Testimony of
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On behalf of
Commodity Markets Council

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Chairman Roberts, Ranking Member Stabenow and Members of the Committee: thank you for holding this hearing to discuss the regulatory burdens impacting end-users and market liquidity as they relate to reauthorization of the Commodity Futures Trading Commission ("CFTC" or "Commission"). My name is Bruce Barber, General Manager of Oilseed Risk Management at ADM. I am testifying today on behalf of the Commodity Markets Council ("CMC").

CMC is a trade association that brings together exchanges and their industry counterparts. Our members include commercial end-users that utilize the futures and swaps markets for agriculture, energy, metal and soft commodities. Our industry member firms include regular users and members of such designated contract markets (each, a "DCM") as the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Minneapolis Grain Exchange and the New York Mercantile Exchange. They also include users of swap execution facilities (each, a "SEF"). The businesses of all CMC members depend upon the efficient and competitive functioning of the risk management products traded on DCMs, SEFs or over-the-counter ("OTC") markets. As a result, CMC is well positioned to provide consensus views of commercial end-users of derivatives with respect to CFTC reauthorization.

For more than a century, the people of Archer Daniels Midland Company (NYSE: ADM) have transformed crops into products that serve the vital needs of a growing world. Today, we are one of the world's largest agricultural processors and food ingredient providers, with more than 33,000 employees serving customers in more than 140 countries. With a global value chain that includes more than 460 crop procurement locations, 300 ingredient manufacturing facilities, 40 innovation centers and the world's premier crop transportation network; we connect the harvest to the home, making products for food, animal feed, chemical and energy uses.

As Congress seeks to once again reauthorize the CFTC, hedgers of agricultural commodities and energy products appreciate being asked if we are better off in today's regulatory environment as compared to the days before Dodd-Frank. Unfortunately, that is still a difficult question to answer as there are still critical pieces of the regulatory puzzle that are not yet resolved. It

should also be stated up front that no exchange, no DCM, no clearing house and no commodity end-user of derivatives was bailed out of insolvency with tax payer money during the financial crisis of 2008 that brought us Dodd-Frank.

Since the passage of Dodd-Frank, many new regulations have been implemented without consideration of the real costs on commodity producers or consumers. CMC has provided the CFTC and other regulators a great deal of information in an effort to help them understand how our members use derivatives markets to reduce our operational risks. We have also made numerous efforts to seek clarity in who is affected and more importantly how to comply.

Yet despite our best efforts to work within the realities of a post Dodd-Frank world, what I can tell you is that our compliance costs are up substantially. The compliance expenditures for ADM Investor Services, ADM's FCM, have doubled in the past five years. CMC members are finding that much of the most problematic red tape that we are now confronted with was not compelled by Dodd-Frank. In fact, some time ago, the CFTC's nearly five-year effort to implement new rules for clearing swaps somehow morphed into an effort to rewrite many long-standing ***futures*** market regulations that Congress, via Dodd-Frank, never contemplated. Congress went out of its way to keep agricultural and energy end-users out of the Dodd-Frank line-of-fire. Our message to you today is that five years later, we find ourselves in the middle of the fight.

CMC is appreciative of the Commission's improved and appropriate emphasis on end-user issues during Chairman Massad's tenure. We couldn't agree more with his statements such as:

"The ability of participants in the agricultural sector to hedge commercial exposure is critical to having a successful agricultural industry and to putting food on the table for all of us"

"Our goal is not to create unnecessary burdens on commercial end-users, but to build a reliable orderly framework for oversight in which vibrant markets can thrive."

Commissioner Giancarlo has been more candid:

"If we replace farmer's commercial risk management decisions with Washington's risk management assumptions, we're all in for a lot of trouble."

"We must always ensure that the rules we write are smart, efficient, and do no harm."

