KANSAS CITY
BOARD OF TRADE

May 26, 2009

SENT VIA E-MAIL

Mr. David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Petition for an Exemption Pursuant to Sections 4(c) and 4d of the Commodity Exchange Act ("CEA") and Commission Regulation 35.2 Permitting the Clearing of OTC Agricultural Swaps and Comingling of Swap Customer Funds with Customer Segregated Funds.

Dear Mr. Stawick:

The Kansas City Board of Trade ("KCBT") is a designated contract market ("DCM") with a wholly-owned subsidiary corporation, The Kansas City Board of Trade Clearing Corporation ("KCBTCC"), a registered derivatives clearing organization ("DCO"). KCBT and KCBTCC hereby petition the Commodity Futures Trading Commission ("Commission") for: 1) an exemption pursuant to Section 4(c) of the CEA and Commission Regulation 35.2 permitting KCBT to specify the terms of cleared-only over-the-counter ("OTC") traded agricultural swap transactions and KCBTCC to clear such transactions; and 2) for a determination pursuant to Section 4d of the CEA and the terms and conditions prescribed herein, permitting KCBTCC and futures commission merchants ("FCM") to comingle customer funds associated with such cleared OTC agricultural swap transactions with other funds held in segregated accounts.

Terms & Conditions of KCBT & KCBTCC Cleared-Only OTC Agricultural Swaps

KCBT & KCBTCC request an exemption pursuant to the aforementioned Sections of the CEA and Commission Regulations permitting KCBTCC to clear wheat calendar swaps and permitting the comingling of customer funds associated with such cleared OTC agricultural swap transactions with other funds held in segregated accounts, **subject to the following terms and conditions**:

General:

The exemption will be limited to cleared-only wheat calendar swaps. The wheat calendar swaps will be exempt from Commission Regulations 35.2(b) & (c), but will remain subject to all other requirements of Part 35 of the Commission's Regulations. The exemption will not apply to any provisions of the CEA or Commission regulations not specified herein.

Wheat calendar swaps will be negotiated between eligible swap participants in the OTC market and either entered into KCBTCC's clearing system by clearing members or electronically transmitted directly to KCBTCC's clearing system, provided both participants have the required agreements and approvals in place with a KCBTCC clearing member to accept such electronically-submitted transactions for clearing. When accepted for clearing, these wheat calendar swaps are not converted or substituted into futures contracts, but remain OTC products. Wheat calendar swaps are not fungible with KCBT wheat futures or options contracts.

Contract Size and Price Fluctuations:

The specific rules pertaining to wheat calendar swaps can be found in Appendix A of this petition (see attached). Some of the more salient features (i.e., contract size of 5,000 bushels and minimum price fluctuations of $.0025) are the same as KCBT's wheat futures contract, while other features like contract months and final settlement differ from the wheat futures contract (see below).

Contract Months:

Wheat calendar swaps can be entered into for any of the 12 calendar months. The last trading day for a particular contract month is the last business day of the month preceding such contract month. For example, an April wheat calendar swap's last trading day is the last business day in March (also referred to as the final settlement date). All open positions in a contract month as of the close of business on the final settlement date of such contract month shall be cash settled to the final settlement price (described below).

Daily and Final Price Settlement:

Wheat calendar swap contracts will be marked-to-market on a daily basis. For purposes of daily and final price settlements of wheat calendar swaps, the corresponding wheat futures contract shall be the futures contract month immediately following the final settlement date. For example, the daily settlement

price for an April wheat calendar swap (the last trading day for which is the last business day in March) would be based on the May futures contract. As another example, the daily settlement price for a March wheat calendar swap (the last trading day for which is the last business day in February) would be based on the March futures contract.

Up to and including the first business day of the calendar month preceding the swap contract month, the daily settlement price for the wheat calendar swap will be the settlement price of the corresponding futures contract. Beginning the second business day of the month preceding the swap contract month and continuing through the final settlement date, the settlement price will be the cumulative average of the settlement price of the corresponding futures contract. At the close of business on the last trading day of a particular swap contract month, this cumulative average settlement price becomes the final settlement price used to cash settle any open contracts of such contract month.

Position Limits and Reportable Levels:

KCBT will establish position limits for wheat calendar swaps that are equivalent to the wheat futures contract (currently 5,000 contracts for any single month and 6,500 contracts for all months combined). KCBT will also establish a reportable position level for wheat calendar swaps of 25 contracts.

Margins:

KCBTCC will calculate clearing member permanent margins for wheat calendar swaps using SPAN® software and applying the same margin rates as are established by KCBT for wheat futures contracts. However, because KCBTCC takes other market conditions into consideration when establishing clearing member margins (i.e., capital or concentration risk), the actual margin levels established for a clearing member may exceed the minimum margin rates established by KCBT.

