

April 17, 2014

VIA ELECTRONIC SUBMISSION

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

**Re: Regulation 1.35 Discussion at Public Roundtable to Discuss Dodd-Frank
End-User Issues**

Dear Ms. Jurgens:

The undersigned associations, representing the wide breadth of agricultural customers and end-users of the commodity markets, appreciate the opportunity to submit these follow-up comments to the Commodity Futures Trading Commission (the “CFTC” or “Commission”) subsequent to the Public Roundtable to Discuss Dodd-Frank End-User Issues held on Thursday, April 3, 2014.

Many important issues regarding CFTC Regulation 1.35 were discussed by the Roundtable panelists on April 3. We concur that the costs of Regulation 1.35 as currently written vastly outweigh any benefits of the regulation. As currently written, the regulation creates a disincentive to become a member of a DCM or SEF, encourages commercial end-user participants to avoid trading on SEFs which were created to enhance market transparency, limits the ability of commercial end-users to utilize the most modern and efficient means of communication, and leads to legal and regulatory uncertainty for farmers, ranchers, and other end-users and customers. These negative consequences have very real and substantial costs as the roundtable participants discussed. Furthermore, making regulatory changes to alleviate these burdens on end-users and customers will not limit the Commission’s ability to oversee derivatives markets nor impede the Commission’s mission to promote market integrity and protect customers in the derivatives markets which it regulates. Therefore, we urge the Commission to address this issue quickly.

Absent a completely new and reworked Regulation 1.35, one way the Commission could address customer and end-user issues would be to simply remove the term “member” in the regulation, and insert the congressional definition in the Commodity Exchange Act which strictly applies these recordkeeping regulations to “FCMs, IBs, floor brokers, and floor traders.”¹ Alternatively, the Commission could clarify the definition of “member” as applicable to Regulation 1.35 in a manner consistent with congressional intent and prior CFTC staff precedent. Prior to the December 2012 amendments to Regulation 1.35, the Commission has always applied the recordkeeping requirements to those that execute customer orders and provide a fiduciary duty to

¹ Commodity Exchange Act, Section 4g(a).

customers. Amendments to Regulation 1.35 in December 1948, June 1963, and September 1971, and the February 2009 Division of Market Oversight Advisory all place the recordkeeping burden strictly on those handling or on the opposing side of customer order executions. The recordkeeping burden was never inclusive of the customer and should not now be expanded. Revising or clarifying this definition would ensure that the historic congressional intent of Regulation 1.35 would be rightly placed on fiduciaries without unduly burdening end-users and customers by forcing them to record all written or electronic communications.

We look forward to continuing to work with the Commission to ensure that the current regulation is revised to eliminate the negative consequences to end-users, customers, and the public at large.

Respectfully submitted,

AMCOT
American Farm Bureau Federation
American Feed Industry Association
Commodity Markets Council
National Corn Growers Association
National Council of Farmer Cooperatives
National Grain and Feed Association