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National Council of Farmer Cooperatives

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May 1, 2013

The Honorable Debbie Stabenow
Chairwoman
Senate Committee on Agriculture
328A Russell Senate Building
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member
Senate Committee on Agriculture
328A Russell Senate Building
Washington, DC 20510

Dear Chairwoman Stabenow and Ranking Member Cochran:

On behalf of the more than two million farmers and ranchers who belong to farmer cooperatives, the National Council of Farmer Cooperatives (NCFC) appreciates this opportunity to provide input to the Committee as you prepare to review the Commodity Exchange Act (CEA) and reauthorize the Commodity Futures Trading Commission's (CFTC) oversight of the futures and swaps markets.

Since 1929, NCFC has been the voice of America's farmer cooperatives. Our members are regional and national farmer cooperatives, which are composed of over 2,500 local farmer cooperatives across the country. As processors and handlers of commodities, farmer cooperatives – and their farmer-owners – rely on futures and swaps markets to hedge the commercial risk inherent to agricultural production, processing and marketing. In addition, there are cooperatively-owned futures commission merchant (FCM) operations that are relatively small and serve a customer base comprised of physical commodity hedgers.

By providing price risk management tools to their farmer-owners, farmer cooperatives help mitigate commercial risk in the production, processing and selling of a broad range of agricultural and food products. America's farmers, ranchers, and their cooperatives must continue to have access to risk management products that enable them to feed, clothe and provide fuel to consumers here at home and around the world.

The Dodd-Frank Act

We greatly appreciate the ongoing oversight the Committee has provided as the Dodd-Frank rules have been written. Your work in encouraging the CFTC to ensure that the agriculture industry has affordable access to innovative risk management tools once the Act is implemented is commendable. With your continued leadership, we are hopeful that the agriculture industry will avoid being subject to a "one-size-fits-all" type of regulation intended for Wall Street.

NCFC supports elements of the Dodd-Frank Act that bring more transparency and oversight to the OTC derivatives markets. We also recognize the complexity in crafting rules for the implementation of Dodd-Frank that best fit cooperatives. With the sheer volume of rules, the challenges in clearly understanding what is contained in those regulations, and the complexity of how they will fit together, NCFC members have been turning their attention to compliance. Our members are doing their best to put into place policies and procedures, but they are finding it a challenge to understand what exactly needs to be done to address the complex regulations. Our members also have concerns regarding how CFTC will enforce the regulations. Because the regulations are very complex, we urge the committee to encourage CFTC to work closely with industry to ensure clear understanding by all parties before beginning any enforcement actions.

There are still many unknowns as to how implementation of the rules will affect cooperatives and their farmer members as uncertainty over ultimate costs and market liquidity remain ongoing concerns. Agriculture is a high-volume, low-margin industry, and incremental increases in costs, whether passed on from a swap dealer or imposed directly on a cooperative, will trickle down and impact producers. Taken one rule at a time, the costs may not seem unreasonable, but to those who have to absorb or pass on the collective costs of numerous regulations, it is clearly evident those costs are significant.

It is also unclear how other costs will be forced down to end users and impact their ability to hedge. As commercial end users, cooperatives often use swap dealers in utilizing the OTC market to lay off the risk of offering forward contracts to producers and customers. However, the costs associated with dealers' compliance with capital, margin and other regulatory requirements are still unclear. It remains to be seen how those costs will be passed on to end users, and how cost effective the OTC market will remain for future hedging activities.

Customer Protection

NCFC supports strengthening protections for futures customers and appreciates the Committee's hearings and the work CFTC has done in proposing new rules in this area subsequent to the failure of MF Global and Peregrine to protect customer funds. However, we are concerned with the potential unintended consequences that a "one-size-fits-all" regulation may have on hedgers and smaller FCMs. The proposed rules do not take into account the type of FCM – by size, the risk profile of their customers, or whether or not the FCM also has proprietary trading or is a broker-dealer. In addition to increased costs for hedgers, this proposed rule would be more burdensome to smaller firms like farmer cooperative-owned FCMs, which largely deal only with hedgers. Regulations that would accelerate a further consolidation in the FCM industry would have the adverse effect of leaving commodity hedgers with fewer options, while concentrating risk among fewer FCM entities. While the issues behind the decreasing numbers of FCM's are more complex than just regulatory burden, we are concerned with unintended consequences of several aspects of the proposed regulations, including changes around capital charges, residual interest, and establishment of risk management systems.[1]

[1] A recent report by the TABB Group predicted that the number of FCMs would fall below 100 by the end of 2013, down from 154 in 2007. The report estimates that the top three FCM's account for 30-40% of total revenues and

Thank you again for the opportunity to provide input ahead of the Committee's work in this area. We look forward to working with you throughout the process, and appreciate your role in ensuring that farmers and their cooperatives continue to have the ability effectively hedge commercial risk and support the viability of their farms and cooperatively owned facilities.

Sincerely,

Charles F. Conner
President & CEO
National Council of Farmer Cooperatives

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the top 10 account for around 75% of total revenues (a news article can be found at: http://www.thetradenews.com/news/Regions/Americas/US_FCMs_to_reduce_by_a_third_in_six_years_by_end-2013_%E2%80%93_TABB.aspx).