

November 24, 2010

VIA ELECTRONIC MAIL

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
agdefnprm@cftc.gov

Re: Agricultural Commodity Definition

Dear Mr. Stawick:

CME Group Inc.¹ submits this letter in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") request for public comment on the definition of the term "agricultural commodity." *See* Agricultural Commodity Definition, 75 Fed. Reg. 65,586 (Oct. 26, 2010). CME Group appreciates the opportunity to express our views on this issue of importance to our business and to the agricultural community generally. We generally support the CFTC's proposed definition and suggest one modest refinement. More importantly, CME Group reiterates its support for a CFTC determination to treat agricultural swaps in the same regulatory manner as all other physical commodity swaps under the CEA. *See* CME Group Comment Letter to CFTC, Re: Agricultural Swaps ANPRM (Oct. 28, 2010).

The Commission's proposed definition would create four categories of agricultural commodities:

- the enumerated commodities listed in CEA § 1a;

¹ CME Group is the holding company for four separate designated contract markets ("DCMs") subject to the Commodity Exchange Act ("CEA"): the Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). Trading and clearing agricultural commodity products is an important part of our business. We offer trading in numerous agricultural commodities, including futures and options contracts on corn, wheat, soybeans, soybean meal, soybean oil, oats, rough rice, cattle, hogs, lumber, and dairy products. In addition, we make clearing available for 12 over-the-counter agricultural contracts on our CME ClearPort clearing platform. We have petitioned the Commission for authorization to expand that service. *See* CME Group Letter to CFTC, Petition for an Exemption to Permit the Clearing of OTC Agricultural Swap Transactions and the Commingling of Customer Funds Used to Margin Such Transactions with Other Funds Held in Segregated Accounts and Participation by Registered CME and CBOT Floor Brokers and Traders as Eligible Swap Participants (June 4, 2010); *see also* CME Group Inc., Annual Report (Form 10-K) (Feb. 26, 2010).

- all other commodities that are, or once were, or are derived from living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;
- tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the CFTC may by rule, regulation, or order designate after notice and opportunity for hearing; and
- commodity-based contracts based wholly or principally on a single underlying agricultural commodity. *See* Proposed Rule 1.3(zz), 75 Fed. Reg. at 65,593.

CME Group supports this definition and believes that defining "agricultural commodity" consistently will promote legal certainty.² For example, knowing what qualifies as an agricultural commodity will play an important role in other rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), including rulemakings on position limits. Once adopted, the definition will also clarify the scope of the exemptions under CEA §§ 2(g) and 2(h) – at least until Dodd-Frank takes effect and eliminates these exemptions. *See* 75 Fed. Reg. at 65,591.

One area where the definition of "agricultural commodity" should not matter is the regulation of agricultural swaps. This is because, as the Commission observes in its release, if agricultural swaps are treated the same as other physical commodity swaps, "the definition will have no impact in the agricultural swaps context." *See* 75 Fed. Reg. at 65,591. Agricultural swaps are important hedging and risk mitigation vehicles for a wide variety of market participants, and users of these instruments need to know how they will be regulated once Dodd-Frank takes effect. Because we believe that treating agricultural swaps identically with other physical commodity swaps would be sound policy and would comport with the intent of Congress, we reaffirm our position that the CFTC should act quickly to provide such equal treatment. *See* CME Group Comment Letter to CFTC, Re: Agricultural Swaps ANPRM (Oct. 28, 2010).³

Currently, most agricultural swaps are entered into pursuant to the Swaps Exemption in Part 35 of the CFTC's regulations. If Part 35 remains in place once Dodd-Frank takes effect, it would exempt agricultural swaps from most aspects of the CEA, including new provisions added by Dodd-Frank. We are aware of no legislative history that suggests this was Congress' intent.

² Other commenters suggest that the Commission should clarify that the second prong of the "agricultural commodity" definition will encompass commodities that are now, or in the future may be, subject to swaps, futures and related options trading, without the need for additional CFTC action. CME Group believes that such a clarification would be helpful to agricultural interests and urges the CFTC to consider taking such a step.

³ We also note that the Commission may wish to reconsider its apparent view that options on commodities are swaps for purposes of the CEA, as amended by Dodd-Frank. *See* CME Group Comment Letter to CFTC, Re: Agricultural Swaps ANPRM (Oct. 28, 2010).

We respectfully suggest that the CFTC use its authority under Section 723(c)(3) of Dodd-Frank to repeal Part 35 and subject agricultural swaps to the same terms as other physical commodity swaps.⁴ Taking this step would create a single, consistent regulatory scheme for all physical commodity swaps, reduce the compliance costs for private-sector market participants, and eliminate the need for the Commission to develop, administer and enforce a special regulatory framework for agricultural swaps.

Providing equal treatment for agricultural swaps would also advance some of Dodd-Frank's primary goals, including the reduction of systemic risk and improved swap-market transparency. To accomplish these objectives, Dodd-Frank applies various requirements, including clearing, exchange-trading and reporting mandates, to swaps. We believe these requirements should apply with equal force to agricultural swaps, because market participants use agricultural swaps for the same purposes as other swaps and have the same need for efficiency, transparency and reduced systemic risk as do market participants for other products. Since treating agricultural swaps equally with other swaps would further the public interests Dodd-Frank is designed to promote, agricultural swaps should be subject to the same requirements that other swaps will face under Dodd-Frank.

* * *

CME Group appreciates this opportunity to comment on the CFTC's proposed definition of "agricultural commodity." Although we generally support the proposed definition, we also urge the CFTC to address expeditiously the treatment of agricultural swaps by proposing rules to treat agricultural swaps equally with other swaps. Doing so will promote certainty and stability in these critical swap markets.

⁴ Section 723(c)(3) provides:

(3) AGRICULTURAL SWAPS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

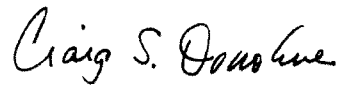
(B) EXCEPTION.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

Granting agricultural swaps equal treatment with other swaps would be permissible under CEA § 4(c) because such action would be consistent with the public interest, only appropriate persons would be able to trade agricultural swaps, and the exemption would not have a material adverse impact on the ability of the CFTC or any contract market to discharge its regulatory or self-regulatory duties under the CEA. *See* CME Group Comment Letter to CFTC, Re: Agricultural Swaps ANPRM (Oct. 28, 2010).

David A. Stawick
November 24, 2010
Page 4

If you have any questions or would like additional information, please feel free to contact me at (312) 930-8275 or via e-mail at Craig.Donohue@cmegroup.com.

Sincerely,



Craig S. Donohue
Chief Executive Officer

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia