



8500 NW River Park Rd  
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### **Testimony of Brent Weisenborn, CEO of Agora-X, LLC.**

Mr. Chairman and Members of the Committee,

My name is Brent Weisenborn of Parkville, Missouri. I am CEO of Agora-X, LLC. Thank you for the opportunity to share my views on the important questions of regulation of the OTC commodities markets that you are now considering in the proposed bill (Draft Bill) to amend the Commodity Exchange Act (CEA).

#### **(1) Background.**

Agora-X, LLC is a development stage company that is dedicated to bringing efficiency, liquidity and transparency to over-the-counter (OTC) commodity markets by means of state of the art, regulatory compliant, electronic platforms for OTC contract negotiation as well as trading and transaction execution. Its initial focus is on cash-settled OTC contracts related to physical commodities, such as energy and agricultural commodities.

Agora-X, LLC was founded in 2007 by FCStone Group, Inc, which is a commodities firm with deep roots in agricultural commodities markets. FCStone originated as a regional cooperative in the Mid-West offering traditional hedging services to cooperative grain elevators, and has grown to offer commodity trading and price risk management services throughout the nation and beyond. In addition to FCStone, Agora-X is now also partly owned by The NASDAQ OMX Group, Inc.

I am tremendously excited about the opportunity that exists to improve the functioning of the commodities markets by means of innovations such as the electronic platforms offered by my company and by adjustments to existing regulatory systems that you are now considering.

I feel qualified to comment on these points, not only because of my role with Agora-X, but also because of years of experience in both the securities and commodities markets.

I have been a member of both the Chicago Board of Trade (CBOT) and the Kansas City Board of Trade (KCBT). I traded futures and was an option market maker as a proprietary trader. I served on the Board of Directors of the KCBT from 1996 to 1998.

I was a founder and served from 1987 until 2001 as President of Security Investment Company of Kansas City, an institutional only Broker-Dealer and NASDAQ Market Maker. Security Investment Company specialized in proprietary trading and wholesale market making.

I was elected to the NASDR (renamed FINRA), District No. 4 District Committee in 1998 and was elected Chairman in 1999. I served as chairman until January of 2001 and as co-chairman of the District 4 & 8 (Chicago) Regional Committee. The NASDR (FINRA) District No. 4 covers seven states: Missouri, Kansas, Iowa, Nebraska, North Dakota, South Dakota and Minnesota. At that time I was responsible for the regulatory oversight of approximately 55,000 stockbrokers in 2,500 offices. I also served on the NASDR National Advisory Council for the year 2000. In June of 2000, I was elected to the NASDR National Small Firm Advisory Board.

As a result of my experience I have observed at close hand the evolution of the electronic markets for securities, and I see strong parallels with electronic markets for commodities that are just now emerging.

(2) **Need for Regulatory Change.**

OTC markets play an important role of market innovation. They provide an alternative venue of contract formation, price discovery and risk mitigation outside the rigid and restrictive regulatory framework for “designated contract markets” that applies to commodity exchanges. OTC markets can provide substantial public benefit without creating systemic risk of the kind that precipitated last September’s financial crisis if they are required to be transparent, reportable, clearable, and to function within the bounds of electronic communication networks (ECNs) or exempt commercial markets (ECMs).

Well organized OTC markets also dramatically improve efficiency of commodity markets and by doing so OTC markets reduce the costs that consumers ultimately pay for commodities. When the markets are transparent, liquid and open, the spreads that swaps dealers can charge shrink and as a result, transaction costs fall. Efficient markets also inevitably attract liquidity and become broader. If these markets become clearable, they will also bring increased liquidity to clearing houses and registered commodity exchanges.

In addition, in open markets there is much less room for manipulation and the possibility of committing fraud. Because of the transparency and breadth of these markets, the likelihood of devastating speculative bubbles is also significantly reduced. These markets will help bring interests of traders and sound market fundamentals into balance. Thus, well regulated and well managed OTC markets will contribute to the integrity of US financial markets as a whole.

