DB Commodity Services LLC

Deutsche Bank
Group

DB Commodity Services LLC
60 Wall Street
5th Floor
New York, NY 10005

March 28, 2011

**<u>Via email: Secretary@CFTC.gov</u>**

David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: **Position Limits for Derivatives and Associated Regulations (76 Federal Register 4752 (Commission, January 26, 2011)); RIN Nos. 3038-AD15 and 3038-AD16 (the "*Proposal*")**

Dear Mr. Stawick:

DB Commodity Services LLC ("***DBCS***"), a Delaware limited liability company that is a registered commodity pool operator ("***CPO***") and commodity trading advisor ("CTA"), welcomes the opportunity to submit this letter in response to the Commodity Futures Trading Commission's ("***Commission***" or "***CFTC***") request for comments in respect of the Proposal. DBCS has been registered with the Commission and has been a member of the National Futures Association since 2005. Its principal place of business is 60 Wall Street, New York, New York 10005, telephone number (212) 250-5883. DBCS is a wholly-owned subsidiary of DB U.S. Financial Markets Holding Corporation, which is a wholly-owned, indirect subsidiary of Deutsche Bank AG. DBCS currently operates 11 commodity pools traded on NYSE Arca, a national securities exchange, in 2010 having in the aggregate over 1,000,000 public investors and as of today approximately $14bn in investor assets.

## A. General Comments

The futures markets serve a vital role in the health of our economic system: they provide a critical price discovery mechanism, enable hedgers to offset risks, allow speculators to express their views on price movements in the various futures contracts (whether up or down) and, via passive index funds, permit investors to hedge against inflation and diversify their investment portfolios. DBCS supports the Commission's efforts to maintain fair and orderly markets. However, DBCS believes that the Proposal suffers from several critical problems: it finds no support in empirical evidence, is unduly onerous and will significantly limit the usefulness of the

U.S. futures markets to international traders. As such, the Proposal threatens to undermine the futures markets' advantages listed above.

The Proposal rests on the proposition that increased open interest leads to higher prices and volatility, yet provides no evidence for such a link. In fact, the available evidence supports the opposite conclusion. Second, the proposed regulatory intrusion into a liquid market is unprecedented and not mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("***Dodd-Frank***") which authorized the Commission to impose position limits only "as appropriate".[1] Furthermore, because the commodity futures market is global, the excessive burden of the proposed regulations would, if enacted, drive many investors and traders to foreign exchanges, leaving the American markets thinner and therefore less liquid. The Proposal is also unnecessary. The nature of the futures markets and the operation of index funds themselves counteract the alleged dangers described by the Proposal. Not only are futures markets inherently balanced, but index funds help bring about the stability which the Commission seeks to accomplish through regulation. Finally and as discussed in greater detail below, the aggregation rules set forth in the Proposal would create potential conflicts of interest for business units within large financial institutions. These units, which operate independently and have different clients, would be forced to share information and coordinate trading in affected futures and swaps and thus violate information barriers that have been set up to prevent such conflicts.

(1) Passive Index-Tracking Funds Should be Exempt From Any Proposed and Existing Position Limits

Passive, unleveraged long-only index-tracking trading strategies used by many publicly-traded commodity pools, as well as by index tracking pools that are leveraged and/or also take short positions (each a "***Passive Pool***"), can be distinguished from actively managed commodity pools. A Passive Pool is not a "speculator" within the intent of Commission Regulation 1.3(z). A Passive Pool's investment objective is simply to track an index over time, regardless of whether the index is rising, falling or flat. To that end, a Passive Pool acquires long futures positions in the commodities making up the underlying index. A Passive Pool does not utilize a discretionary trading program but simply seeks to track the underlying index with minimal tracking error.