To CMC members, such comments are a tacit recognition that some of these rules have not been smart or efficient, and even have the potential to do harm, particularly to end-users and the markets they use to manage risks so that farmers earn more for the crops they produce and consumers pay less for food, fuel and energy. A reliable framework for oversight of the futures markets was already established before the passage of Dodd-Frank. Many CMC members would describe this situation as an example of process failure. During this reauthorization process, we would ask this Committee to focus its efforts on the contrast between the congressional intent

of Dodd-Frank's Title VII versus today's reality of how it is being implemented in an effort to address these process failures.

The additional regulatory costs that a multitude of new CFTC rules have foisted upon end-users and commercial participants will ultimately be passed on to producers and consumers as those costs work their way through the supply chain. There will also be an impact on market liquidity, which will further raise the costs of risk management and ultimately the cost of finished agricultural and energy goods. In other words, if Dodd Frank is not implemented as Congress intended, this law will hurt the folks that it was intended to help.

For example, since President Obama signed Dodd-Frank nearly five years ago, the Commission has issued 274 no-action letters, 20 interpretive letters and 64 exemptive letters all providing different levels of regulatory relief to CFTC rules. This compares to 201 no action letters during the decade prior to Dodd-Frank. By stating these numbers we do not mean to suggest that this nearly ***tripling*** of no-action relief should be curtailed. What we do mean to provide with these numbers is some perspective in terms of the regulatory burden and dramatic increase in the level of uncertainty that CMC members face in the wake of thousands of pages of new Dodd-Frank regulations. The implementation of Dodd-Frank has been significantly lacking in clarity, yet CMC members also know that mistakes in compliance are often greeted with punitive penalties.

More recently, CMC has been quite pleased with the Commission's efforts to reconstitute several advisory committees, which had not met in several years. The uptick in the number of public Roundtable discussions on a variety of important topics has also been a refreshing change. All four Commissioners' willingness to listen to end-user concerns in an effort to achieve clarity is appreciated and noteworthy.

However, there are important issues that warrant Congress' attention in the context of CFTC reauthorization, all of which fall under a need for more clarity and a redirection of the regulatory process to better reflect Congressional intent.

End-User Concerns

CMC recognized the need for and supported reform in the over-the-counter (OTC) swaps market and believes that Dodd-Frank provided a foundation for an effective overhaul of this important risk-management market. However, there are various issues that have arisen as part of the implementation process which we believe the Committee should revisit going forward.

1. Rule 1.35

CMC recognizes the Commission's actions to amend CFTC Regulation 1.35 ("Rule 1.35") and applauds its efforts. However, CMC members still believe that the costs and burdens associated with Rule 1.35 as currently written vastly outweigh any benefits. CMC members

remain concerned about the scope of Rule 1.35's requirement to retain written communications made via "digital or electronic media" that "lead to the execution of transactions in a commodity interest and related cash or forward transactions" ("pre-trade communications"). Although unregistered members of a DCM or SEF are now exempted from the requirement to retain text messages, unregistered and registered CMC members are still troubled by the requirement to retain written and electronic records of pre-trade communications.

CMC members believe the proposed changes do not go far enough in providing relief and that the rule will force members to either withdraw from or forego membership in DCMs and SEFs, or, out of an abundance of caution, spend significant amounts of time and resources in a commercially impracticable attempt to capture all required records. Further, CMC members would like additional clarification regarding what constitutes a "text message" under the proposed amendments. CMC believes that the Commission should encourage membership in DCMs and SEFs in order to further promote transparency in the marketplace and to reduce costs for consumers of commodities. If further relief and clarification is not provided, Rule 1.35 will discourage membership in DCMs and SEFs, which will in effect reduce transparency in the marketplace, limit the ability of commercial firms to utilize modern and efficient means of communication, and lead to legal and regulatory uncertainty for end-users and customers.

