



UNIVERSITY OF MARYLAND  
SCHOOL OF LAW

April 4, 2011

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re:** Commodity Options and Agricultural Swaps.

Dear Mr. Stawick:

These comments are submitted in response to the Notice of Proposed Rulemaking<sup>1</sup> issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>2</sup> (the “Dodd-Frank Act”). In the proposal, the Commission specifically requests comment on whether the proposed rules will “provide an appropriate regulatory framework for the transacting of agricultural swaps”<sup>3</sup> and whether “the proposals outlined herein omit or fail to appropriately consider any other areas of concern regarding agricultural swaps and options in any commodity.” I addressed those issues in my previous November 26, 2010 comment letter on the Advanced Notice of Proposed Rulemaking<sup>4</sup> on this subject. I, therefore, incorporate by reference November 26, 2010 comment letter.

It is now well-known that speculative trading through various investment tools, including index swaps, in commodity markets is incontrovertibly a main driving force of rising commodity prices and price volatility. Congress was well aware of the importance of price stability in the agricultural markets and found it imperative to impose a specific duty on the Commission to provide protections for the agricultural markets. The Commission staff have emphasized that this legislative intent within Dodd-Frank, stating “Congress seems to imply that farmers and

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<sup>1</sup> Commodity Options and Agricultural Swaps, 76 Fed. Reg. 6095 (February 3, 2011).

<sup>2</sup> Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Proposed Rules, *supra* note 1, at 6104-5.

<sup>4</sup> Agricultural Commodity Definition, 75 Fed. Reg. 65586 (October 26, 2010).

other persons trading agricultural swaps should be subject to some kind of additional, special protections beyond those available to persons trading swaps in other physical commodities.”<sup>5</sup>

To be consistent with this Congressional intent, the definition of agricultural commodity should include a contract based on an index of the prices of any agricultural commodities. However, in the Agricultural Commodity Definition proposal, the Commission proposed that the definition of swaps for “multiple commodities indices” would be “based wholly or principally on a single underlying commodity index.”<sup>6</sup> This definition exempts major investment tools such as commodity index swaps from regulation despite of their substantial reference to various agricultural commodity prices. Therefore, in order to “provide an appropriate regulatory framework for the transacting of agricultural swaps,” the Commission should include each of those multiple commodities indices that reference any farm product into the definition of an “agricultural commodity.”

Sincerely,



Michael Greenberger, J.D.  
Law School Professor  
University of Maryland School of Law

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<sup>5</sup> Presentation by Don Heitman, Agricultural Swaps Rulemaking Team, Commodity Futures Trading Commission, Agriculture and the Dodd-Frank Bill (August 5, 2010) at 10, *available at* [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/speechandtestimony/aac080510\\_heitman.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/speechandtestimony/aac080510_heitman.pdf) (Note that there was a Disclaimer: “The opinions expressed in this presentation do not represent the official views of the Commission, its staff, or even, necessarily, myself.”).

<sup>6</sup> *See* Agricultural Commodity Definition, 75 Fed. Reg. 65586 (October 26, 2010).