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July 18, 2000

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

COMMENT

To Whom It May Concern:

Cargill appreciates the opportunity to comment on the CFTC's proposed regulations to the Commodity Exchange Act (CEA). We are pleased that the CFTC – by offering its proposal - recognizes the importance of providing regulatory relief for organized futures exchanges as well as preparing the United States for the tremendous opportunities of e-commerce. Allow us to provide comments on the following aspects of the CFTC's proposed regulations: a) regulatory relief for commodity exchanges, b) consistent regulation of financial products, and c) legal certainty for agricultural cash contracts.

Cargill supports the CFTC's efforts to provide regulatory relief to organized futures exchanges. As one of the largest users of futures exchanges in the United States, we applaud the Commission for recognizing the importance of facilitating a regulatory environment that allows domestic exchanges to compete with foreign exchanges and over-the-counter contracts while maintaining adequate safeguards against fraud and abuse. Cargill also believes that the CFTC should perform an oversight function with respect to exchange contracts that serve a price discovery function and are potentially subject to manipulation. However, Cargill does not believe that this oversight function is needed with respect to OTC derivative contracts in the same commodities because OTC contracts do not serve a price discovery function and do not raise manipulation concerns.

First and foremost, Cargill believes bilateral agricultural contracts should be treated exactly the same as bilateral contracts for other commodities. That is, a bilateral derivative contract involving copper or Treasury Bills should receive no more – and no less – regulation than an identical contract involving wheat. Furthermore, this should be true ***regardless who is buying and/or selling the contract***.

Provided that contracts are clearly drafted - and Cargill is an industry leader in ensuring that simple, clear contract terms are provided to farmers - producers today are savvy enough business people to recognize the potential risks and rewards from participating in commodity marketing. Furthermore, our customers have told us they want to be able to conduct business in person – ie., in a grain elevator or in a feed yard. Thus, Cargill sees no reason for the CFTC to regulate bilateral agricultural commodity contracts– whether cash, swaps, OTC options, or other derivative transactions – more strictly than other derivative contracts. In addition common law fraud protection exists to provide remedies for abuses, and the CFTC is not needed to oversee this area. We support the proposed Exemption of Bilateral Agreements, but we urge the CFTC to apply the same eligible participant definition that is included in the Bilateral Agreement proposal to the Agricultural Trade Options regulations.

Cargill supports the basic structure of the CFTC's regulatory relief proposal for organized futures exchanges. The three-tier system seems to provide adequate regulation for a wide range of financial products and market participants depending on the relative sophistication of the participants. We support allowing businesses that deal extensively in trading activities to trade among themselves in a less regulated environment. For at least some products, the CFTC proposal should facilitate the development of this type of market activity.

At the same time, we are cognizant of and share the concerns some – particularly in the agriculture producer community – have regarding "deregulation" of futures markets. Significant fear still exists regarding the possibility for manipulation and/or collusion in agriculture markets. The simple fact remains that agricultural commodities – as commodities with finite supplies– are more subject to manipulation than others. For this reason, we hope the CFTC will choose a solution that provides regulatory relief that is critical to the U.S. futures exchanges on one hand while still providing adequate oversight of agricultural futures trading on the other.

This fear of regulatory uncertainty leads us to examine the open-ended nature of the CFTC's regulatory relief proposal that would a) exclude most agricultural commodities from possible inclusion on the derivatives transaction facility (DTF) and b) make it difficult – if not impossible – for an excluded commodity to move from the regulated futures exchange (RFE) to the DTF. Cargill does not oppose preventing agricultural commodities from being traded immediately under DTF status. However, we do believe the CFTC should give itself as much flexibility as possible to address this issue in the future.

It may be difficult – both politically and logistically – for agricultural commodities to ever move from RFE to DTF status. However, given the promise of e-commerce and the threat to agricultural commodity market liquidity that may develop if regulation is excessively strict, the CFTC should attempt to iterate more clearly the circumstances that would have to be met in order for an excluded commodity to reach DTF status. Furthermore, the CFTC should work closely with the agricultural community and Congress to a) help educate farmers about the promise of e-commerce, both from a competition and market transparency perspective and b) inform all parties of the consequences that would befall excessive regulation of agricultural markets (whether electronic or traditional).

Positions taken by the CFTC staff have created significant uncertainty in the agricultural community concerning innovative commodity contracts. There is clear demand from farmers for marketing contracts that contain risk management features. Cargill has taken the position, which we believe is well-supported by case precedent, that contracts that require physical delivery are exempt from challenge under the Commodity Exchange Act. The CFTC's actions have stifled innovation and competition in this area as many companies are unwilling to risk the significant expense of enforcement actions from the CFTC or non-performance by contractual counterparties based on the past positions taken by CFTC staff. In addition the restrictive nature of the current agricultural trade option pilot program limits participation.
Cargill believes that clarity is imperative to the continued development of risk management programs for farmers and ranchers. These programs cannot be fully developed until the CFTC provides the clarification and, if necessary, regulatory relief that would allow businesses such as ours to develop these new, modern, comprehensive risk management contract.

We appreciate your attention to these comments and look forward to working with you as the CFTC moves forward with consideration of its regulatory relief proposal.

Sincerely,

Dan Dye

Daniel P. Dye
Vice President, Ag Producer Services