

January 4, 2012

The Honorable Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> 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 earlier this 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