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February 10, 2012

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN No. 3038-AD64 - Interpretation of the Term "Actual Delivery"
as set forth in Section 2(c)(2)(D)(ii)(III)(aa) of the Commodity Exchange Act
(76 Fed. Reg. 77,670 (Dec. 14, 2011))

Dear Mr. Stawick:

We are submitting this comment letter as counsel for various entities which would be adversely affected by the issuance of the above-referenced interpretation. In its Federal Register release announcing the interpretation, the Commission attempts to legislate what Congress chose not to. Specifically, in the second example set forth in the Commission's release, the Commission would build into Section 2(c)(2)(D)(ii)(III)(aa) requirements that would have to be met by third party depositories to which actual delivery can be made on behalf of a buyer under the exemption provided by that section. There is nothing in the Dodd-Frank Act or its legislative history which supports such an interpretation or the concept that Congress intended to qualify the depositories which could be used for deliveries in any fashion whatsoever. The qualification requirements the Commission would impose upon such depositories are taken directly from the Model State Commodity Code (the "Model Code"). Interestingly, the qualification requirements in the Model Code apply only to transactions involving partial deliveries as opposed to full delivery which is required under the exemption in Section 2(c)(2)(D)(ii)(III)(aa) of the Commodity Exchange Act. There is legislative history showing that Congress was aware of the Model Code when it adopted the Dodd-Frank Act. If Congress wished to impose qualification requirements on warehouses accepting delivery for buyers under the exemption, it could easily have done so.

The Commission's examples in its Federal Register release are a thinly veiled attempt to legislate limitations on an exemption from its jurisdiction which it lobbied unsuccessfully to avoid during the consideration of the Dodd-Frank Act by Congress two years ago. The Commission's "interpretation" is simply beyond the statutory authority of the Commission to adopt. Moreover, even if the Commission has some

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limited authority in this area, that authority could only be exercised through notice-and-comment rulemaking. Such a process is designed to, and would have, provided the Commission with a greater understanding of the legitimate participants in the industry and the manner in which they conduct business.

Respectfully submitted,



John J. Giovannone

JJG:can