



# THE FARM CREDIT COUNCIL

May 1, 2013

**By email to:**  
**[cftcreauthorization@ag.senate.gov](mailto:cftcreauthorization@ag.senate.gov)**

The Honorable Debbie Stabenow  
Chairwoman  
U.S. Senate Committee on  
Agriculture, Nutrition & Forestry  
328A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Thad Cochran  
Ranking Member  
U.S. Senate Committee on  
Agriculture, Nutrition & Forestry  
328A Russell Senate Office Building  
Washington, D.C. 20510

**Re: CFTC Reauthorization**

Dear Chairwoman Stabenow and Ranking Member Cochran:

On behalf of its members, the Farm Credit Council appreciates the opportunity to provide its input regarding this year's reauthorization of the Commodity Futures Trading Commission ("CFTC") and the ongoing implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").<sup>1</sup>

The Farm Credit Council is the national trade association for the Farm Credit System, a government instrumentality created "to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations."<sup>2</sup> Today, the Farm Credit System comprises four banks and 82 associations, which are cooperatively owned by their member-borrowers.

As you recognized in soliciting comments from members of the public, this year's reauthorization of the CFTC comes at an important time, as that agency continues to implement

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<sup>1</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 12 U.S.C. § 2001(a).

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Dodd-Frank and address rapidly evolving market conditions. The Farm Credit Council is interested in these developments because Farm Credit System institutions rely on the safe use of derivatives to manage interest rate, liquidity, and balance sheet risk. The safe use of derivatives allows the Farm Credit System to offer reliable, low-cost, and flexible funding to the farmers, ranchers, and rural cooperatives that borrow from, and cooperatively own, Farm Credit System institutions.

### **CFTC Implementation of Dodd-Frank to Date**

The Farm Credit Council commends the CFTC for a number of measures that the agency has taken to implement Dodd-Frank in a manner that mitigates systemic risk and increases transparency, without imposing burdensome new costs on cooperative financial institutions like the Farm Credit System. As described further below, in several contexts, the CFTC has appropriately recognized that cooperative entities, like Farm Credit System institutions, should be exempt from certain new regulatory requirements. In addition, the Farm Credit Council strongly supports the CFTC's proposal, which has not yet been finalized, to provide an exemption from the clearing requirement that would cover Farm Credit System institutions.

***Entity Definitions.*** In May 2012, the CFTC, jointly with the Securities and Exchange Commission, issued final rules further defining certain entities subject to regulation under Dodd-Frank.<sup>3</sup> The joint final rules further defining "swap dealer" recognize that a cooperative financial institution, such as a Farm Credit System institution, will not be required to register as a swap dealer based on the notional amount of swaps entered into with its members.<sup>4</sup> In adopting an exception for cooperatives, the CFTC recognized that a swap between a Farm Credit System institution and one of its members does not warrant the same entity-level, swap dealer regulation as a swap between a Wall Street swap dealer and its unrelated customer. This is because the former swap "serves to allocate or transfer risks within an affiliated group, rather than to move those risks from the group to an unaffiliated third party, so long as the cooperative adheres to certain risk management practices."<sup>5</sup>

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<sup>3</sup> See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 Fed. Reg. 30,596 (May 23, 2012).

<sup>4</sup> See *id.* at 30,625, 30,746 (17 C.F.R. § 1.3(ggg)(6)(ii)).

<sup>5</sup> *Id.* at 30,625.

***End-User Clearing Exception.*** In July 2012, the CFTC issued a final rule implementing the end-user exception to the clearing requirement for swaps.<sup>6</sup> Under that rule, the end-user clearing exception will be available to a small financial entity only if its total assets are \$10 billion or less.<sup>7</sup> Because of the \$10 billion asset threshold, certain Farm Credit Banks will be unable to qualify for the end-user clearing exception. The CFTC recognized, however, that “cooperatives exist to serve their member owners”; “some cooperatives represent their members in the financial markets, and the members of some of these cooperatives are entities that could elect the end-user exception if acting alone”; and for these reasons, exemptive relief for cooperatives would be appropriate.<sup>8</sup>