2. Deliverable Supply Estimates

CMC requests that the Commission make a determination about the deliverable supply estimates for each of the twenty-eight physical commodities covered by the CFTC's proposed rule that will serve as the baseline for spot month position limits. Until a proper deliverable supply baseline is established, it will be impossible to assess the appropriate long or short spot month limits that may be set for individual contract markets.

The Commission has received updated deliverable supply data from affected contract markets which CMC believes are conservative estimates. CMC urges the Commission to make an objective economic study of the relevant physical commodities that could be delivered upon expiry.

Additionally, CMC encourages the Commission to analyze physical markets in an objective fashion that is appropriate for each commodity asset class. The Commission should consider domestic storage capacity, real time production levels and historic import activity for asset classes such as oil and gas. In addition, the Commission should consider refinery capacity when considering deliverable supply for gasoline or other refined products. For grains and soft commodities, storage capacities and flows of the relevant commodity in areas that are in and tributary to the specified delivery points should provide a realistic estimate of deliverable supply.

With an objective economic study made (and an opportunity for public comments), the Commission will be in a better position to deliberate and decide, if necessary, on the

appropriate federal spot month position limit levels for each of the relevant commodity asset classes. Upon establishment of federal limits based on updated deliverable supply estimates, the applicable designated contract markets also will be able to continue to use their discretion in setting exchange specific limits below the federal limits as necessary and appropriate to reduce the potential threat of market manipulation or congestion.

3. *Bona Fide* Hedging

Commercial and end-user firms accept and manage several different types of risks in the supply chain that impact producer and consumer prices. Examples of risks are below:

- Absolute contract price risk with the counterparty (or flat price)
- Relative price risk (basis and calendar spread risk) - unfixed
- Time, location and quality risk
- Execution / logistics risk
- Credit / counterparty default risk
- Weather risk
- Sovereign / government policy risk

All of the above risks directly impact the commercial operations of a merchant and ultimately affect the value of the merchant's commercial enterprise (including the price the merchant pays and receives for a product). In each and every transaction, the above identified risks, including potentially others, are not the same and the relationship between them is constantly in flux. As a result the merchant must make a decision how to not only price the risk in the commercial transaction, but more importantly, how to actively hedge and manage the risks. For instance, in negotiating a forward contract with a potential counterparty, the merchant must take into consideration all of these and will make the most appropriate decision on if/when/how to utilize exchange traded futures contracts to hedge the multiple risks that are present. All of these risks affect price. In other words, the hedging of all of these risks is directly hedging price risk.

The fundamental principle is this: price risk is far more complex than just fixed-price risk, but may include volatility and similar non-linear risks associated with prices, and a transaction to hedge any of these risks in connection with a commercial business should receive *bona fide* hedging treatment. Regulators should not condition *bona fide* hedging treatment as available only when risk crystalizes by virtue of a firm holding a physical position or by entering into a contract. Commercial market practices would be severely impacted if hedging transactions were not deemed *bona fide* hedges. We ask this oversight Committee to help ensure that CFTC regulation empowers commercial and end-user firms to manage risk to the fullest extent possible.

Unfortunately, the CFTC is taking a different course by seeking to adopt a narrow view of risk. Within the CFTC's proposed position limits rule, the Commission has chosen to focus solely

on the absolute price risk of a transaction with a counterparty, and is not considering the multitude of risks in the commercial operations of enterprises.

By narrowly defining *bona fide* hedging, the traditional hedger will be compromised and thus will not be able to effectively manage its risks. If this happens, risk premiums are going to rise throughout the business, which will be passed along the supply chain. Bid/offer spreads will widen and liquidity will be substantially reduced. This narrow view of hedging, if adopted, will mean that producer prices will decline and the cost to the consumer will increase.

Commercial producers, merchants and end-users have provided numerous examples to the Commission in the last three comment letter periods and have explained how detrimental it would be to constrain the market participants that are *bona fide* hedgers. A summary of several areas of concern related to hedging in the CFTC's proposed position limits rule follow below.

