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National Council of Farmer Cooperatives

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June 8, 2011

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

Dear Chairman Gensler:

The National Council of Farmer Cooperatives (NCFC) writes to convey our urgent concern regarding the potential disruption in the over-the-counter (OTC) derivatives markets. We ask for your clarification of acceptable swap transactions after July 16, 2011, the effective date of most Title VII provisions contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Recognizing that the administrative rulemaking process will not be completed in time for implementation of the law, there is concern that certain swap transactions, presently used by our members to hedge bona-fide commercial risk, may no longer be allowed.

Farmer cooperatives use OTC derivatives to effectively mitigate risks in the increasingly volatile commodity markets and to provide producers with risk management tools. As processors and marketers of commodities, and suppliers of farm inputs, farmer cooperatives use swaps to hedge or mitigate commercial risks associated with price movements in commodities such as grain, dairy products, livestock, energy, and fertilizer. In addition to physical commodities, farmer cooperatives enter into a number of swaps to help hedge other commercial risks of operating their businesses, including fluctuating interest rates and currencies. For these reasons, we are concerned that without action to address the looming legal uncertainty around OTC derivatives, there will be significant disruptions in the marketplace that would negatively affect the ability of farmer cooperatives to hedge those risks.

Specific to agricultural swaps and options, we believe that OTC agricultural commodity swaps currently trading under Part 35 rules are grandfathered and may continue until the Commodity Futures Trading Commission (CFTC) puts in place new regulations replacing Part 35. However, agricultural trade options in the enumerated commodities trading under the 32.13(g) exemption from the agricultural trade option rules may become illegal, absent CFTC action, when Dodd-Frank takes effect. Based on our discussions, there is enough uncertainty in the marketplace that a clarification by the CFTC is necessary, both for fixed price transactions and options on both enumerated and non-enumerated price option transactions. To calm the concerns of the users of these products and to create certainty, we ask the CFTC to clarify those rules as well as rules for other transactions noted above.

We understand that the CFTC is acutely aware of these problems and is evaluating what options it has to provide for a "bridge" until the new regulations are put in place. We urge you to provide clear guidance on how the Commission intends to resolve this predicament well in advance of July 16 to avoid disruption in the markets leading up to and beyond that date. Elimination of this potential disruption would be of great relief to NCFC's members and their farmer-owners across the country.

Thank you very much for your attention to this matter. We appreciate working with you and the Commission as the rules to the Dodd-Frank Act are written and implemented.

Sincerely,

Chuck Conner
President & CEO

cc: The Honorable Michael Dunn
The Honorable Jill Sommers
The Honorable Bart Chilton
The Honorable Scott O'Malia
David Van Wagner, Chief Counsel
Don Heitman, Special Counsel
Ryne Miller, Attorney Advisor