***Proposed Cooperative Exemption.*** Separately in July 2012, the CFTC unanimously issued a proposed rule providing that an “exempt cooperative,” such as a Farm Credit System institution, may elect not to clear swaps used to hedge or mitigate commercial risk related to loans to its members.<sup>9</sup> In support of its proposal, the CFTC explained that cooperatives exist for the benefit of, and cannot be separated from, their member owners.<sup>10</sup> The CFTC recognized that member owners of a financial entity could elect the end-user exception if acting alone, but could not do so collectively with other member owners at the level of a cooperative financial entity with total assets exceeding \$10 billion.<sup>11</sup> To address this issue, the CFTC proposed exemptive relief for cooperative financial institutions, such as a Farm Credit Bank. In doing so, the CFTC concluded, among other things, that “[u]sing the substantial, finance-focused resources of the cooperative to undertake hedging activities for the numerous members of the cooperative promotes greater economic efficiency and lower costs for the members,” and the proposed cooperative exemption therefore “would promote responsible

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<sup>6</sup> See End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42,560 (July 19, 2012) (17 C.F.R. § 50.50).

<sup>7</sup> See *id.* at 42,591 (17 C.F.R. § 50.50(d)).

<sup>8</sup> *Id.* at 42,580.

<sup>9</sup> See Clearing Exemption for Certain Swaps Entered Into by Cooperatives, 77 Fed. Reg. 41,940 (proposed July 17, 2012).

<sup>10</sup> See *id.* at 41,943 (“Cooperatives have a member ownership structure in which the cooperatives exist to serve their member owners and do not act for their own profit. Furthermore, the member owners of the cooperative collectively have full control and governance of the cooperative. In a real sense, the cooperative is not separable from its member owners.” (footnote omitted)).

<sup>11</sup> See *id.* (“[T]he cooperative members would not benefit from the end-user exception if they use their cooperative as the preferred vehicle for hedging commercial risks in the greater financial marketplace. In light of this, the Commission is exercising its authority under Section 4(c) of the CEA to propose § 39.6(f) and establish the cooperative exemption.”).

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economic and financial innovation and fair competition.”<sup>12</sup> The Farm Credit Council strongly supports the proposed cooperative exemption, which has not yet been finalized.

***No-Action Relief for Cooperatives.*** On November 28, 2012, the same day the CFTC determined that credit default swaps and interest rate swaps would be required to be cleared, the CFTC’s Division of Clearing and Risk issued a no-action letter stating that it will not recommend that the CFTC commence an enforcement action for failure to clear a credit default swap or an interest rate swap, provided that certain requirements, which essentially follow the provisions of the proposed cooperative exemption, are satisfied.<sup>13</sup> This no-action relief expired on April 1, 2013.<sup>14</sup>

### **Ongoing CFTC Implementation of Dodd-Frank**

The Farm Credit Council commends the CFTC for proposing to exempt cooperative financial entities, such as Farm Credit System institutions, from the clearing requirement. The Farm Credit Council is hopeful that the CFTC will take action to finalize the proposed cooperative exemption soon. Such action is important because, under the CFTC’s phased implementation schedule for compliance with the clearing requirement, absent exemptive relief, Farm Credit System institutions will be required to start clearing interest rate swaps on June 10, 2013.<sup>15</sup> As the CFTC recognized in proposing the cooperative exemption, mandatory clearing will operate to raise the cost of credit for the cooperative members of the Farm Credit System — America’s farmers, ranchers, and farm-related businesses — without reducing systemic risk.

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We appreciate your invitation to submit these comments concerning the CFTC’s ongoing implementation of Dodd-Frank, and we thank you for your leadership on these important matters.

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<sup>12</sup> *Id.* at 41,943-44.

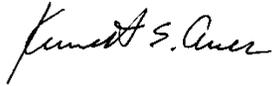
<sup>13</sup> CFTC Letter No. 12-36, Re: Time-Limited No-Action Relief from the Clearing Requirement for Swaps Entered Into By Cooperatives (Nov. 28, 2012), *available at* <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-36.pdf>.

<sup>14</sup> *See id.* at 3.

<sup>15</sup> *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74,284, 74,289 n.52, 74,320 (Dec. 13, 2012) (to be codified at 17 C.F.R. pts. 39 & 50).

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Sincerely,

A handwritten signature in black ink that reads "Kenneth E. Auer". The signature is written in a cursive style with a large initial 'K'.

Kenneth E. Auer  
President and CEO  
Farm Credit Council

cc: Honorable Gary Gensler, Chairman  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott D. O'Malia, Commissioner  
Honorable Mark P. Wetjen, Commissioner  
Commodity Futures Trading Commission