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April 4, 2011

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

Re: Proposed Rulemaking on Commodity Options and Agricultural Swaps (RIN 3038-AD21)

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 supports the Commission’s proposal to treat agricultural swaps and commodity options the same as all other swaps.

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. CMC believes this proposal will enhance certainty in the agricultural swap markets and encourages the Commission to adopt the proposal as a final rule.

Harmonious Treatment of Agricultural Swaps

In our October 2010 letter on this subject, CMC urged the CFTC to exercise its discretion under Section 4(c) of the CEA to promulgate rules specifying that agricultural swaps will be treated the same as other types of swaps. CMC believes applying a single, uniform set of rules to all swaps will advance the public interests that the Dodd-Frank Act (“Act”) and the CEA are designed to promote and benefit the users of these products. We are pleased the CFTC has adopted our suggestion.

CMC agrees with the Commission’s assessment that subjecting agricultural swaps to the Act’s regulatory regime would be consistent with the public interest. Permitting agricultural swaps to transact under the same terms and conditions as other swaps will provide greater certainty and stability to the agricultural swaps market and will advance many of the Act’s goals, including increased pre-trade price transparency, and reduction of systemic risk through the use of central clearinghouses.

Applying the same rules to agricultural swaps as to all other types of swaps will also ensure that only appropriate entities enter into agricultural swaps. 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 embedded in the Act will provide the necessary safeguards for producers and other market participants, as well as the general public. 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.

In addition, streamlining swap regulation so that agricultural swaps are treated the same as other swaps will enable the Commission and Commission-regulated markets to discharge their regulatory duties more efficiently. Moreover, under the current part 35 exemption, DCMs and the CFTC have developed appropriate levels of oversight for the trading and clearing of agricultural products. This experience demonstrates that agricultural swaps can transact in the same manner as other swaps without disrupting the market and suggests that special regulation for agricultural swaps is unnecessary.

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

In light of Chairman Gary Gensler’s recent comments before the U.S. House Committee on Agriculture, CMC would like to take this opportunity to re-iterate our views on this issue.

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 bookout 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.

Clarification in these two areas is critical because forward cash contracting between grain trading companies and producers for the 2011 crop is currently underway. There seems to be a disconnect between the time the Commission will finalize rules for agricultural swaps and the time it implements final rules defining a swap. This disconnect creates uncertainty in the marketplace. Thus the Commission needs to find some way to reassure the cash industry that forward contracts with embedded options and book-out transactions will in fact continue to be cash contracts not subject to the swaps the regulatory regime.

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 initial "C" and a distinct "M".

Christine M. Cochran
President
Commodity Markets Council