Dodd-Frank requires the Commission to impose position limits "as appropriate" in order to prevent excessive speculation and market manipulation. Passive Pools do not have the capability to manipulate physical commodity prices which is one of the ills the position limits regime is intended to prevent. It is a fundamental principle of the futures market that prices are set in the cash market by supply and demand for the actual physical commodities. However, Passive Pools do not provide the market with either supply or demand as the funds do not own, store, buy, sell or consume any commodities. Passive Pools do not concentrate their positions in any one futures contract or swap so that their investment decision could affect the price in the underlying physical commodity. In addition, Passive Pools, in their primary role as an aggregator, change the size of their positions only as a result of individual investors investing or divesting in the pool and not as a result of a pool-wide investment strategy.

[1] Please see further discussion of this point in section 8 of this letter.

Further, Passive Pools apply *zero* net buying pressure across the commodity term structure. As Passive Pools cannot and do not hold positions into the delivery month, the primary market activity in which these unique market participants engage is the simple "rolling" of futures as they approach the spot month. This "rolling" occurs by selling nearby contracts and simultaneously buying an equal dollar amount of a more deferred contract. At the point of convergence of the cash and the futures markets (at the near end of the futures curve), Passive Pools are heavy net sellers as they sell their nearby current futures holdings in order to roll into more distant futures positions. Thus as futures contracts become deliverable to and converge with the physical market, index funds are no longer involved in those contracts and have no effect on the physical price determination process.

Dodd-Frank also requires that the position limits regime ensure sufficient market liquidity for bona fide hedgers. Passive Pools create a more liquid and efficient futures market for hedgers and speculators alike. Passive Pools own futures contracts for the purpose of providing their underlying investors with portfolio diversification and inflation hedging. They do not take positions, short or long, in anticipation of future price movements. Often, Passive Pools participate in illiquid contracts, thereby bringing liquidity where none existed.

The function of investors such as Passive Pools as liquidity providers was recognized by Congress during the Dodd-Frank legislative process. Senator Blanche L. Lincoln (D-AR)[2] clearly articulated that the Dodd-Frank position limits regime is not intended to restrain or substantially reduce the participation of such investors in the commodities markets. As Sen. Lincoln said, in setting position limits, the Commission

> must balance the needs of market participants, while at the same time ensuring that our markets remain liquid so as to afford end-users and producers of commodities the ability to hedge their commercial risk. Along these lines I do believe that there is a legitimate role to be played by market participants that are willing to enter into futures positions opposite a commercial end-user or producer. Through this process the markets gain additional liquidity and accurate price discovery can be found for end-users and producers of commodities.

Sen. Lincoln further expanded on the liquidity-providing role of investors like Passive Pools in her comment letter to Chairman Gensler dated Dec. 16, 2010, where she noted that such investors provide an important source of liquidity to commercial hedgers, serve a price discovery function and provide an important inflation hedge to retail investors. Sen. Lincoln stressed that imposing unnecessary position limits on such investors

> could limit their investment options, potentially substantially reduce market liquidity, and impede price discovery. Such limits might also have the unintended consequence of forcing investors to rely on higher-cost managers with little experience, insufficient compliance and trade flow infrastructure,

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[2] July 15, 2010 Senate Floor speech, during the consideration of the Dodd-Frank Conference Report, Congressional Record-Senate, pages S5919-20, CREC-20 1O-07-15-ptl-PqS5902.pdf (pages S5919-20).

and limited risk management capabilities associated with effectively managing commodity index risk.

In summary, Passive Pools accomplish the same ends at which the Proposal aims. The Commission seeks to balance and calm the markets, but the markets are already more balanced and calmer because of the activities of Passive Pools. Passive Pools cannot manipulate the market nor do they engage in speculation. On the contrary, they provide an important source of liquidity to bona fide hedgers and other market participants. They permit the small investor, as well as large investors such as pension funds and endowments, to gain access to and profit from the markets without incurring potentially large risks. Without such access, these investors may find it necessary to open individual futures trading accounts, thereby increasing the risk and volatility with respect to their invested funds. Passive Pools are highly regulated, highly transparent, and unleveraged Passive Pools are conservative in approach: they seek incremental growth and minimal loss through passive investing. In this fashion, the introduction of the small investor via Passive Pools increases the market's capacity for risk-sharing.