- *Anticipatory Hedging, Merchandising, & Processing*

Within Title VII of Dodd-Frank and in the Commodity Exchange Act ("CEA"), Congress explicitly referred to anticipatory and merchandising hedging as bona fide hedging methods because they are crucial to the risk management functions of commercial and end-user firms. Anticipatory hedging allows commercial firms to mitigate commercial risk that can reasonably be ascertained to occur in the future as part of normal risk management practices. Merchandising activity enables producers to place commodities into the value or supply chains and ultimately brings those commodities to consumers with minimal price volatility.

In addition, merchandising activity promotes market convergence – a crucial aspect of the price discovery function commodity markets serve. A reduction in the efficiency of convergence increases risk, reduces liquidity, and ultimately may lead to both higher consumer prices and lower producer prices. Allowing the full scope of hedging activity promotes more efficient, effective and transparent markets – exactly the public policy goals of the Commission.

Also of concern is the issue of the anticipatory processing hedge. While the Commission's proposed rule states that such hedges are *bona fide*, the proposed rule simultaneously extinguishes the utility of the exemption by stating that anticipatory processing positions will only be recognized as *bona fide* if all legs of the processing hedge are entered into equally and contemporaneously. Hedging is based on human assessment of risk at any given time. Sometimes it is best to hedge just one leg of processing exposure. The proposed parameters around the processing hedge exemption not only fail to recognize market dynamics; worse, they put the Commission in the position of defining risk and mandating how that risk must be hedged in the market.

- *Economically Appropriate Risk Management Activities*

CMC would also like to express concern to this Committee with language in the CFTC's proposed position limits rule which suggests that a *bona fide* hedge only exists when the net

price risk in some defined set is reduced. This is inconsistent with the manner in which a commercial firm evaluates risk – which is not limited to price risk, as mentioned above. The most appropriate way to deem a derivatives transaction as "economically appropriate" is whether a commercial firm has a risk abated by the transaction, and such risk arose in its commercial business.

Linking the ability to engage in *bona fide* hedging to a net reduction in risks across an entire enterprise, corporate family, or separately-managed lines of business is not consistent with how commercial firms commonly address risk. Moreover, individual firms identify which risks they want to accept. A transaction that may be risk reducing on one side of a business, but leave an opposite risk unhedged in another part of the business might serve legitimate business purposes. Thus, to impose a "net price risk" formula across a corporate group for purposes of *bona fide* hedging effectively replaces a commercial firm's business judgment with regulatory prescription.

- *Non-Enumerated Hedges*

Non-enumerated *bona fide* hedges are important to commercial market participants, as they allow additional flexibility for firms to hedge risk in ways that are unforeseen. However, the ability to utilize these non-enumerated hedges is often dependent upon utilizing the hedging strategy in real time in response to fluid market conditions. Specifically, merchandisers and other intermediaries (physical, financial and risk, among others) play a vital role in helping end-users understand and ultimately reduce their risks. To the extent that these merchandisers and other intermediaries are unable to get exemptions for the hedges they require to provide these services, risk mitigation will be reduced and overall systemic risk will increase.

CMC supports allowing market participants to engage in non-enumerated hedging activity subject to a reasonable review period similar to that contained within current CFTC Regulation 1.47. In addition, we would like to emphasize that the expertise of the exchanges should continue to be drawn upon by the Commission to allow a timely review of these petitions in the most efficient manner for the Commission.

- *Cross-Hedging*

Cross-hedging is another important hedging tool for commercial participants, and is particularly important for commodities which may be processed or transformed into products which may not be traded commodities. CMC believes that commercial firms should be granted the discretion to determine what relationships between two positions are correlated sufficiently to be considered "substantially related." The CFTC has advanced a notion of a bright-line test with respect to the regulation of cross-hedges. The decision to use a cross-hedge is multi-factored, and commercial businesses have a natural profit incentive to achieve as great a correlation as possible. However, a fixed correlation is not always achievable, and sometimes risk managers are limited in their selection to what products are available. CMC members believe that a position limits regime where risk managers can freely select their cross-hedges, report them as

such, and stand ready to explain them to the Commission if necessary is the proper regulatory path.

