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February 12, 2009

The Honorable Collin Peterson
Chairman
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Peterson:

I write on behalf of the members of the Commodity Markets Council (CMC) to present our views on the Derivatives Markets Transparency and Accountability Act (DMTA). We also thank you for the invitation to testify last week. Unfortunately, we could not participate in person because it conflicted with our annual membership meeting. During that event, our Board of Directors had the opportunity to briefly examine the legislation and discuss several of the policy issues presented in the DMTA.

CMC is a trade association that brings together commodity exchanges with their industry counterparts. The activities of our industry members represent the complete spectrum of commercial uses of the agricultural and energy futures markets – from grain and energy hedging by local country grain elevators to highly sophisticated, high-volume hedging activities supporting domestic and international product merchandising, exporting, and processing operations. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange, and New York Mercantile Exchange.

CMC is uniquely positioned to provide the consensus views of commercial end-users of derivatives exchanges and the exchange markets. On balance, the full membership of CMC strongly supports the purpose of the bill to bring “greater transparency and accountability to commodity markets.” Over the years, CMC and its predecessor organization the National Grain Trade Council, worked with the Commodity Futures Trading Commission (CFTC or the Commission) and lawmakers to improve transparency and accountability in these markets. The financial well-being of all of our members depends on the continued competitiveness of US futures exchanges and the smooth functioning of the risk management instruments traded on such regulated exchanges. As such, we look forward to working with you on additional improvements.

With the goal of improving transparency and accountability in commodity markets, we make the following suggestions:

Section 3 – Speculative Limits and Transparency of Offshore Trading

CMC supports your effort to promote coordination and information sharing among international regulators. Among other things, these provisions could help address concerns about regulatory arbitrage; thus, reducing the opportunities for exchanges to select a foreign regulatory jurisdiction in order to avoid the CFTC’s more stringent requirements. We believe this is an important step toward greater global regulatory cooperation in an industry that is international in nature.

Section 4 – Detailed Reporting and Disaggregation of Market Data

CMC believes detailed reporting is necessary for greater market transparency and accountability. We were the industry’s leading advocate to disaggregate the data relative to index funds in the agricultural markets on the *Commitment of Traders Report* and we support the extension of that disaggregation into all physical commodity markets. We are concerned, however, about the provisions requiring the reporting of speculative positions of bona fide physical hedgers. It is our belief and understanding that because commercial hedgers are already obligated to report speculative positions held to the CFTC, this data is already reflected in the current COT reporting to the extent these speculative transactions rise to levels that trigger large trader reporting.

Section 5 – Transparency and Recordkeeping Authorities

CMC believes that reporting of OTC transactions for all commodities will improve CFTC’s ability to see the full market. In light of the exclusion of swaps from the CFTC’s jurisdiction, this clarification of the Commission’s access to information seems appropriate.

Section 6 – Trading Limits To Prevent Excessive Speculation

We believe that the exchanges in conjunction with the CFTC should have frontline authority to evaluate and set position and accountability limits. Over the years, exchanges and the Commission have developed an expertise in understanding these markets and identifying the appropriate level for position limits. This system provides the flexibility necessary to respond to market users while also maintaining transparent and liquid markets.

We are concerned that requiring the CFTC to set all limits for all physically-deliverable commodities would erode the flexibility afforded under the current system. Moreover, requiring the Commission to hold annual public hearings on such limits in the agriculture and energy markets could result in limits that do not promote liquidation and the orderly delivery of physical contracts.

We are also concerned that the provision defining bona fide hedging would exclude many of the current, but legitimate, market users. For example, a food processor that uses fuel to operate its facility or a railroad that delivers commodities across the country will not qualify for a hedge exemption under the DMTA.

Section 7 – CFTC Administration

CMC is a strong proponent of additional staffing for the Commission. There have been calls for “more police on the beat.” By increasing the resources for the CFTC, you take a significant step in strengthening one of the Commission’s most important roles in market oversight – monitoring and surveillance. Through expanded data collection, Commission staff will have a clearer picture of the market and its participants. We believe they will be able to identify questionable positions and “jawbone” with the market user to determine whether the position serves a legitimate business purpose or should be liquidated in an orderly manner. Increasing the CFTC’s surveillance capabilities advances the public interest by preventing situations from causing harm to the markets and their users. This process, coupled with a robust enforcement arm, is a powerful and effective tool. We strongly support your efforts.

Section 10 – Studies; Reports

CMC believes the study and reports commissioned are important, and we believe having them issued within a year will aid in future discussions and deliberations.

Section 14 – Treatment of Carbon Offset Credits and Emission Allowances

CMC applauds the inclusion greenhouse gas allowances, offset credits, and derivative instruments under the jurisdiction of the CFTC. We believe the expertise of the Commission makes it the appropriate regulator of such markets. CMC also supports the trading of such contracts on designated contract markets. We would also like to see the opportunity for OTC trading to allow for instances when customized transactions are necessary. We would recommend that centralized clearing be encouraged as these markets mature and develop.

CMC also believes that the US Department of Agriculture should play a significant role in a cap and trade programs but that role should be focused on greenhouse gas offset protocol development and implementation for relevant offset projects such as forestry projects. We believe that the Environmental Protection Agency, through its successful Acid Rain Clean Air Markets program, has the expertise, infrastructure, and track record to oversee the issuance of emission allowances and compliance with emission reduction goals.

We commend your work to improve the transparency and accountability of commodity markets. CMC represents the full spectrum of commodity market users, and our members rely on open and competitive markets. We appreciate the opportunity to work with you as you take steps to improve commodity markets and find solutions that promote best practices.

Sincerely,



MICHAEL D. WALTER
President