Section 4a(a)(7) of the Commodity Exchange Act ("***CEA***") authorizes the Commission to exempt from position limits "any person or class of persons". The Commission should rely on this authority to exempt Passive Pools from the position limits regime.

Additionally, rather than imposing strict limits, the Commission should consider adopting "position accountability" standards similar to those currently administered by futures exchanges. Position accountability, rather than position limits, would permit the Commission to require traders who own or control positions in excess of certain thresholds to provide the Commission, upon request, with information regarding the nature of the positions, hedging needs, and the trading strategy to enable the Commission to determine at that time the appropriate course of action, rather than arbitrarily imposing limits on all traders.

Finally, if the Commission does adopt speculative position limits, the different exchanges should either withdraw their position accountability and position limits regimes in deference to any new Federal requirements, or conform them accordingly, so that a single regime will apply across exchanges.

(2) In Adopting an Exemption for Passive Pools, the Commission Should Rely on Past Precedent.

The Commission staff granted, but then three years later rescinded, no-action relief to two passive long index-based funds from speculative position limits on certain agricultural commodities. *See* CFTC Letter 06-09 (April 19, 2006); CFTC Letter 06-19 (September 6, 2006). The no-action letters provide guidance in establishing an exemption for Passive Pools. In 2009, the Commission staff affirmatively determined that these funds "represented a legitimate and potentially useful investment strategy." 74 Federal Register 12282 (CFTC, March 24, 2009), at footnote 15.

As stated in the no-action letters, Passive Pools include the following attributes: (i) passive tracking of a benchmark; (ii) excess positions not affecting the spot month futures

contract; (iii) high level of transparency; (iv) extensive federal and self-regulatory oversight; and (v) lack of price exposure to the fund. *See* CFTC Letter 06-09 at 4; CFTC Letter 06-19 at 5-6.

These unique features of Passive Pools allow them to actively participate in the commodity futures market while still providing substantial protections and full disclosure to market participants and the investing public. Their activities do not cause the concerns that the Proposal is intended to address. Additionally, limiting the ability of Passive Pools to trade in the futures markets will: (i) expose retail passive investor customers to bilateral credit risks; (ii) increase price volatility and reduce liquidity; and (iii) force more retail customers to access the futures markets directly. We believe that the Commission should codify rules exempting Passive Pools from speculative position limits or adopt a separate position limits exemption for Passive Pools.

Most Passive Pools are passive long traders, as is evident from a review of their disclosure documents. The Commission could consider having such pools file a certificate with the Commission confirming their status as an "Index-tracking Exchange-traded Pool" and, to the extent any speculative position limits are imposed, aggregation rules and exemptions applicable to these uniquely transparent and highly regulated collective investment vehicles should be adopted.

(3) Positions of Passive Pool Should Not Be Attributed to the CPO Based on Control.

Under proposed rule 151.7(a), positions of Passive Pools would be attributed to the CPO because the CPO would likely be regarded as having "control" over those positions.

We disagree with that application of the proposed rule. Passive Pools do not trade based on a discretionary trading strategy. Instead, they assume positions solely to track a predefined index. DBCS's role as a CPO with respect to its funds is essentially an administrative one – specifically, the CPO (i) selects parties that are necessary to administer the pool's activities such as the trustee, the commodity broker, administrator, custodian, transfer agent, distributor, marketing agent and auditor; (ii) negotiates various agreements and fees; and (iii) monitors the performance results of the pool's portfolio and reallocates assets within the portfolio with a view to causing the performance of the pool's portfolio to track that of the relevant index.

The CPO does not have the discretion to react to market movements so, for example, even if the index were to generate negative returns for extended periods of time, the CPO would not have the power to reshuffle the portfolio and would have to keep making investments solely to track the negative-performing index. Thus, the CPOs role does not involve "control" in the usual meaning of that word as the ability to influence the trading decisions of an entity. Because the CPO is not capable of making decisions that are speculative in nature or express a market view, it is unable to cause the harm that the position limits regime is intended to prevent and the positions of the commodity pools should not be attributed to the CPO.

