January 4, 2012

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler:

The undersigned organizations write to express concern with rules proposed by the Commodity Futures Trading Commission (Commission) to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Our members are farmers, cooperative associations, grain dealers and millers, food processors, and others who produce and distribute our nation's food, feed, fuel and fiber. As agricultural markets have become more global and more volatile, risk management needs are greater and more diverse.

We support the broad objectives of Dodd-Frank – regulatory consistency, transparent markets, and reduced systemic risk. The undersigned organizations worked with Congress as the Act evolved to better target these objectives, including broad exemptions for agricultural end users hedging their legitimate business risks.

However, we are greatly concerned by what we see as an inflexible regulatory approach with many of the proposed rules issued to date. These rules would apply regulations largely designed for systemically important institutions to cooperatives, grain companies, and many other end users whose hedging poses no such risk to the markets or the economy. The result would be to jeopardize the availability of risk management tools, putting many farms and small businesses at a severe disadvantage in the marketplace.

We appreciate the Commission's efforts to improve the final rule defining a *bona fide* hedge by providing a broader, more functional definition. The initial proposal was so narrow and the reporting requirements so onerous on commercial market participants it would have greatly undermined the use of risk management tools by end users. To ensure Dodd-Frank implementation achieves the goals of the law while at the same time preserving the ability of end users to effectively hedge their risk, we now seek your support in the following areas.

First, access to risk management tools, especially for smaller producers, often depends on their cooperatives or their local grain elevators, which provide these products as a service to their members or customers. As proposed, the ***swap dealer definition*** is so broad it would subject many such risk management providers to extensive additional regulation generally intended for entities that pose a risk to the U.S. financial system (attached are comments submitted last year by many of the undersigned organizations). More likely, such entities would reduce risk management offerings to avoid being designated a swap dealer, or entirely exit the business as the costs resulting from minimum capital requirements, mandatory clearing and margining, real-time reporting, and business conduct standards would be too great to continue offering such services. The potential result will not only be less access to risk management products, but also consolidation of the commodity swaps business in a small number of large dealers – especially large financial companies – who are able and willing to manage and pass along these costs in the form of larger spreads.

Further, the interaction between various rules remains unclear. For instance, while an entity may meet the criteria of hedging or mitigating commercial risk in the end user exception from mandatory clearing rule, the same activities may define the same entity as a swap dealer making it ineligible for the end user exception. To ensure clarity in implementation of the law, we recommend the following:

- Explicitly exclude commercial hedging transactions from the definition of swap dealing activity.
- The swap dealer definition should recognize the distinct difference between significant swap dealers and entities offering swaps not as part of a regular business, but rather to facilitate legitimate hedging practices.
- Establish a significantly higher, commercially meaningful *de minimis* exception that allows for rising commodity prices and increased market volatility.
    - The notional threshold should be high enough to exclude commercial entities that do not pose a systemic risk to the U.S. financial system as demonstrated through economic analysis by the Commission.
    - Further, there should be no threshold on the maximum number of counterparties or swaps.

Second, as contained in the ***conforming amendments*** draft rule, the Commission proposed to require all members of a designated contract market (DCM) to "record all oral communications that lead to the execution of transactions in a commodity interest or cash commodity." Many agricultural operations are members of DCMs. While some firms now record certain conversations in order to provide a record of execution orders, the Commission's proposal would require employees at hundreds of small operations, such as country grain elevators, to record all face-to-face and telephone conversations with farmers, even when recording has never been required in the past. Moreover, these same operations could face penalties if they simply failed to index, file, and store for five years all e-mail, facsimile, and other communications with agricultural producers.

We strongly oppose this requirement in the cash commodity markets, and believe the requirement of recording conversations, indexing and retaining those recordings, should:

- Go no further than is currently required in the cash commodity markets; and
- Any contemplated expansion of the current requirements in the cash commodity markets should be thoroughly evaluated to ensure the economic benefits outweigh the costs imposed on members of DCMs and farmers.

We seek your further support for clearer and more flexible regulations that take into account the legitimate hedging needs of agricultural end users. Agricultural end users, as the backbone of the commodity markets and of our economy, should be positively encouraged to manage their risks and not forced into a one-size-fits-all regulatory approach. As was the case with the *bona fide* hedging definition, the proposed rules should be re-examined with keener eye to the needs of U.S. agriculture and to the spirit of Dodd-Frank.

Sincerely,

American Cotton Shippers Association
American Farm Bureau Federation
American Feed Industry Association
Commodity Markets Council
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Grain and Feed Association
National Milk Producers Federation
National Pork Producers Council
USA Rice Federation

February 22, 2011

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

RE: ***Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"; Proposed Rule (Federal Register Vol. 75, No. 244)***

Dear Mr. Stawick,

In response to the entity definitions proposed rule, we submit the following comments for your consideration. Our organizations represent a broad section of agriculture producers and agribusiness that rely on futures and swap markets to hedge the commercial risk inherent to agriculture production, processing and marketing.

Swaps are used by our members because they provide a targeted, customized, cost-effective, and efficient risk management strategy in the grain/oilseed, dairy, livestock, and farm input sectors. Swaps offer contract characteristics generally unavailable on regulated futures markets, such as custom sizes and contract dates that line up more closely to producers' needs. In addition to providing the agriculture sector the ability to offer customized products to help producers better manage risk and returns, the risk associated with offering forward contracts to farmers with a price guarantee often is offset with swaps.

We are concerned that the proposed definition of "swap dealer" contained in the proposed definitions rule is overly broad and would capture entities that were never intended by Congress to be regulated as swap dealers. At times, providing and using hedging tools in the agriculture industry in the form of swaps may look somewhat similar in nature to functions performed by a "swap dealer" as outlined in the draft regulations. However, swaps utilized by our members are not being used for speculative purposes; rather, they are used to hedge commercial risk by entities with an underlying interest in the physical commodities themselves and to support the viability of farmers, including many small producers with no other practical access to risk management tools that serve their specific needs.

If increased requirements for mandatory clearing, posting capital and margin, reporting, record keeping and other regulatory requirements intended for large financial institutions are applied to those that offer risk management products to farmers, those tools would become less available and more expensive. That would be a highly undesirable outcome in today's volatile marketplace where more risk management tools are needed, not less.

Therefore, we strongly urge the Commission to take into account the unique needs of the agriculture sector to have access to better risk management instruments – including customized products like swaps – when refining the definitions regulations. Clearly, it was not the agriculture sector that caused the financial crisis in 2008; to the contrary, the agriculture sector benefitted by the use of swaps during that volatile time and posed absolutely no systemic risk.

We look forward to working with the Commission to preserve the ability of producers and others in the agricultural sector to have access to the products they need to manage their commodity price risk in the future.

Sincerely,

American Farm Bureau Federation
American Soybean Association
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Council of Farmer Cooperatives
National Grain and Feed Association
National Milk Producers Federation
National Pork Producers Council