Fighting for the U.S. Cattle Producer!

R-CALF USA

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February 10, 2011

J. Dudley Butler
Administrator
U.S. Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
Stop 3601, Room 2055 – South Building
1400 Independence Ave, SW
Washington, DC 20250-3601

The Honorable Christine Varney
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Request for Enforcement Action Against JBS USA LLC for It's Involvement in the Unlawful Cattle Futures Market Transaction that Occurred in October 2009

Dear Administrator Butler and Assistant Attorney General Varney,

On Monday, Feb. 7, 2011, the Commodity Futures Trading Commission ("CFTC") issued an announcement stating it had ordered Chicago-based futures commission merchant Newedge USA, LLC ("Newedge") to pay more than $220,000 for violating speculative position limits in live cattle futures trading. *See* http://www.cftc.gov/PressRoom/PressReleases/pr5981-11.html. According to the CFTC, one of the nation's largest beef packers, JBS USA, LLC ("JBS"), was involved in the transaction that led to the CFTC's remedial sanction.

According to the CFTC order issued in this matter, Newedge purchased 4,495 October 2009 live cattle futures contracts on the CME from their client JBS, and then Newedge sold JBS an over the counter swap (OTC) in live cattle on Oct. 9, 2009 – a transaction that caused Newedge to exceed the 450 contract speculative limit for trading live cattle by 4,045 contracts. *See* http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfnewedgeorder020711.pdf. The CFTC Order further states of the transaction: "On Friday, October 9, 2009, Newedge and JBS, a live cattle end user, agreed that JBS would sell Newedge 4,495 contract long October 2009 live cattle futures position. Newedge would hedge the purchase with a short position in an underlying swap in live cattle and sell JBS a live cattle swap." *Id.* The CFTC order also stated that Newedge earned $80,910 in total profit and commissions on related transactions with JBS. *See id.*

As discussed more fully below, R-CALF USA immediately recognized the symptoms of the unlawful market manipulation that occurred in the cattle futures market in October 2009 and formally notified federal regulatory officials of the disastrous consequences to U.S. livestock producers resulting from that manipulation. At that time, R-CALF USA witnessed a severe break in the cattle futures market, likely indicating that a dominant market participant had shorted the market, causing the futures market to fall the limit. However, R-CALF USA had no knowledge at that time regarding which dominant market participant was involved. Below are actions R-CALF USA initiated in its attempts to address this incidence of obvious market manipulation:

Soon after the close of the October 2009 live cattle futures contract month, on Dec. 9, 2009, R-CALF USA Marketing Committee Chairman Dennis Thornsberry submitted a formal complaint/affidavit to the U.S. Department of Agriculture ("USDA") Grain Inspection, Packers and Stockyards Administration ("GIPSA") in which he stated:

> I have used the Chicago Mercantile Exchange to hedge cattle for the purpose of managing the risk associated with marketing my cattle. However, the problems in the cash cattle market are mirrored in the futures market as it too is subject to undue influence by the dominant corporate packers and feedlots. For example, on the last trading day before the October futures contract expired, some outside force broke the October board, causing it to fall by the full $3.00 limit to $81.65 per cwt. However, the live cattle trade was at $87.50. This was among the worst convergences that I have seen in the futures market for a long time. It is unlikely that the futures market can attract sufficient long positions to add the needed liquidity to the futures market for determining the value of cattle when the market remains vulnerable to those who would exercise speculative short selling to effectively drive down the futures price. Given that this type of volatility cannot be attributed to market fundamentals (but, according to market analysts can be triggered by a $50 million infusion, which is not beyond the means of hedge funds and perhaps the dominant beef packers), small to mid-sized producers would not have the financial wherewithal to cover the margin calls associated with such a volatile market. This, I believe, plays directly into the hands of the large corporations that use the markets daily to gain an advantage over the small to mid-sized producer. And, the volatility in the futures market caused by manipulative practices has rendered it incapable of serving as a risk management tool for the small to mid-sized producer and is contributing to the exodus of these producers from the industry.

Document available to GIPSA and DOJ upon request.

Later, on April 26, 2010, R-CALF USA submitted formal comments to the CFTC concerning proposed federal speculative position limits and informed the agency of R-CALF USA's concern that dominant beef packers were manipulating the cattle futures market to lower the price of live cattle. R-CALF USA provided the CFTC with the information that originated in

Mr. Thornsberry's complaint/affidavit to GIPSA to substantiate R-CALF USA's concern that dominant market participants were manipulating the cattle futures market:

> Evidence, albeit anecdotal, that the cattle futures market is subject to undue influence by dominant market participants includes market events that occurred in October 2009. On the last trading day before the October 2009 futures contract expired, some outside force broke the October board, causing it to fall by the full $3.00 limit to $81.65 per cwt. However, the live cattle trade was at $87.50, resulting in an unexplained convergence that is suggestive of direct manipulation.

http://www.r-calfusa.com/Competition/100422%20R-CALF%20USA%20CFTC%20Comments%20on%20Spec%20Limits.pdf

R-CALF USA believes the October 2009 live cattle futures market transaction that involved both Newedge and JBS, and in which Newedge was known to have engaged in unlawful activity, was a significant, contributing cause for the manipulation of cattle prices and resulting harm to U.S. cattle producers. Further, and based on available information, we believe JBS' involvement in this transaction constitutes a direct violation of the Packers and Stockyards Act of 1921 ("PSA') that prohibits beef packers from engaging in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices. *See* 7 U.S.C. § 192(e).

For the reasons set forth above, we formally request that GIPSA and the U.S. Department of Justice immediately initiate a PSA enforcement action against JBS for its role in the debilitating cattle futures market transaction that occurred in October 2009.

Sincerely,

Bill Bullard

Bill Bullard, CEO

Cc: Senator Patrick Leahy
Senator Charles Grassley