The Commission's aggregation regime must prudently apply the limits to passive index-tracking CPOs who use the futures markets for legitimate risk management purposes, in a manner that does not penalize those CPOs who operate multiple commodity pools, each a separate legal entity, each having its own public investor beneficial owners, each tracking a

different index and over which the CPO does not exercise "control". Imposing speculative position limits without also adopting a realistic aggregation policy that permits responsible traders, such as a regulated CPO, to trade in these markets without the positions in one of its pools being aggregated with those of its other pools, will decrease liquidity and impair price discovery, causing pools to move their trading to foreign markets.

The Commission should not attribute the positions of passive index-tracking commodity pools to the CPO in situations where, as described above with respect to DBCS, there exists no "control". The Commission should adopt an aggregation rule that disaggregates the positions of highly regulated passive index-tracking commodity pools from other pools that either (a) are operated by the same CPO or (b) track the same index, where there is either no common control or no common ownership among the investors that own 10% or more of the pools.

(4) <u>Positions of CPOs That Are Owned by Multifaceted Financial Firms Should be Disaggregated From the Positions of the Parent If the CPO Can Demonstrate Independence</u>

Under proposed rule 151.7(a), positions of Passive Pools would be attributed to the CPO because the CPO would likely be regarded as having "control" over those positions. Positions of the CPO would be aggregated with the positions of its parent, based on ownership.

The Proposal will also require holding company structures that have separate business units trading for various proprietary and customer accounts to aggregate their holdings across their various business units. The Proposal is not operationally feasible for large financial institutions and will have the unintended consequence of requiring organizations that have not shared information in the past to disclose their positions to other independent business units.[3]

We believe that the proposed aggregation of positions among affiliates of large financial institutions, that have implemented strong information barriers and effective measures designed to prevent coordinated trading activities, is unnecessary and could cause negative consequences. For example, within a large financial organization, trading in futures and swaps may be carried out by various business units in their roles as swap dealer, CPO, commodity-linked note issuer, futures commission merchant, asset manager and the proprietary trading desk. Each of these units has different clients to whom various duties, including fiduciary and confidentiality duties, may be owed. In order to aggregate positions in futures and swaps across all affiliates and desks, as would be required under the Proposal, these separate units would have to disclose their positions to other affiliated entities and desks within the wider organization. This is because the affiliates and desks would now be forced to coordinate any sale or purchase of additional futures and swaps to ensure that the organization as a whole stays under the aggregate position limit. Similarly, these entities would be forced to coordinate their holdings of futures and swaps going forward so as to allocate the allowable position limit among them.

As a consequence, the Proposal would require such entities to break down well-established informational and institutional barriers and expose the entities to potential conflicts of interest between the duties owed to their clients and the obligation to disclose positions to

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[3] We direct the Commission's attention to a separate comment letter submitted by Deutsche Bank AG, our affiliated entity, for additional discussion on the aggregation issues.

affiliates and desks within the organization. In addition to potentially violating any of the relevant regulatory or fiduciary obligations, the result would restrict the aggregate positions that may be held by financial entities in the markets, which will further reduce liquidity and raise the cost of risk management for all market participants, including non-financial entities such as commercial end-users.

We believe that a CPO that demonstrates, using the standards enumerated in proposed rule 151.7(f) for owned non-financial entities, that its trading is controlled and managed independently from any of its affiliates, should not have the positions held by its commodity pool aggregated with the positions of its parent or affiliates. The Commission has not offered any explanation as to why disaggregation based on independence would not be appropriate for CPO affiliates of large financial institutions.

