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April 22, 2008

Walter Lukken, Acting Chairman
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., NW
Washington, DC 20581

RE: Commodity Futures Trading Commission (CFTC) – action on convergence in agricultural commodities futures

Dear Mr. Chairman:

I write to express deep concern about the failure of spot and futures prices to converge in some agricultural commodities futures and the CFTC's related proposal to relax limits on speculative trading. Moreover, I urge you to act quickly in order to prevent further financial losses for agricultural producers. The CFTC plays a vital role in ensuring that effective, efficient, and reliable trading mechanisms are available to commodities producers and buyers. If the CFTC does not act quickly it will abrogate an important part of its regulatory function and heighten the potential for greater market instability. I am pleased that the CFTC has taken a first step by conducting a roundtable conference on the convergence problem, but more must be done.

Commodities producers have been suffering already from the instability caused by the failure of prices to converge. The recent proposal to relax limits on speculative trading will only exacerbate this problem. Instead of exacerbating the convergence problem, the CFTC should consider action designed to alleviate it. Modifying contract terms to provide for more efficient commodity delivery mechanisms, and further increasing the official storage rate for frequently non-converging commodities like wheat, are two changes that can be enacted promptly to start remedying this problem.

As you are aware, efficient mechanisms for the delivery of commodities in futures contracts are vital to ensuring the integrity of the contract and its use as a hedge for producers. Efficient delivery mechanisms facilitate risk transfer and price discovery, concepts at the core of the usefulness of futures contracts. Unfortunately, some exchange contract terms appear to undermine price discovery by denying the producer-seller the ability to enforce delivery. By helping to correct this disparity in contracting power, the CFTC could go a long way toward arresting the growth of the convergence problem and restoring futures contracts as effective hedging tools for agricultural producers. Similarly, by improving the official storage rate for products like wheat, the CFTC could alleviate the effects on convergence that institutional investors create when they carry commodities in perpetuity.

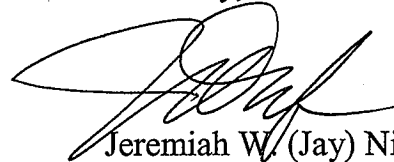
To be sure, the positions of most futures contracts are reconciled through continued futures trading, as opposed to making delivery of the underlying commodity. But the ability to deliver the commodity forms the foundation for the entire futures contracting regime. When the ability to transfer possession of the physical good between producer and taker is weakened or removed, the tie between the futures contract and the underlying commodity evaporates. Further, when the settling date is not adhered to by the buyer, and instead the commodity is carried from month to month at a minimal storage rate, the producer's incentive to use futures contracts also evaporates. Indeed, the futures contract ceases to be a valuable hedging tool for commodities producers, and instead, becomes an albatross around their necks. I am already receiving reports that the convergence problem is leading producers to discontinue using futures and forcing lenders to become increasingly skeptical about financing futures transactions.

With the active use of futures as an investment vehicle, we see that when the cash market is at a premium to the futures market, the investors take delivery and sell the commodity on the cash market. When the cash market is at a discount to the futures market, investors eat the minimal storage costs involved in paying to carry the commodity until market conditions improve. The producer, then, is stuck with the commodity in bad times and reaps little of the reward in good times, while the investor can afford to time the market because they have no interest in actually making use of the commodity. When this phenomenon happens over the long term, the commodities take up increasing amounts of limited storage capacity, multiple years of crops accrue, and significant supply and demand issues develop. By loosening speculative trading limits, the CFTC would only serve to make the convergence problem worse.

In sum, the one-two punch of inefficient contract terms and greater use of futures for speculative trading threatens the financial solvency of many Missouri farmers. If the CFTC fails to address the threat posed by the wide lack of convergence in certain commodities, it undermines the utility of the very instruments in which it facilitates trade. Certainly, there may be disagreement about the nature of the problem and how to solve it, and while a reassessment of contracting power in futures agreements is but one way to

deal with it, there should be no doubt that a solution is needed, and soon. I encourage the CFTC to take prompt and decisive action to address this non-convergence in a way that protects producers and prevents continued instability in the market. I ask that my comments be made part of the record and appreciate your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Nixon', with a large, sweeping flourish at the end.

Jeremiah W. (Jay) Nixon
Attorney General of Missouri

Cc: Hon. Jo Ann Emerson – Representative, United States Congress
Hon. Robert Mayer – Senator, Missouri General Assembly
David Stawick – Secretary, Commodity Futures Trading Commission
Katie Smith – Director, Missouri Department of Agriculture