NEWS

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Prospect of Overly Broad CFTC Definition of Swap Dealer Alarms Natural Gas Companies and Corn Growers

NGSA and NCGA Warn White House of Harmful Consequences to Consumer Costs, Market Liquidity and Economic Growth

(Washington, D.C.) -- The definition of Swap Dealer that the Commodity Futures Trading Commission (CFTC) is expected to unveil February 23rd will unnecessarily capture companies using over-the-counter risk management tools to protect consumers from commodity price changes – and the economic consequences could be enormous, according to the Natural Gas Supply Association (NGSA) and the National Corn Growers Association (NCGA). The associations jointly wrote White House officials today, describing the consequences of the CFTC's rules for the definition of Swap Dealer.

"As currently envisioned, the CFTC's Swap Dealer definition will sweep businesses using the OTC market to hedge into an unwieldy regulatory process that limits their access to risk management tools while unnecessarily subjecting them to increased levels of margin and collateral requirements," said Jenny Fordham, NGSA's vice president, markets. She said, "Ultimately these costs will find their way to consumers or come at the expense of business investment and growth."

R. Skip Horvath, president and CEO of NGSA said, "We are dismayed that the CFTC is considering an action that is the exact opposite of what Congress intended when it created the Dodd-Frank Act. Rather than protecting consumers and reducing market risk, the CFTC will be raising market risk and raising consumer costs – without any significant benefit to the U.S. financial system."

Horvath said, "If firms that are predominantly hedgers and traders are treated as swap dealers, $600 billion in capital will be needlessly sidelined as collateral instead of spent creating jobs and building infrastructure."

The joint letter to White House Chief of Staff Jacob Lew and National Economic Council Director Gene Sperling follows.

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February 9, 2012

Mr. Jacob Lew
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington D.C., 20500

Mr. Gene B. Sperling
Director
National Economic Council
The White House
1600 Pennsylvania Avenue, N.W.
Washington D.C., 20500

Subject: Support responsible implementation of CFTC's Swap Dealer definition

Dear Mr. Lew and Mr. Sperling:

Careful implementation of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") by the Commodity Futures Trading Commission ("CFTC") is critical to the economic protections provided to end users engaging in hedging for commercial risk management purposes.

The Dodd-Frank Act provides important economic protections that were the subject of significant Congressional debate in the final hours before passage. If the integrity of the economic and end user protections for hedging is maintained through CFTC Dodd-Frank Act implementation, repeal or amendments to the Dodd-Frank Act will remain unnecessary. Unfortunately, after more than a year of work with the CFTC, we are increasingly concerned that the CFTC's implementation of the statute will undermine these important protections with serious implications for agricultural and energy infrastructure investments and the overall economy.

The CFTC's definition of "Swap Dealer," along with its implementation of other aspects of the Dodd-Frank Act, are dangerously close to imposing a *de facto* clearing mandate, an outcome that Congress explicitly intended to avoid with the incorporation of the general and *de minimus* exclusions to the swap dealer definition and end user clearing exception. A broad Swap Dealer definition appears imminent given recent CFTC draft orders that progressively expand CFTC purview into physical commodity contracts used by commodity producers to hedge business risk inherent in the production of commodities. The breadth of the Swap Dealer definition is significant because entities designated as Swap Dealers cannot use the important end user protections and will be subject to increased levels of margin and other collateral requirements and very significant administrative burdens. If firms that are predominantly hedgers and traders are treated as dealers, $600 billion in capital currently at work in the economy as job creating investments by businesses with strong balance sheets and assets in the ground will be needlessly sidelined as collateral.

The CFTC has at its fingertips the statutory authority to protect the American public from systemic risk *and* American businesses from unproductive capital and margin requirements. To keep business capital productively at work in the economy, the CFTC's Swap Dealer definition must use a dealer-trader distinction that distinguishes firms trading for their own behalf, such as those hedging business risk, from firms acting as intermediaries. Doing so will ensure continued business access to cost effective hedging tools. We respectfully urge you to reach out to the CFTC to help protect businesses engaged in agriculture and energy production.

The Natural Gas Supply Association ("NGSA") and National Corn Growers Association ("NCGA") were active participants in the shaping of the Dodd-Frank Act during its passage and are taking an active role in the CFTC's rulemaking process.

Founded in 1957, NCGA is the largest trade organization in the United States, representing 37,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state associations and checkoff organizations work together to create and increase opportunities for their members and their industry.

Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 40 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers.

We would welcome an opportunity to work with you to help develop a CFTC implementation solution that is appropriate for American businesses. If we can provide additional information, please contact Sam Willett with the National Corn Growers Association at (202) 628-7001 or Jennifer Fordham with the Natural Gas Supply Association at 202-326-9317.

Respectfully,

National Corn Growers Association
Natural Gas Supply Association