KCBT establishes margin rates for wheat futures based on historical price volatility (daily settlement price changes) and endeavors to establish maintenance margin rates sufficient to cover daily price changes 95% of the time (1.96 standard deviations, or a 95% comfort level). While these same margin procedures will apply to wheat calendar swaps, given the anticipated price correlation between wheat calendar swaps and wheat futures, KCBT may establish inter-market spread credits for the margin benefit of accounts holding such inter-market spread positions.

Public Reports:

KCBT & KCBTCC will make available daily settlement price, volume and open interest information regarding wheat calendar swaps cleared by KCBTCC in the same manner as it does for wheat futures contracts.

Regulatory Oversight & Financial Resources:

KCBT will apply the same risk management and financial surveillance procedures to wheat calendar swaps that it uses to monitor the financial health of clearing members and firms for which the KCBT is the Designated Self-Regulatory Organization ("DSRO"). These procedures include monitoring the daily and recent trend of clearing member pay/collect data across all markets in relation to each such clearing member's regulatory capital, hypothetical market movement impact analysis, position concentration analysis and major market movement fieldwork. In addition, KCBT will expand its market surveillance programs used to monitor trading and positions in wheat futures & options contracts to encompass wheat calendar swaps in a coordinated manner.

With regard to non-clearing member and non-member FCMs, KCBT receives and reviews daily large trader reporting information to monitor for position concentration. In addition, during volatile markets, KCBT contacts clearing member FCMs to inquire as to the status of non-clearing member and non-member FCMs carried by the clearing member who have reportable positions opposite the market movement and whether such accounts are properly margined and meeting margin calls. Finally, non-clearing member and non-member FCMs are subject to the risk management and financial surveillance procedures of their DSRO, many of which are similar or identical to those employed by KCBT and described above.

KCBTCC guarantees the financial fulfillment of all KCBT contracts cleared and is in compliance with the Core Principles applicable to DCOs set forth in the CEA regarding financial resources, risk management and financial surveillance. These same procedures and safeguards will apply as well to wheat calendar swaps. With regard to any concentration or default risk associated with wheat calendar swaps, the exchange has discussed the issue with prominent firms who deal in agricultural OTC products and concluded that wheat calendar swaps do not impose significant additional market risks and the associated risk can be managed or mitigated through the establishment of risk reducing positions in the corresponding futures contracts.

Segregation:

All monies, securities and property received by an FCM to margin, guarantee or secure wheat calendar swaps, shall be deemed to have been received by such FCM in accordance with Section 4d of the CEA and separately accounted for and treated and dealt with as belonging to the customers of such FCM. Such monies, securities and property received by an FCM to margin, guarantee or secure wheat calendar swaps may be comingled with monies, securities and property received by an FCM to margin, guarantee or secure futures or options contracts executed on a DCM or DTEF, or accruing as a result of such contracts and required to be segregated pursuant to Section 4d of the CEA.

All monies, securities and property received by KCBTCC from a clearing member FCM on behalf of its customers or customers of a non-clearing member FCM or non-member FCM to margin, guarantee or secure wheat calendar swaps, shall be deemed to have been received by such FCM in accordance with Section 4d of the CEA and separately accounted for and treated and dealt with as belonging to the customers of such FCM. Such monies, securities and property received by KCBTCC to margin, guarantee or secure wheat calendar swaps may be comingled with monies, securities and property received by an FCM to margin, guarantee or secure futures or options contracts executed on KCBT, or accruing as a result of such contracts and required to be segregated pursuant to Section 4d of the CEA.

Overview of the Commission Regulations Applicable to this Petition

Part 35

Agricultural swap transactions are not considered excluded or exempt swap transactions under CEA Sections 2(g) and 2(h) (respectively). Therefore, Part 35 of the Commission's regulations governs agricultural swaps and Regulation Section 35.2 provides an exemption from all provisions of the CEA (with the exception of those provisions pertaining to fraud and manipulation) provided:

1. The swap agreement is entered into solely between eligible swap participants at the time such persons enter into the swap agreement;

2. The swap agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

3. The creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms of the swap agreement; and

4. The swap agreement is not entered into and traded on or through a multilateral transaction execution facility.

Section 4(c)

Section 4(c) (paraphrased) provides that in order to promote responsible economic or financial innovation and fair competition, the Commission may exempt any contract, either unconditionally or on stated terms or conditions, from the requirements that such contract be entered into through a DCM or registered derivatives execution facility ("DTEF") or from any other provision of the CEA (except subparagraphs (C)(ii) and (D) of Section 2(a)(1)), provided:

1. The Commission determines that the exemption would be consistent with the public interest and purposes of the CEA;

2. The contract will be entered into solely between appropriate persons (the definition of which is similar to eligible swap participants under Part 35); and

3. The contract will not have a material adverse effect on the ability of the Commission or and DCM or DTEF to discharge its regulatory or self-regulatory responsibilities under the CEA.

