract.” Accordingly, CMC respectfully urges the Commission to grant an exclusion from rules regulating agricultural swaps for book-outs, so long as such transactions are intended to be physically settled.

Because of the importance of this distinction to the agricultural industry, CMC requests the CFTC expressly state in its rulemaking that embedded options in forward contracts and book-outs are not swaps and therefore will not be regulated as such.

Below are CMC’s answers to the Commission’s specific questions.

Current Agricultural Swaps Business

- 1. How big is the current agricultural swaps business—including both agricultural swaps trading under current part 35 and ATOs under §§ 32.4 and 32.13(g) of the Commission's regulations?***

Unlike other forms of swaps, agricultural swaps markets are not as fully developed; however, we believe they are robust and, as we discussed above, serve an important function for the industry. Until the industry has in place reporting requirements, it is difficult to estimate the size of the agricultural swaps market.

- 2. What types of entities are participating in the current agricultural swaps business?***

We believe the participants in the agricultural swaps markets are very similar to those using futures and options for risk management. These include grain trading and processing firms, elevator operators, energy companies, swaps dealers, proprietary trading firms, and others.

- 3. Are agricultural swaps/ATO participants significantly different than the types of entities participating in other physical commodity swaps/trade options?***

CMC believes the participants in the agricultural swaps and agricultural trade options (ATOs) markets are not significantly different from the entities participating in the market for other physical commodity swaps/trade options.

Similar to our answer to question 2, we believe market participants use agricultural swaps and ATOs in the same way users of other physical commodity swaps/trade options use those products.

Agricultural Swaps Clearing

4. *What percentage of existing agricultural swaps trading is cleared vs. non-cleared?*

Until the industry has in place reporting requirements, it is difficult to estimate the size of the agricultural swaps market.

5. *What percentage of existing agricultural swaps would be eligible for the commercial end-user exemption from the mandatory clearing requirement?*

Based on our understanding of the end-user exemption and the composition of market participants, we believe most users of commodity index swaps would not qualify for the commercial end user exemption. However, based on a survey of our membership, we believe that many users of individual commodity swaps such as grain traders and processors, energy companies, and elevator operators likely would qualify for the end-user exemption.

A definitive answer to this question - and several other similar questions asked by the Commission - would depend fundamentally on how the CFTC defines a “swap”. If embedded options in a physical contract or book-outs are defined as “swaps”, then the percentage would be higher. As stated above, the CMC believes that such transactions should not be defined as swaps, as the core business models of several companies that currently engage productively in the commodities markets would be dramatically and adversely impacted.

The CMC strongly supports the CFTC’s efforts to bring more transparency to the markets, but respectfully cautions that a “swaps” definition that is overly broad and captures too many transactions would be economically detrimental to the markets and market participants, including commercial end users. A practical example of such a detrimental effect would be the widening of bid-ask spreads from the current 2-3 cents to 30-40 cents in most agricultural commodities. This would result in the drying up of liquidity.

6. *What percentage of trading would be subject to the Dodd-Frank clearing requirement, if that requirement applied automatically to agricultural swaps (other than those eligible for the commercial end-user exemption)?*

Unless the Commission retained the existing regulations under Part 35, as we discussed above, our belief is the majority of agricultural swaps currently being traded would be subject to the clearing requirement.

7. *What would be the practical and economic effect of a rule requiring agricultural swaps transactions (other than those eligible for the commercial end-user exemption) generally to be cleared? The Commission is interested in the views of agricultural swaps market participants (both users and swap dealers) regarding a potential clearing requirement for agricultural swaps.*

CMC anticipates the practical and economic effects of mandatory clearing for agricultural swaps to be both positive and negative. Positively, we expect to see a reduction of systemic risk by mutualizing risk in the central counterparty clearing system. We also believe resources will be more efficiently allocated with a reduced need to evaluate creditworthiness of counterparties and improved market liquidity by reducing concern over counterparty credit risk.

While we expect to see these very strong positives from mandated clearing, we also anticipate negative effects as well. For example, we expect to see an increase in the number and use of more standardized transactions. Correspondingly, we believe there will be a loss of innovation as customers lose the benefit of tailored risk management tools. We also anticipate increased costs from the capital and margin requirements for clearing. Exchanges have proven their efficiency at setting margins on standard contracts, but, historically, they have not had the necessary experience to effectively establish margin for bilateral transactions.

8. *What would be the practical and economic effect of requiring agricultural swaps to be cleared under the Dodd-Frank clearing regime?*

See our answers above.

Trading

9. *Have current agricultural swaps/ATO participants experienced any significant trading problems, including:*

- (a) economic problems (i.e., contracts not providing an effective hedging mechanism, or otherwise not performing as expected);*
- (b) fraud or other types of abuse; or*
- (c) difficulty gaining access to the agricultural swaps market?*

We are not aware of any trading problems; however, we believe participants in ATO markets have been extremely limited due to the complicated process for complying with ATO rules.

Access to calendar swaps for corn, wheat and soybeans was enhanced following CFTC approval of CME Group's 4c and 4d petitions for these products, as was access to the swaps on soft commodities and wheat offered by ICE Clearing U.S. and KCBT Clearing, which allowed them to be offered to eligible contract participants.

Agricultural Swaps Purchasers

10. *Do agricultural swaps/ATO purchasers need more protections than participants in other physical commodity swaps/trade options?*

As we explained above, we do not believe agricultural swaps/ATO purchasers need more protections than participants in other physical commodity swaps or trade options.

11. *If so, why, and what should those protections be?*

See our answer to question 10.

