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September 20, 2010

David Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: *Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act***

Dear Mr. Stawick,

The Commodity Markets Council (CMC) thanks the Commodity Futures Trading Commission (CFTC or Commission) for the opportunity to provide comments on the Title VII definitions in the Dodd-Frank Act before the CFTC embarks on associated rulemakings. Definitions are, of course, fundamental to any subsequent rulemaking, and must be addressed with due deliberation.

CMC is a trade association bringing together commodity exchanges with their industry counterparts. The activities of our members represent the complete spectrum of commercial users of all futures markets including agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange, and New York Mercantile Exchange. CMC is uniquely positioned to provide the consensus views of commercial end-users of derivatives exchanges and the exchange markets. Our comments below represent the collective view of the CMC's members.

Congress and the President enacted The Dodd–Frank Wall Street Reform and Consumer Protection Act (the Act) in response to the financial crisis in 2008-09 with the purpose of establishing a prescriptive regulatory framework for systemically risky financial institutions and instruments. Since 2008, CMC has advocated for increased transparency and regulation of such institutions and instruments; however, we do not believe the Act was intended to prescriptively regulate *all* firms and *all* instruments that operate in financial markets. While Congress created a prescriptive regulatory framework, it provides the CFTC with flexibility to implement the law in a way that continues to promote and maintain the efficiency of US markets. CMC encourages the Commission to recognize the protections already embedded in swaps which exchanges agree to list, trade and accept for clearing. We also urge you to make the necessary distinctions as the CFTC makes decisions related to definitions.

#### **Defining “Swaps Dealers”**

Cleared over-the-counter (OTC) swaps would be subject to exchange rules of credit assessment and margining. Moreover, clearing members of the exchanges are subject to a thorough credit analysis and required to provide regular financial reporting. These clearing members in turn require a margin and credit analysis of their customers. Entities that exclusively trade exchange-cleared swaps mark their

positions to market and are assessed a daily margin. The clearing house also verifies the provision and maintenance of adequate liquidity buffers to cover extreme markets swings.

Despite these protections, CFTC Chairman Gary Gensler recently suggested the Commission could classify as many as 200 firms as "Swap Dealers" (SD), subjecting them to additional capital and margining requirements. CMC supports the Commission in its mission to curb systemically risky institutions and instruments; however, we ask the CFTC to use caution in drafting definitions so broad as to impede the creation and flow of capital and liquidity in the financial markets.

CMC recommends that entities which only trade exchange-cleared swaps be exempt from the SD definition. This will ensure commercial end users continue to utilize deep OTC markets with adequate liquidity to effectively hedge their risks. We are concerned increased capital and margining requirements will correspondingly increase the cost of compliance and opportunity cost of capital for entities which only trade exchange-cleared OTC swaps. These costs could result in firms ceasing or reducing their use of such instruments which would decrease the liquidity of currently robust markets.

The Act specifies that an SD or Major Swap Participant (MSP) designation does not apply across all asset classes. There is concern within the industry that once a firm is designated as such for one asset class it will be regulated as such for *all* asset classes. CMC would ask the Commission to clarify its position on this issue.

#### **Defining Yield Swaps**

There are market participants (e.g. reinsurance companies) that offer risk mitigant products, i.e. "swaps," that reference "yield" (in bushels per acre on corn, soybeans, wheat and other commodities) as the underlying asset. The CMC would like to ensure that such products are included in the definition of "swaps".

#### **Defining "Futures Commission Merchants"**

The Act expanded the definition of a Futures Commission Merchant (FCM) to include many new categories, one being any entity that solicits or accepts swaps. Understanding the markets for physically traded commodities, CMC is concerned this language could be interpreted in a manner that adversely impacts the businesses of our members by capturing firms which are not traditional FCMs and do not operate as such. For example, a firm trading only exchange-cleared swaps could be defined as both an SD and an FCM, which would treat the firm as systemically risky despite the proven safeguards of being exchange-cleared.

The CMC appreciates the opportunity to submit these comments, and we look forward to working with the Commission in the weeks and months ahead. If you should have any questions, please do not hesitate to contact us.

Sincerely,



CHRISTINE M. COCHRAN  
President  
Commodity Markets Council