We urge the CFTC to retain the IAC exemption as it currently exists in Regulation 150.3(a)(4). In a departure from its current rule in Regulation 150.3(a)(4), commodity pool operators, mutual funds and certain CFTC registrants (each an "eligible entity") would not be permitted to disaggregate positions that are traded on their behalf by independent account controllers ("***IAC***"). Currently, agricultural futures speculative positions traded by IACs for collective investment vehicles are disaggregated under Part 150.

The IAC exemption is premised on the fact that accounts that are under separate management need not be aggregated because they have no combined effect on the market. The elimination of the IAC exemption is unnecessary and will be disruptive to a wide variety of market participants that have relied upon the exemption to operate efficiently in the commodity markets.

As a result of the aggregation rules in the Proposal, Passive Pools may either have to liquidate positions or financial institutions that have CPO affiliates may be forced to divest such affiliates. This would increase systemic risk in the markets as a spun off CPO would no longer function under the umbrella of a well-regulated, highly capitalized parent financial institution with sophisticated legal, compliance and internal audit departments.

In the alternative, we urge the Commission to consider an aggregation rule applicable to multifaceted financial companies discussed in section 5 of this letter.

(5) Aggregation Rules Should Be Modernized.

The Proposal does not address the crucial issue of aggregation of commodity positions amongst entities that are under common control. The Commission should adopt an aggregation rule that is responsive to the legitimate trading and risk management needs of financial holding companies that have numerous affiliates and trading desks, each of which independently trade in the futures markets. The CPOs of commodity pools and index-tracking commodity pools, as well as issuers of commodity-indexed notes, are often separate business units of a multifaceted financial institution that have implemented appropriate barriers between the units. We encourage the Commission to consider adopting a responsible disaggregation policy for a multifaceted financial institution. In this regard, we recommend that the Commission add a new section to proposed part 151 to responsibly permit disaggregation of a financial holding

company's affiliates' positions, and we offer the following draft proposed rule for the Commission's consideration:

"**Proposed Rule 151.7(h) – Aggregation Exemption for Financial Institutions**

(a) Positions which may exceed limits. The position limits set forth in § 150.2 and § 151.4 of this Part may be exceeded to the extent such positions are:

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(h) Financial Institution.

(i) Carried by (a) an Independent Trading Unit (as defined herein) of a financial institution (as defined in section 1a(15) of the Act) in the separate account or accounts of the financial institution controlled by an Independent Trading Unit of the financial institution or (b) any commodity pool organized as a separate legal entity or separate series of a separate legal entity where trading is controlled by such Independent Trading Unit, in each case where each Independent Trading Unit of the financial institution has, and enforces, written procedures to preclude other Independent Trading Units from having knowledge of, gaining access to, or receiving data about, trades of the other ("Disaggregation Procedures"). Such Disaggregation Procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; *provided, however,* that such Disaggregation Procedures may provide for the disclosure of information which is reasonably necessary for a financial institution to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf or through the Independent Trading Units, including disclosures to legal, compliance, internal audit and risk management departments and other similar independent control functions of a financial institution that may be common to all Independent Trading Units. The financial institution must file with the Commission a notice of eligibility that:

(a) describes and confirms the implementation of the Disaggregation Procedures;

(b) designates an office of the financial institution responsible to coordinate the Disaggregation Procedures;

(c) provides an organizational chart that includes the name, main business address, main business telephone number, main facsimile number and main email address of the financial institution, each Independent Trading Unit, and if applicable, any separate legal entity whose trading is controlled by such Independent Trading Unit;

(d) provides the names of pertinent staff of each Independent Trading Unit (trading, operations, compliance, clerical, and risk management) and their work locations;

(e) provides a description of all information sharing systems, bulletin boards, and common email addresses;

(f) provides an explanation of the financial institution's risk management system and staff structure and a description of the overall structure and operations of the relevant staff;

(g) provides an explanation of how and to whom the trade data and position information is distributed for each Independent Trading Unit, including which officers receive reports for all Independent Trading Units and their respective titles; and

(h) is signed by a representative duly authorized to bind the financial institution.