Section 4d

Section 4d (paraphrased) precludes FCMs from comingling monies, securities and property received to margin, guarantee or secure the trades or contracts of any customer with the funds of such FCM or using such customer funds to margin, guarantee or secure the trades of or extend credit to any customer or person other than the one for whom the same are held. Section 4d (paraphrased) also precludes DCOs and DTEFs from holding, disposing or using segregated monies, securities or property received for the benefit of the depositing FCM or any person other than the customers of such FCM.

However, Section 4d(a)(2) provides that in accordance with such terms and conditions as the Commission may prescribe by rule, regulation or order, such money, securities and property of the customers of such futures commission merchant may be comingled and deposited as provided in this section with any

other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant.

Regulatory Authority for Exemption

It appears from the provisions of Sections 4(c), 4d of the CEA and Part 35 of the Commissions regulations, that the Commission has the authority to grant the exemptions requested in this petition. In addition, the Commission has previously issued a similar Order pursuant to Sections 4(c) and 4d of the CEA to the Chicago Mercantile Exchange "(CME") dated March 24, 2009, permitting CME to clear OTC agricultural swaps and customer positions in such cleared-only contracts and associated funds to be comingled with other positions and funds held in customer segregated accounts. Such Order was subject to certain terms and conditions similar or identical to those contained herein.

Economic Benefits of Wheat Calendar Swaps

The wheat market over the last two years has experienced historical price volatility. The need to manage this price volatility has never been greater. Wheat calendar swaps will provide the industry with an additional risk management tool with unique attributes (i.e., contract months and settlement features) to address price risk that would complement KCBT's actively traded and liquid wheat futures and options contracts.

In addition, centralized clearing of wheat calendar swaps through KCBTCC benefits OTC market users by eliminating counterparty risk associated with such OTC transactions. Clearing also provides market benefits through the increased transparency and regulatory monitoring of such positions.
Finally, in the findings and conclusions section of the Commission's aforementioned March 24, 2009 Order to the CME, the Commission noted the following:

> First, permitting the clearing of these transactions is consistent with the public interest and with the purposes of the Act. The purposes of the Act include "promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants." The purpose of an exemption is "to promote economic or financial innovation and fair competition." Permitting the clearing of corn basis swaps and corn, wheat and soybean calendar swaps by CME would appear to foster both financial innovation and competition. It could benefit the marketplace by

providing eligible swap participants the ability to bring together flexible negotiation with central counterparty guarantees and capital efficiencies. Clearing also may increase the liquidity of the OTC markets and thereby foster competition in those markets.

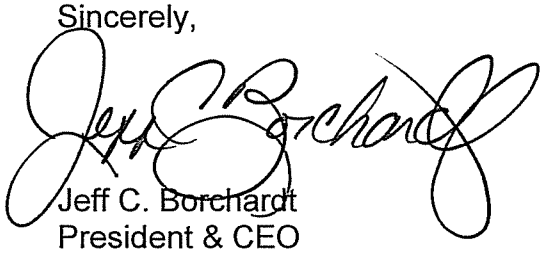
Second, the OTC swaps would be entered into solely between appropriate persons. Those would be limited to persons qualifying as eligible swap participants under Part 35.

Third, the exemption would not have a material adverse effect on the ability of the Commission or any designated contract market to carry out its regulatory or self-regulatory responsibilities under the Act. Clearing of OTC swaps will actually enhance the Commission's ability to carry out its regulatory responsibilities by, for example, facilitating the collection of large trader reports for cleared-only contracts.....

Closing

KCBT & KCBTCC appreciate the Commission's time and effort in considering this petition for 4(c) & 4d exemption. Please direct any questions pertaining to this request to either the undersigned or Joseph Ott, Vice President of Compliance at 816-753-7500.

Sincerely,



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Appendix A

Chapter 21
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Chapter 21
Wheat Calendar Swaps (Cleared-Only)

Product

2100.00 Wheat Calendar Swaps; Cleared-Only. The scope of this Chapter is limited to Wheat Calendar Swaps negotiated between eligible swap participants (as defined in Commodity Futures Trading Commission ("CFTC") Regulation 35.2(b)(2)) in the Over-The-Counter ("OTC") market and submitted to the Kansas City Board of Trade Clearing Corporation ("KCBTCC") for clearing. When accepted for clearing, these Wheat Calendar Swaps are not converted or substituted into futures contracts, but remain OTC products. Wheat Calendar Swaps are not fungible with KCBT wheat futures or options contracts. Wheat Calendar Swaps are subject to the general rules of the Exchange as may be applicable. The clearing and settlement of Wheat Calendar Swaps are also subject to the rules and by-laws of KCBTCC.