CMC has urged that the Commission not impose an arbitrary deadline upon which market participants engaged in cross-hedging must exit their hedges in the spot month, near month, or in the last five trading days. DCMs should be permitted to set restrictions on a contract-by-contract basis, recognizing the unique characteristics of each individual commodity and contract, and the need (or lack thereof) for commercial end-users to continue to utilize cross-commodity hedges in a specific market during the spot month, near month, or in the last five trading days.

- *Gross and Net Hedging*

CMC continues to request that the Commission allow end-users to utilize both "gross hedging" and "net hedging" concepts when managing risk. The Commission uses concepts of both "gross hedging" and "net hedging" in its discussion of the economically appropriate requirement, but these terms are not separately defined, and the context in which they appear does not fully inform their meaning. CMC understands gross hedging to be the practice of separately hedging each of two or more related positions. Net hedging happens when that firm nets its cash purchase and sale contracts to a net long or short position and then offsets that risk by entering into short or long derivatives transactions, respectively. It is crucial that the Commission affirm that each of these methods entail derivatives that would be eligible for *bona fide* hedging treatment. Additionally, when utilizing gross hedging, firms should have the flexibility to hedge either the gross long or the gross short when this is the most economically appropriate risk management position.

- *Wheat Equivalence Determinations*

It is critical to maintain equality among the three U.S. Wheat markets: Chicago, Kansas City and Minneapolis. Currently, each market has the same spot month limit and the same single-month and all-months-combined limit. Regardless of the level at which these limits are set, parity should be maintained among these three markets. Different limits for the same type (but not necessarily variety) of commodity could dramatically impact the growth or potential for risk mitigating strategies between the contract markets. In the case of wheat, this is particularly critical given the nature of the three differing varieties. Having three varieties provides not only additional opportunities for market participants to reduce risk through spread trades, but also provides opportunity for hedging and risk management by commercial participants between markets in response to domestic or global economic factors.

4. Trade Options

CMC is urging the Commission not to categorize trade options as referenced contracts subject to position limits. These physical options, including physical forward transactions with embedded volumetric optionality, are an important tool in physical commodity markets. Trade

options may be used to manage, among other things, supply chain risk, price risk, or both. Subjecting these products to federal position limits could severely harm the efficient operation of physical commodity markets and increase costs for end-users.

Trade options do not trade like physical futures and cannot simply be traded out of or unwound prior to the spot month. In the spot month, a trade option that does not qualify as a "*bona fide* hedging position" could only be offset with another physical position to bring the net position within the applicable position limit. Taking on a physical position in order to offset a trade option for position limit purposes could introduce new risks to the market participant and would undermine the entire purpose the market participant entered into a trade option in the first place. Such a result would be extremely disruptive to the physical markets.

The burden on market participants associated with speculative position limits on trade options would be substantial. Market participants would be required, for the first time, to track trade options separately from spot and forward contracts, develop systems to calculate the futures contract equivalents for these physical-delivery agreements, and, ultimately, monitor trade option positions for compliance with applicable limits.

5. Aggregation

CMC is recommending that the CFTC not pursue aggregation of positions only based upon affiliation or ownership. Instead, the Commission should require aggregation of positions where an entity controls the day-to-day trading of a portfolio of speculative positions. In the past, Commission staff highlighted the possibility of using the independent account controller safe harbor as a model for not requiring aggregation among related companies where there is ownership but not control. CMC applauds this approach and believes it may provide a useful framework for capturing the purposes of position limits while not unduly burdening otherwise separate trading activities.

Towards that end, CMC recommends the Commission adopt an exemption from the requirement that persons under common control ("excluded affiliates") aggregate their positions under certain circumstances described below.

