

June 29, 2011

By Electronic Submission

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: Effective Date For Swap Regulation (“Effective Dates”)

Dear Mr. Stawick:

We submit these comments on behalf of our clients, the Commodity Options and Agricultural Swaps Working Group (the “Working Group”) in response to the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) June 17, 2011, Notice of Proposed Order regarding the effective date for swap regulation (the “Proposed Order”).¹ The Working Group is comprised of diversified financial institutions and commercial companies that provide risk management products, including agricultural and other commodity options and swaps, to producers, processors, merchants handling, and users of physical commodities, or that use such transactions to hedge their commercial risk.²

The Working Group supports the Commission’s effort to provide the market with legal certainty during the transition period and supports the Commission’s proposal, including the proposed relief for transactions in exempt and excluded commodities. The Working Group understands that, although not stated explicitly in the Proposed Order, market participants may execute transactions in reliance upon one or a combination of the Commission’s rules, exemptions, interpretations and no-action relief, except with respect to enumerated agricultural commodity options, which must comply with the requirements of Rule 32.13(g). Our understanding is consistent with the Commission’s long-standing position that its exemptions

¹ Effective Date for Swap Regulation, 76 Fed. Reg. 35372 (June 17, 2011).

² The Working Group previously submitted a comment letter addressing this issue on June 6, 2011, and appreciates the Commission’s consideration of its suggestions.

C A D W A L A D E R

David A. Stawick
June 29, 2011
Page 2

and interpretations are not mutually exclusive.³ Clarifying that market participants can rely upon one or more rules, exemptions and other relief for transactions executed during the transition period will provide greater legal certainty and “ensure that current [market] practices are not unduly disrupted during the transition to the new regulatory regime.”⁴ We request that the Commission confirm in the final order that, except with respect to options on enumerated agricultural commodities, the Commission’s rules, policy statements, and exemptive and no-action relief are not mutually exclusive and, therefore, that market participants can rely on all that apply to a particular transaction.

The Working Group also requests that the Commission clarify in the final exemptive order that the temporary exemption for transactions in exempt or excluded commodities applies equally to agricultural swaps in order for parties to continue entering into these transactions in conjunction with a line of business, or otherwise in reliance on Part 35 of the Commission’s regulations under the terms of the Proposed Order.⁵ As noted above, the Commission’s stated intent was to preserve the status quo with respect to the regulatory framework for transacting in swaps based on exempt, excluded or agricultural commodities, including to allow market participants to continue to rely on all applicable rules, exemptions and interpretations, such as the 1989 Swap Policy Statement, which includes the line of business provision. In the Proposed Order, the Commission expressly made the line of business provision available for exempt and excluded commodity transactions, but did not reference agricultural commodities.⁶ As a result, questions have arisen regarding whether the line of business exemptive relief applies to agricultural swaps for the interim period. For this reason, the Working Group requests that the Commission clarify in its final order that the temporary exemption, including the line of business provision referenced in the Proposed Order, also applies to agricultural swaps. This would be consistent with its proposal to regulate

³ See, e.g., Final Rule Issuing Part 35, 58 Fed. Reg. 5587 at n.9 (Jan. 22, 1993), noting the continued applicability of various exemptions to bilateral transactions (“The Commission has also recognized, as have others, that certain swap transactions may fall within the Act’s jurisdictional exclusions for forward contracts, or the so-called Treasury Amendment or within the Commission’s regulatory trade option exemption”); see also, e.g., Exemption for Bilateral Transactions, 65 Fed. Reg. 78030 (Dec. 13, 2000) (withdrawn following the CFMA) (“In proposing the rules, the Commission affirmed the continuing vitality of the exemptive relief that it had previously granted to transactions in the OTC market, including the part 35 exemption, the Policy Statement Concerning Swap Transactions (54 Fed. Reg. 30694 (July 21, 1989)) (Swaps Policy Statement), the Statutory Interpretation Concerning Forward Transactions (55 Fed. Reg. 39188 (Sept. 25, 1990)) (Energy Interpretation), and the Exemption for Certain Contracts Involving Energy Products (58 Fed. Reg. 21286 (April 20, 1993)) (Energy Exemption)”).

⁴ See 76 Fed. Reg. at 35373.

⁵ See Proposed Order at 35376.

⁶ See *id.*

C A D W A L A D E R

David A. Stawick
June 29, 2011
Page 3

agricultural swaps like all other commodity swaps (a recommendation that the Working Group supports and for which it has submitted comments).⁷

Please contact us if you have any questions about the Working Group's comments.

Respectfully submitted,



Paul J. Pantano, Jr.
Athena Eastwood

Commodity Options and Agricultural Swaps Working Group:

Barclays Capital
Citigroup
Commodity Markets Council
Credit Suisse Securities (USA) LLC
Gavilon, LLC
GROWMARK, Inc.
INTL FCStone Inc.
JPMorgan Chase & Co.
Morgan Stanley
Wells Fargo & Co.

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
Donald Heitman, Senior Special Counsel
Ryne Miller, Attorney Advisor

⁷ In its proposed rule regarding commodity options and agricultural swaps, the Commission proposed to treat all commodity swaps on an equivalent basis. *See* 76 Fed. Reg. 6095, 6013 (Feb. 3, 2011) (“permitting agricultural swaps to trade under the same terms and conditions as other swaps should provide greater certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner. Treating all swaps, including agricultural swaps, in a consistent manner should provide greater certainty to markets.”).