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PRACTICE LIMITED

COMMENT

March 26, 1998

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

By FAX (202) 418 5521

Reference: Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market.

Dear Ms. Webb,

I am a lawyer with a limited practice largely dealing with agricultural activities. I wish to make it very clear that the ideas promulgated herein are my own and do not reflect the opinions, concerns, or aspirations of any of those clients, nor am I receiving any pay or other consideration for this effort.

Although only practicing law for the past eleven years, my grain trading experience started in 1940, and includes being a member of the Agricultural Advisory Committee to the CFTC, representing the Millers' National Federation of which I have been the Chair, a director of NFA for ten years industry, and a member of the Chicago Board of Trade for about twenty five years.

I would like to make a very brief comment on the present regulation or lack thereof in relation to the exchange of futures contracts for, or in connection with cash commodities ("EFPs").

The historic use of EFPs as described in Section II.A.1., when applied to the transfer of ownership of exchange traded grains and their derivatives, very simply stated, works. It is used practically every day by the various links in the chain of ownership of grain from the producer to the end user. I personally checked with many of my clientele, including grain producers, country and terminal elevators, and grain processors. EFPs are in very general use to eliminate futures price variance risk. EFPs are used for pricing of the futures component of transactions contemplating delivery of the cash grain or the products thereof. EFPs are used in connection with prompt delivery, deferred delivery, delayed price, stored, and to arrive contracts. EFPs are ubiquitous throughout the cash grain trading industry.

In my more than fifty years association with grain trading, I cannot recall a single instance of an EFP transaction becoming a substantive problem, nor have I ever experienced a "transitory EFP." or a "contingent EFP." As one client said: "An EFP is the cleanest, safest way to buy or sell quantities of cash grain."

While the majority of grain EFPs are transacted at price levels within the range of the day's trading, there are times when, by mutual agreement, it is advantageous to trade of a different level. Although this is a rare event, it should not be banned, since it provides a bona fide hedge in the same manner as the EFP executed within the day's range.

Since EFPs have the effect of an open market transaction, I believe each trade should be included in the daily market activity report.

Although not broadly based, my survey revealed no demand for Exchanges of Options for Physicals ("EOPs") or Exchanges of Futures for Swaps ("EFSs") in grain transactions. Again a comment reference EOPs was: "Why inject an element of risk into an otherwise safe transaction?"

I should also note that, although single contracts of 5,000 bushels are often the subject of an EFP, it is more likely that the EFP will be for multiple contracts thus exposing both sides to greater futures variance risk if each side had to take independent action to complete the hedge.

While I appreciate that the more exotic and less tangible products which are currently traded on futures markets may be creating EFP difficulties and abuses, I suggest that, if it is deemed necessary to do something to curb such abuses, the CFTC sever grain EFPs from those causing trouble and allow those which are not causing trouble to continue under current rules.

I certainly have no objection to an effort to enunciate that which has been a long standing trade practice in the grain industry, but I suggest caution that such an enunciation may create barriers to trade where none now exist in a system which works.

To put it in legal terms - "Don't throw out the baby with the bath water" and "if it ain't broke, don't fix it," at least insofar as the grain cash/futures exchange customs and practice now apply.

Sincerely yours,

Donald M. Mennel

dm/s CFTC-14