Accounts of entities under common ownership need not be aggregated where the entities are excluded affiliates. An excluded affiliate should be defined as a separately organized legal entity:

> (1) That is specifically authorized by a parent entity to control trading decisions on its own behalf, without the day-to-day direction of the parent entity or any other affiliate;
>
> (2) Over whose trading the parent entity maintains only such minimum control as is consistent with its fiduciary responsibilities to fulfill its duty to supervise diligently the trading of the excluded affiliate or as is consistent with such other legal rights or

obligations which may be incumbent upon the parent entity to fulfill (including policies and procedures to manage enterprise wide risk);

(3) That trades independently of the parent entity and of any other affiliate; and

(4) That has no knowledge of trading decisions of the parent or any other affiliate.

CMC appreciates the Committee's consideration of our views regarding the regulation of *bona fide* hedging.

6. The Swap Dealer *De Minimis* Level

End users of derivatives are also concerned about the CFTC's rule regarding the definition of "swap dealer." Under the rule the non-special entity *de minimis* level is currently $8 billion gross notional of swap dealing in a 12 month period; however that amount is set to drop automatically to $3 billion by the end of 2017 unless the CFTC takes action.

The CFTC's final rule contains no rationale as to why a 60% drop in the swap dealer *de minimis* level is necessary nor what the impact of such a drop may be on the market. For end users however the results are clear: fewer counterparties with whom end users can hedge, a significant decrease in market liquidity and further consolidation of swap dealing into a handful of large financial institutions.

If the CFTC is to lower the *de minimis* level it should only be after careful deliberation and impact analysis, including giving the public an opportunity to comment. In at least one area the Commission already knows the consequences of setting the *de minimis* level too low: when municipal utilities found they were to be treated like "special entities," subjecting their counterparties to a $400 million swap dealer threshold, these utilities discovered very few counterparties were willing to offer them risk management solutions. One of Chairman Massad's first acts as Chairman was to amend the swap dealer rule to allow municipal utility related swaps to be subject to the $8 billion threshold. This move was both prudent and highly welcome.

For end users a lower swap dealer *de minimis* level will not mean end users have more registered swap dealers with whom to deal. For a variety of reasons including business models and operational costs it seems apparent that entities that wish to be registered as swap dealers have already largely done so. Instead a lower *de minimis* level will mean that market participants (especially in the energy and commodity markets) will no longer be able to offer risk management services alongside the physical delivery arrangements they currently have in place with their customers. The end result is likely to be less liquidity and higher volatility in commodity prices.

CMC believes the self-executing provision in this rule as well as the provision that was recently reversed by the CFTC involving its residual interest rule are fundamentally flawed. We applaud

the Commission for their reversal on residual interest and urge this Committee to encourage the Commission to do the same regarding the swap dealer *de minimis* level by establishing the swap dealer *de minimis* level be set at the current size of $8 billion, and require that it be lowered only after a new rulemaking giving the public, including those end users that would be most affected by such a drop, the opportunity to comment. While the current rule provides the CFTC is to conduct a study on the appropriate level, without a new rule or action by Congress the level will still automatically drop. For end users this uncertainty can only be resolved by congressional action.

7. International Harmonization

In addition to these specific regulatory topics, CMC encourages Congress and the CFTC to continue to seek resolution to international regulatory issues. Two in particular are US-EU equivalence and the Basel III Supplemental Leverage Ratio. With regard to the US-EU equivalence issue, the lack of an equivalence determination has significant impacts to end-users that operate globally and depend on access to US exchanges and clearinghouse for risk management. For example, right now U.S. futures contracts count as “OTC derivatives” under the European Market Infrastructure Regulation (“EMIR”) because US futures exchanges have not yet been “recognized” by European regulators. This creates a disincentive for commercial end-users (Non-financial counterparties, or NFCs under the EMIR construct) that prefer not to be subject to the EMIR OTC thresholds and registration requirements as an NFC+. We are encouraged by recent progress on the broader equivalence debate and hope to see this resolved soon.