As used in this rule, the term "Independent Trading Unit" means a branch, office, profit center, affiliated commodity pool operator, passive commodity pool tracking an index, or affiliate of the financial institution that complies with the Disaggregation Procedures and is listed in the notice of eligibility.

(ii) The notice of eligibility will be effective upon filing, provided the notice is materially complete. The notice of eligibility must be refiled within 45 days of January 1 of each year following the initial filing."

* * *

(6) <u>The Legacy Position Limits for Agricultural Commodities Should be Increased from Proposed Levels and Based on a Percentage of Open Interest</u>.

Proposed rule 151.4(d)(3) provides that non-spot month limits, currently in place for agricultural commodities under Part 150.2, will continue to apply. We do not see the reason for subjecting agricultural commodities to a limit that was last fixed in 2005 and has not been changed since despite the considerable growth in trading and open interest with respect to agricultural commodities. In addition, the legacy limits were set with respect to the futures markets only and yet the changes imposed by Dodd-Frank will subsume the equivalent swap market under the same unchanged limit.

This is inconsistent with the approach taken for non-agricultural commodities, where the position limits are calculated as percentages of open interest that includes futures and swaps. For those other commodities, the limits would increase with the increase in open interest while for agricultural commodities, it would be fixed. Such disparate treatment is not supported by any evidence or the Commission's own studies.

We believe that if the percentage of open interest is appropriate for non-agricultural commodities, then it should be appropriate for agricultural commodities as well. Failure to adjust agricultural position limits to reflect existing open interest and liquidity levels will restrict the ability of commercial hedgers to effectively hedge their exposure due to decreased liquidity.

The Commission should apply to referenced contracts in agricultural commodities the same formula used to determine position limits for non-agricultural commodities. In the alternative, we support the position limits recommended by the Chicago Board of Trade, as we believe that they would better protect the liquidity and price discovery function of the agricultural commodity markets than the current limits.

(7) If the Commission Declines to Exempt Passive Pools From the Position Limits Regime, a Simpler Formula for Calculating Non-spot Month Position Limits Should be Applied.

We are hopeful that the Commission will exempt passive index-tracking pools from the position limits regime. The consequences of not doing so include (a) removing from the market a significant source of liquidity, (b) disenfranchising the hundreds of thousands of public retail investors who invest in Passive Pools as a mechanism to prudently access these markets as a diversification and hedging tool, (c) preventing the passive long trader's affiliated commodity pools, if subject to aggregation, from using the futures markets, (d) causing these traders to utilize foreign markets as alternatives, which are less transparent and less regulated markets, (e) increasing price volatility and distortion of price discovery signals and (f) leaving foreign markets as the focal points for commodity price discovery.

If the Commission were nevertheless to decide to proceed with the proposed rules, it should apply a different formula for calculating non-spot position limits.

Under proposed rule 151.4(d), non-spot position limits will be based on open interest and would equal 10% of the first 25,000 contracts, with a marginal increase of 2.5% thereafter. Because the non-spot limits approach 2.5% of open interest as open interest increases, the rationale behind the 25,000 threshold is weak and needlessly complex.

A simpler solution would be to fix the percentage of open interest. As open interest grows, so do the non-spot position limits. We think the rule for passive investors such as passive index-tracking pools should be 10% (thus requiring at minimum 10 aggregators in the market) and for non-aggregators/speculators it should be 5% (thus requiring at minimum 20 speculators in the market).

(8) The Futures Market Is Unique Since Buyers Offset Sellers, Obviating the Need for Position Limit Restrictions.

Dodd-Frank does not require the Commission to set position limits.[4] The proposed position limits are superfluous because futures markets by their nature possess a fundamental

[4] Section 4a(a)(3) of the CEA, as amended by Section 737 of Dodd-Frank, requires the CFTC to impose position limits "as appropriate." However, the Commission has not explained why position limits are appropriate at this time. On the contrary, it would appear that substantial evidence of a link between speculation and volatility or prices does

balance not present in other markets. Commodities in futures markets do not have a finite number of contracts. If demand exists on either side of a future, another party can easily meet the other side of that demand, thereby quickly increasing or decreasing the open interest in that contract.