12. *Would additional protections for agricultural swaps purchasers unduly restrict their risk management opportunities?*

Yes. Additional protections for agricultural swaps purchasers likely would restrict their risk management opportunities. Requiring additional protection for agricultural swaps purchasers may increase the costs associated with entering such swaps and decrease the liquidity of the agricultural swap market. CMC believes that the Act offers ample protections for all swap market participants and there is no reason to extend additional protections to purchasers of agricultural swaps.

13. *Should the Commission consider rules to make it easier for agricultural producers to participate in agricultural swaps—for example, by allowing producers who do not qualify as ECPs to purchase agricultural swaps?*

As stated above, we encourage the Commission to set the same requirements for ECPs across all asset classes; however, we encourage the CFTC to allow non-ECP market participants to continue to trade in agricultural swaps on DCMs. Market participants should have the same ability to engage in agricultural swaps as they do other swaps.

CMC would recommend against allowing non-ECPs to engage in OTC agricultural swaps. Because agricultural swap participants and instruments are similar to other asset classes, the rules and regulations that apply to agricultural swaps should be the same as those that apply to other swaps. While we see no reason to restrict trading in agricultural swaps any more than for other swaps, we also do not believe there is any reason to expand it beyond the boundaries outlined in the Commodity Exchange Act or the Dodd-Frank Act.

Designated Contract Markets

14. *Should agricultural swaps transactions be permitted to trade on DCMs to the same extent as all other swaps are permitted on DCMs?*

Yes, CMC believes that the rules and regulations applicable to non-agricultural swaps should apply with equal force to agricultural swaps, including rules with respect to trading on DCMs.

15. *If yes, why?*

Market participants use agricultural swaps for the same purposes as other swaps, i.e. hedging and speculation. DCMs are already subject to comprehensive regulation by the CFTC and this regulation offers a suitable level of protection for those market participants who choose to trade swaps on DCMs. Furthermore, permitting agricultural swaps to trade on DCMs would increase market transparency.

16. *If no, what other requirements, conditions or limitations should apply?*

CMC believes no other requirements, conditions or limitations should apply.

Swap Execution Facilities

17. *Should agricultural swaps transactions be permitted on SEFs to the same extent as all other swaps are permitted to transact on SEFs?*

Yes, CMC believes that the rules and regulations applicable to non-agricultural swaps should apply with equal force to agricultural swaps, including rules with respect to trading on SEFs.

18. *If yes, why?*

ECPs use agricultural swaps for the same purposes as other swaps, i.e., hedging and speculation, and should have the same tools available for all physical commodity swaps, whether agricultural commodities or not.

19. *If no, what other requirements, conditions or limitations should apply?*

CMC believes no other requirements, conditions or limitations should apply.

Trading Outside of DCMs and SEFs

20. *Should agricultural swaps be permitted to trade outside of a DCM or SEF to the same extent as all other swaps?*

Yes, CMC believes that the rules and regulations applicable to non-agricultural swaps should apply with equal force to agricultural swaps, including rules with respect to trading in the OTC market.

21. *If yes, why?*

Under the Act, only ECPs may transact swaps in the OTC market and most standardized swaps must be cleared and exchange-traded. ECPs can evaluate and manage appropriately the risks associated with OTC swaps and the Commission should not restrict their ability to enter agricultural swaps.

Moreover, market participants use agricultural swaps for the same purposes that they use other swaps and we are aware of no specific evidence that indicates users of these swaps need more (or fewer) protections than the users of other swaps.

Over the past decade, the various agricultural constituencies have come to rely more on OTC agricultural products and the technologies that facilitate trading in these products. We have also seen the development of a core group of commercial firms who have demonstrated experience in serving as dealers in the OTC market for agricultural swaps. The Commission should allow the OTC agricultural swap market to develop and evolve naturally without hindering the creation of liquidity, just as in the cases of OTC market for other commodities.

22. *If no, what other requirements, conditions or limitations should apply?*

CMC believes no other requirements, conditions or limitations should apply.

23. *Should agricultural swaps be permitted to trade outside of a DCM or SEF to a different extent than other swaps due to the nature of the products and/or participants in the agricultural swaps market?*

No. CMC believes that agricultural swaps should be permitted to trade outside of a DCM or SEF to the same extent as other swaps.

24. In general, should agricultural swaps be treated like all other physical commodity swaps under Dodd-Frank?

Yes, agricultural swap should be treated like all other physical commodity swaps under the Act.

25. If yes, why?

The Act establishes a comprehensive regulatory scheme that both promotes the stability of the U.S. financial system and provides protections for individual market participants. We are aware of no difference between agricultural swaps and swaps in other physical commodities that would require different treatment for agricultural swaps. Moreover, treating agricultural swaps just like all other physical commodity swaps would enhance depth and liquidity in the markets.

26. If no, are there any additional requirements, conditions or limitations not already discussed in other answers that should apply?

CMC believes no other requirements, conditions or limitations should apply.

27. If agricultural swaps are generally treated like swaps in other physical commodities, are there specific agricultural commodities that would require special or different protections?

As stated above, CMC believes agricultural swaps should be treated identically with other swaps. There are no specific agricultural commodities that would require special or different protections.

If you have any questions or would like to discuss further, please do not hesitate to contact me via email at christine.cochran@commoditymks.org or via phone at (202) 842-0400 – ext. 101. Thank you in anticipation of your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine M. Cochran". The signature is written in a cursive style with a large, looping initial "C".

Christine M. Cochran
President
Commodity Markets Council