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January 25, 2008

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Mr. David Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

COMMENT

Re: Section 4(c) Requests – 73 Fed. Reg. 1205 (February 6, 2008)

Dear Mr. Stawick:

We are writing to express Agora-X's support to ICE Clear U.S. Inc.'s ("**ICE Clear**") request that the Commodity Futures Trading Commission ("**Commission**") issue an Order pursuant to Section 4(c) of the Act, confirming that over-the-counter ("**OTC**") swaps on certain agricultural products that are exchanged for "cleared-only" futures contracts (as described in ICE's petition for an Order, dated September 11, 2007, the "**ICE Clear Petition**") will be exempt from the provisions of the Commodities Exchange Act, as amended (the "**Act**"), on the same basis as non-cleared swaps are exempt under Regulation 35.2.

Agora-X also supports ICE Futures U.S., Inc.'s ("**ICE Futures U.S.**") request that the Commission issue an Order Pursuant to Section 4(c) of the Act to permit ICE Futures U.S. floor traders and floor brokers that are registered with the Commission (collectively "**Floor Traders**") to enter into "substitutions" (as described in ICE Futures U.S.' petition for an Order, dated September 14, 2007, the "**ICE Futures U.S. Petition**") with respect to certain agricultural commodities.

Agora-X believes that, so long as the underlying OTC swaps on coffee, sugar and cocoa proposed for substitution in the ICE Clear Petition otherwise satisfy the requirements of Part 35.2 of the Commission's regulations, the "cleared-only" futures contract that ICE Clear offers in exchange should receive the same treatment from the Commission as the non-cleared "swap contracts" as defined in Part 35. While the "cleared-only" futures contract offered by ICE Clear may not satisfy the technical requirements of Parts 35.2(b) and (c), Agora-X believes that the public protection concerns which underlie Parts 35.2(b) and (c) will be satisfied by any "cleared-only" futures contract that is offered by a credit-worthy, derivatives clearing organization that remains subject to the Commission's jurisdiction and oversight – as it would be the case since both the designated clearing organization (*i.e.*, ICE Clear) as well as designated contract market (*i.e.*, ICE Futures) are regulated entities under the Act.

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Arguably, a "cleared-only" futures contract will offer even greater protection than the swaps they are replacing since "cleared-only" contracts will incorporate the essential terms of the corresponding futures contract (except for physical delivery). We understand that open interest and settlement prices will be reported separately, clearing members will be required to report holding positions in "cleared-only" contracts on the same basis as other futures contracts, and that margining and defaults will be handled in the same manner as other futures contracts.

By allowing parties to substitute their privately negotiated OTC swaps for "cleared-only" futures contracts, the Commission will be providing market participants with a mechanism whereby these participants can greatly reduce the costs associated with mitigating counterparty risk while at the same time promoting liquidity and transparency in the marketplace.

In addition, we concur with other comments and believe that current regulatory distinctions that treat swaps on agricultural commodities differently from swaps on all non-agricultural commodities are unnecessary and have the effect of limiting innovation, price discovery and flexibility in the U.S. agricultural markets and may have the effect of driving these markets offshore. Furthermore, given that there is no definition of multilateral transaction execution facility for the purposes of Part 35 of Commission's regulations, there is much regulatory uncertainty inherent in reliance on the only exemption available to swaps on agricultural commodities. Therefore, we request that the Commission support in its future regulatory initiatives and interpretations harmonious treatment of agricultural and non-agricultural swaps whenever possible.

For the reasons stated above, Agora-X believes the Commission should grant the Order requested in the ICE Clear Petition and that such Order is consistent with Congress' intent that Commission use its exemption power under 4(c) of the Act to provide "certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner".¹ Accordingly, Agora-X believes the Commission should also grant the Order requested in the ICE Futures U.S. Petition so that ICE Clear can carry out the substitution transactions described in the ICE Clear Petition.

Your Sincerely,


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¹ HOUSE CONF. REPORT NO. 102-978, 1992 U.S.C.C.A.N. 3179, 3213 ("4(c) Conf. Report").



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