



August 25, 2011

Submitted via e-mail

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

Re: Adaptation of Regulations to Incorporate Swaps (RIN 3038-AD53) (Federal Register Vol. 76, No. 109, Page 33066)

Dear Mr. Stawick:

The Kansas City Board of Trade (KCBT) appreciates the opportunity to provide comments on the Commodity Futures Trading Commission's (Commission) aforementioned Notice of Proposed Rulemaking. Specifically, we wish to address concerns that we have pertaining to the Commission's proposed amendments to Regulation Section 1.35(a).

Proposed amended Regulation Section 1.35(a) would require *all members of DCMs* to record all oral and written communications that lead to the execution of transactions in a commodity interest or cash commodity. While we agree with other commenters that the new requirements covering all oral communications is overly burdensome and will impose a significant cost burden to the industry, we wish to focus our comments on some of the specific language contained in 1.35(a) and its consequences if taken literally.

The Kansas City Board of Trade has always interpreted 1.35(a) to pertain to transactions with customers (and in the case of DCMs, other members) as agent for such transactions, including cash transactions that directly relate to commodity futures transactions, namely exchange of futures in connection with the physical commodity (EFP). More to the point, we have always understood 1.35(a) to apply to members of DCMs (other than member FCMs & IBs already specifically subject to 1.35(a)) in order to capture and monitor the activities of exchange members (other than FCMs & IBs) dealing with customers as agent for such transactions, namely registered floor brokers.

However, since the release of the Commission's proposed amendments to 1.35(a), concerns have been expressed about the overreaching nature of the language of 1.35(a) when read literally. While we do not believe the Commission intends for 1.35(a) to apply to cash and cash forward transactions outside of those directly relating to a regulated futures or swaps

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transaction (as agent), we understand the concerns expressed and encourage the Commission to clarify the wording of 1.35(a) to make clear that transactions in “cash commodities” pertain only to cash transactions that directly relate to regulated DCM transactions (i.e., EFPs). This clarification will avoid the misunderstanding of 1.35(a) applying to cash grain merchant members of DCMs in their cash commodity dealings outside of those that directly relate to regulated DCM transactions.

There are several significant problems associated with the application of 1.35(a) to all DCM member cash or cash forward transactions:

Discriminatory Nature of Application. Applying 1.35(a) to all DCM member cash transactions creates a discriminatory regulatory structure, as commercial DCM members will be subject to burdensome and prescriptive regulation of their cash business solely as a result of their membership in such DCM. This overreaching application of 1.35(a) creates a strong disincentive for commercial entities to remain members of DCMs. One of the primary reasons for commercial entity membership in DCMs is to gain the benefit of the fee structure associated with membership. In addition, commercial entities become members of DCMs in order to participate in committees and governance, where their market expertise and input can benefit the DCM markets and market participants. Regulatory disincentives could have the unintended consequence of driving away this necessary market expertise.

Deliverable Supplies & Contract Convergence. KCBT rules (and those of other DCMs) require that operators of registered delivery warehouses be members. The regulatory disincentives created by the application of 1.35(a) to all DCM member cash transactions could affect not only DCM expertise, but deliverable supplies and convergence. Should DCM commercial members operating delivery warehouses decide to withdraw from membership because of the onerous regulatory burdens of 1.35(a), deliverable supplies would be negatively impacted and there would be fewer deliverable supplies to foster convergence at delivery. Commission regulations should encourage rather than discourage deliverable supplies and convergence of DCM physical markets. In fact, Part 40 of the Commission’s regulations places great emphasis on deliverable supplies and locations in reviewing new contracts with physical delivery characteristics. Adequate deliverable supplies are a key component in fostering convergence at delivery. Deliverable supplies also assist in the prevention of market manipulation, price distortions and disruptions in the physical delivery process.

Congressional Regulatory Intent. As stated above, KCBT does not believe that the Commission intends for 1.35(a) to apply to the cash market (except in the case of EFPs that directly relate to regulated agent transactions). We do not believe that the intent of Congress, either in the past or as a result of Dodd/Frank, was ever to regulate cash and cash forward transactions, and Section 2 of the Commodity Exchange Act makes no specific mention of cash or cash forward markets (other than reports required in Part 19 substantiating bona fide hedging transactions) in delineating the Commission’s jurisdiction.

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In closing, we thank the Commission for its kind consideration of our concerns and we encourage the Commission to amend its proposal to make clear that cash and cash forward transactions (other than those directly connected to a regulated transaction) are outside of the scope of 1.35(a). In addition, like many other commenters, we encourage the Commission to remove the requirements to record all oral communications as set forth in proposed 1.35(a) for the myriad reasons set forth in prior comments.

Sincerely,



Jeff C. Borchardt
President & CEO

Cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Jill Sommers
Commissioner Bart Chilton
Commissioner Scott O'Malia

John Lawton
Peter Kals
Elizabeth Miller
David Aron
Barry McCarty
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