2100.01 Additional Rules. The Board of Directors may adopt additional rules or modify existing rules of this Chapter, subject to CFTC approval, if required.

Product Contract Specifications

2101.00 Place of Trading. Wheat Calendar Swaps are negotiated and consummated off-exchange between eligible swap participants in the OTC market.

2102.00 Hours of Submission for Clearing. KCBTCC shall determine the business day hours during which Wheat Calendar Swaps may be submitted for clearing. In order to be accepted for clearing, Wheat Calendar Swaps trade data must either be entered into KCBTCC's clearing system by clearing members or electronically transmitted directly to KCBTCC's clearing system, provided both participants of the swap trade have the required agreements and approvals in place with a KCBTCC clearing member to accept such electronically-submitted trade data for clearing.

2103.00 Contract Size. Each Wheat Calendar Swap contract accepted for clearing must be for 5,000 bushels of wheat.

2104.00 Contract Months. Wheat Calendar Swaps may be entered into for any of the twelve (12) calendar months. The number of months in which clearing may occur shall be at the discretion of the Exchange and KCBTCC.

2105.00 Corresponding Futures Contract Month. For purposes of determining Wheat Calendar Swaps daily and final settlement prices, the corresponding KCBT wheat futures contract shall be the futures contract month immediately following the swap's final settlement date.

2106.00 Minimum Price Increment. The minimum trade price increment for Wheat Calendar Swaps is one quarter of one cent ($.0025), or $12.50 per contract. Trades submitted for clearing must be priced in multiples of the minimum price increment.

2107.00 Last Clearing Day; Expiration Day; Final Settlement Day. The last clearing day (also referred to as the expiration day or final settlement day) for a particular Wheat Calendar Swap contract month shall be the last business day of the calendar month immediately preceding such swap contract month.

2108.00 Delivery Mechanism. All open contracts as of the close of business on the last clearing day for a contract month shall expire at such time and be liquidated by means of cash settlement to the final settlement price determined in accordance with Rule 2011.00. All balances due to or from KCBTCC shall be established at that time, the clearing members so advised, and handled in accordance with normal variation margin settlement procedures.

2109.00 Last Month of Trading. The last month of trading for a particular swap contract month shall be the calendar month immediately preceding such swap contract month.

2110.00 Daily Settlement Price Prior to Last Month of Trading. The daily settlement price for a swap contract month prior to the last month of trading for such contract shall be the daily settlement price of the corresponding futures contract.

2111.00 Daily Settlement Price During the Last Trading Month. The daily settlement price for a Wheat Calendar Swap contract month during the last month of trading for such contract shall be the cumulative average of the daily settlement prices for the corresponding KCBT wheat futures contract month for each clearing day during the last month of trading. As an example, for an April Wheat Calendar Swap, the last month of trading would be March and the corresponding futures contract would be the May contract. Therefore, the daily settlement price for the April swap contract during the last month of trading would be the cumulative average of the daily settlement prices for the May futures contract month for each clearing day during March.

2112.00 Final Settlement Price. The final settlement price for a swap contract month, determined on the final settlement day, shall be the cumulative average of the daily settlement prices for the corresponding KCBT wheat futures contract month for each clearing day during the last month of trading. For example, the final settlement price for an April Wheat Calendar Swap would be the cumulative average of the daily settlement prices for the May futures contract month for each clearing day during March.

2113.00 Position Limits. Wheat Calendar Swaps shall be subject to the same position limits prescribed for wheat futures contracts as set forth in Rule 2008.00, except that spot month limits are not applicable since Wheat Calendar Swaps contracts expire prior to their corresponding futures contract delivery month.

2114.00 Reportable Positions. A position of 25 or more Wheat Calendar Swaps contracts owned, controlled or carried by any person shall constitute a reportable position. Every member, registered partnership or registered corporation shall report reportable positions to the Department of Audits and Investigations at such times and in such form and manner as shall be prescribed.

2115.00 Margin Requirements. Exchange minimum margins required for Wheat Calendar Swaps shall be established by Resolution of the Board of Directors, and may be changed from time to time in like manner.
Note: See Resolution 11-1160.00-1.

2116.00 Contract Fees. The KCBT Board of Directors may establish an exchange fee and the KCBTCC Board may establish a clearing fee for each Wheat Calendar Swap contract cleared. Such fees are subject to change.