As a result the futures markets are essentially balanced – for every long there is an equal offsetting short position and for every short there is an equal offsetting long position. When cleared through the U.S. futures exchanges, the profits from one side are in equilibrium in every instance to the losses incurred by the other. Since losses are offset by gains, money is simply transferred from one account to the other and there is no net loss of wealth in either bull or bear markets. Accordingly, when speculators win, hedgers lose, and when hedgers win, speculators must lose.

(9) The Proposed Regulations Encumber the Free Market and Break Down the Efficiency of the Price Discovery Mechanism.

The futures exchanges allow for the creation of a free marketplace where willing buyers and willing sellers can come together to discover the price of the commodity that they are trading. Each time willing participants meet to buy and sell the commodities, they are engaging in the process of "discovering" the price of that commodity. In aggregate, this results in efficient prices that are constantly discovered in an open and transparent manner. However, onerous regulatory constraints imposed on market participants will impede them from transacting freely. As explained further below, these constraints are unusually onerous because they significantly interfere with risk offloading, price discovery, and diversification. The inevitable result will be less efficient markets and therefore more volatile commodity prices.

(10) The Proposed Position Limits Will Hinder the Ability of Individuals and Corporate Hedgers to Offload Risks.

A chief objective of the futures market is to provide individuals and companies who maintain price risk in their day-to-day business activities a place to offset those risks via hedging transactions. For example, the futures markets allows grain handlers to make commitments to buy or sell grain from and to their clients for months or years into the future. A deep and liquid futures market functions as a surrogate buyer or seller until an actual client can be found. Without the futures markets, the merchandisers would have no place to allay their risks of ownership on the long side, or to make a short position for a client who needs a long-dated sale. The futures markets exist to allow hedgers to hedge, a function only robust futures markets can accomplish.

(11) Position Limits Proposed by the CFTC Will Directly Inhibit Speculators' Ability to Take a View on Prices, Either Upwards or Downwards, and

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not exist. Not only do the Proposal and its supporters fail to offer empirical evidence for the Proposal's underlying assumption, but the available evidence supports a contrary conclusion. Given the significant impact, we don't believe that the Commission should implement a restrictive position limit regime without establishing with reasonable certainty that excessive speculation causes price fluctuations or that position limits are effective to reduce excessive speculation or market manipulation.

Consequently Will Severely Damage the Price Discovery Mechanism That Is the Modern Futures Market.

The futures markets also exist to allow speculators a forum to take a view on prices. Speculators are permitted to place their own money at risk if they so choose, and in the process of speculating (both long and short) they create liquidity that allows hedgers to easily hedge and the price of the underlying contract to be properly "discovered." But the proposed position limits, if passed, will prevent firms that are supposedly hedgers to take any positions other than perfect hedge positions and simultaneously prevent speculators from taking short positions unless they have a direct price risk of their own.

As a consequence, the proposed limits will significantly diminish liquidity, the lifeblood of efficient futures markets. If hedgers lose much of their ability to hedge, the currently transparent price discovery process will become opaque as speculators move to overseas markets. Commodity prices, rather than being continuously discovered by participants with real interests in the commodity in question and by speculators who wish to take an interest in that same commodity, each hoping to profit over the other, thereby promoting the price discovery function of the market itself, will be "skewed" by artificial and arbitrary constraints. U.S. futures markets, their efficiency crippled, will see significant thinning and increased volatility.

## B. Conclusion

DBCS appreciates the opportunity to comment on the Proposal and respectfully submits these comments for the Commission's consideration. Please contact our outside counsel, Michael Sackheim of Sidley Austin LLP at (212) 839-5503 or Adam Wernow of Deutsche Bank Compliance at (212) 250-6739 with any questions regarding this letter.

Respectfully submitted,

Hans Ephraimson, Chief Executive Officer

cc: Michael S. Sackheim
Adam Wernow