With respect to the Basel III Leverage Ratio issue, CMC members are deeply concerned that the leverage ratio will significantly increase the cost of hedging for end-users. Many of CMC’s members use bank affiliated FCMs, which are subject to Basel III requirements, to access the futures markets to perform critical risk management functions. While the CFTC has taken great measures (*i.e.* gross margining at CCPs, improvements to CFTC Rule 1.25, residual interest requirements) to enhance the protection of segregated customer funds held by an FCM, the Leverage Ratio framework suggests that bank-affiliated FCMs may use those very customer funds to leverage themselves. Furthermore, the exposure measure in the Leverage Ratio is punitive to commodity hedge portfolios, rendering many commodity end-users undesirable for a bank-affiliated FCM, despite having a better counterparty credit profile than many speculative users of the same markets. As a consequence of these new requirements, some CMC members report having received notice from their FCMs of new fees earlier this year, while others have been told simply that the FCM can no longer support that client’s business due to the high capital burden. CMC members are very concerned with the sharp decline in the number of FCMs. Recently, another major non-bank affiliated FCM exited the business indicating that access to clearing can no longer be considered a given.

Conclusion

Commodity derivatives markets continue to grow and prosper. They have become deeper and more liquid, thereby narrowing bid/ask spreads, and improving hedging effectiveness and price discovery. All of these developments benefit much more than just those who trade commodities. Efficient derivatives markets offer providers of food and energy the ability to reduce the multitude of risks they must manage. Consumers are the ultimate beneficiary of these efficiencies.

The swaps market reforms in Dodd-Frank were not required because of problems in physical commodity markets. Commercial end-users of agricultural and energy futures had no role in creating the financial crisis. In fact, the regulated futures market fared well throughout the financial crisis. CMC members recognize the need for the Dodd-Frank Act and support its goals, yet these regulations should be efficient and reasonable rather than overly prescriptive and complex.

We believe that as Congress considers how the CFTC is to regulate in the future, it should use the core principles on which the CFTC was founded as its guide. A balance must be maintained between regulatory zeal and consideration as to how regulatory changes could result in negative consequences to not just CMC members in the middle of the food and energy chain, but also to the producers and consumers on each side of the chain. Undue regulatory interference with the hedging mechanism introduces risk that must be priced into the chain, negatively affecting both ends and everything in between. Given this, we strongly believe that the CFTC's post Dodd-Frank trend toward very prescriptive changes to futures market regulation will hinder rather than improve our economy's ability to manage commodity market risks.

While the CFTC must continue to evolve in order to adequately regulate increasingly complex derivatives markets, many of these pending changes also introduce the potential for regulators to *create* risk and increase costs by going beyond their purview. Doing so, without consideration of the consequences, is dangerous and goes against both the "do no harm" principle of regulation as well as the CFTC's core principle regulatory heritage.

Compliance costs for end-users have skyrocketed. Today, agriculture and energy end-users are faced with thousands of pages of new CFTC rules that no one person can comprehend followed by a multitude of letters issued by the Commission to clarify rule language, extend compliance dates, or provide temporary no-action relief.

But the problem isn't only that this complexity and regulatory uncertainty adds unnecessary costs. It is also that, uncertainty, *via* additional regulation of the risk management tools that commodity market participants utilize, *actually creates risk* where it did not previously exist.

CMC members mitigate risks by hedging. The fact that future regulation may determine that the risk management methods we have described here today may no longer be considered hedging is of enormous concern and is an example of where risk could be created.

When regulatory initiatives lack clarity or evolve to be at cross-purposes with the core principles on which the Commission was founded, CMC members are compelled to reach out to this Committee for help. Thank you for this opportunity to testify. We look forward to continuing to work with this Committee to strike the right balance.

I look forward to your questions.