Of course, we must not ignore the problems that have emerged from the current crisis, but we should be careful in identifying the sources of these problems. In my view, the major problems have been in the misuse of securities and commodities contracts, and have not been in the means by which they are traded.

This brings me to the major point I wish to make. I urge the Committee to preserve the OTC commodity markets, but to modify the existing law to derive improvements in them.

The present financial crisis demonstrated that there are inefficiencies in the regulation and functioning of the OTC commodities markets and that these markets can be improved by means of electronic audit trail and reporting, by clearing and by moving these markets to a transparent ECN or ECM facilities, where possible.

In addition, an important issue for this Committee is the treatment of OTC contracts on agricultural commodities. We believe that agricultural derivatives, such as commodity swaps and options, deserve the same treatment as the non-agricultural commodities under the Draft Bill. Existing law and regulation discriminate against these commodities by making it difficult or impossible to create OTC agricultural contracts electronically or to clear them. Harmonization of regulation for OTC contracts on agricultural commodities with other contracts will provide the same public benefits to agricultural commodities as are available to all other commodities. In addition it will eliminate existing regulatory anomalies such as prohibitions of clearing and electronic trading that arose in the evolution of the OTC markets and were discarded over time for other commodities, but retained without critical analysis for agricultural commodities.

An example may help illustrate the point. Last summer grain prices in the United States reached very high levels, but many producers who wanted to lock in those prices with cash forward contracts were unable to do so because the country elevators who ordinarily offer such contracts did not do so because of inability to finance the margin required for offsetting futures positions. I think clearable, structured OTC contracts could have emerged to bridge that gap if it were not for restrictive regulations.

We currently face a time when agriculture desperately needs liquidity. The agricultural OTC market is a significant existing market that is developing entirely outside of registered commodity exchanges. Allowing cleared, structured agricultural OTC contracts on ECNs can help facilitate and accelerate liquidity, while adding transparency and efficiency.

With the safeguards that this Committee will add to protect the OTC markets it is time for agricultural commodity producers, processors and users to have full access to such regulated markets.

(3) **Conclusions and Recommendations.**

During the last few decades the securities markets have been truly revolutionized by innovative electronic trading methods. Now, the commodities markets are following the same path of innovation. Based on my experience I think four things are essential to the OTC commodity markets reform agenda:

- (A) The OTC commodity markets should be retained, but improved;
- (B) Unless exempted by the CFTC, all OTC commodity contracts, agreements and transactions must be reportable to the CFTC;
- (C) Unless exempted by the CFTC, all OTC commodity contracts, agreements and transactions must be clearable; and
- (D) Unless exempted by the CFTC, all OTC commodity contracts, agreements and transactions must be negotiated on an electronic communication network (ECN) via the request for quote process (RFQ) or traded or executed algorithmically on an exempt commercial market (ECM) or posted by means of give-ups to such electronic trade reporting facilities.

Accordingly, I generally support the language of the Draft Bill, but propose amending the Draft Bill as follows:

1. ***Clearing of all OTC commodity contracts, agreements and transactions.*** Repeal existing laws and regulations which prohibit electronic trading and clearing of OTC contracts on agricultural commodities and provide that agricultural commodities should be given equal regulatory treatment with non-agricultural commodities by amending Section 2(g) of the CEA. The Draft Bill implies some of this, but it should be further clarified to assure that agricultural commodities fully benefit from the reforms enacted.
2. ***Electronic Documentation.*** Require that all OTC commodity contracts, agreements and transactions be electronically documented, whether or not cleared, to assure transparency and to facilitate the reporting of these transactions.
3. ***Negotiation, Trading and Execution on ECNs or ECMs.*** Require that unless certain limited CFTC-defined exemptions and exclusions apply, all OTC commodity contracts, agreements and transactions be negotiated, traded and executed on an ECN or ECM or posted by means of the give-ups to such electronic facilities.
4. ***Definition of ECN.*** The definition of “Trading Facility” in the CEA should be amended to explicitly not include the ECNs. A new definition of the ECN should be drafted and added to the CEA.

Thank you for giving me the opportunity to share my views on the Draft Bill. I look forward to offering any assistance with drafting this proposed legislation as you may request.

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