



Tel: 202-626-8700  
Fax: 202-626-8722  
50 F Street, NW Suite 900  
Washington, DC 20001  
[www.ncfc.org](http://www.ncfc.org)

October 31, 2011

The Honorable Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Dear Chairman Gensler,

Thank you again for the opportunity to meet with you on September 26, 2011, and engage in a constructive dialog concerning farmer cooperatives and the entities definition rule. As we discussed, much of our concern lies with how the final rule will treat many of the swap transactions that our members enter into, both with members of a cooperative and third parties.

Based on our meeting and subsequent discussions with CFTC staff, we are still uncertain how various transactions will be treated in the final rule, specifically which transactions would be considered "swap dealing" activities. I believe those discussions have, however, provided some guidance as to how CFTC may consider some of our members' transactions. Given that input, and in an effort to respond to questions raised during our meeting, we offer the following proposals concerning the "de minimis" provision contained in the rule.

We offer two proposals, one that would consider cooperative transactions with members as dealing activities, and a second that would not. The "de minimis" levels in the proposals reflect the differences in the types of transactions considered swap dealing.

In both proposals we make the assumption that swaps used to lay off risk would not be considered as swap dealing. Some examples of such activities include:

- Swaps entered into with third parties to hedge or mitigate commercial risk of cooperative operations, where clearly the cooperative would be considered an end user (example: hedging fuel costs to run a plant or transport milk, hedging grain or fertilizer purchases, etc.).
- Swaps with third parties to offset the risk of forward contracts with customers (example: offsetting the risk of dairy product sales to food companies, or grain sales to processors).
- Swaps with third parties to offset the risk of providing forward contracts to producers (example: offsetting forward milk contracts to farmers).
- Offsetting swaps entered into with third parties to hedge the risk of offering swaps to members or customers (example: swaps used by federated cooperatives to offset the risk of offering a local cooperative a swap to mitigate its risk of entering into forward contracts with farmers).

- Swaps where both the cooperative is hedging or mitigating commercial risk as well as its counterparty; or what should be viewed as an end user to end user swap.

Proposal 1. Cooperative swaps that do not meet the assumptions above, including those with cooperative members and customers, may likely be considered “dealing activity” under the entities definition rule. To allow enough latitude to account for growing demand for risk management tools and commodity price appreciation, a minimum “de minimis” level of \$3 billion would be appropriate.

Proposal 2. In addition to the assumptions noted above, swaps between cooperatives and their members would not be considered swap dealing activities. Such examples include swaps between a federated cooperative and an affiliated local cooperative (to hedge forward contracts), and a cooperative and their producer members (to hedge input costs or future price risk of commodities produced). If those transactions are not considered dealing on the part of the cooperative, a minimum “de minimis” level of \$1 billion would be appropriate.

Once again, we appreciate your commitment to work with us on implementation of the Dodd-Frank Act, and more specifically to address our concerns with the entities definition rule. We look forward to continuing our dialog and as the rules are written.

Sincerely,



Charles F. Conner  
President & CEO