Atlanta Calgary Chicago Houston London New York Singapore

March 28, 2011

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

RE: Position Limits for Derivatives
RIN 3038-AD15 and 3038-AD16

Dear Mr. Stawick:

ICE Futures U.S. ("ICE Futures" or the "Exchange") appreciates the opportunity to comment on the proposed rulemaking issued by the Commodity Futures Trading Commission ("CFTC" or "Commission") setting forth new rules on position limits for derivatives. The Exchange is a subsidiary of IntercontinentalExchange, Inc. ("ICE"), which operates a diverse set of exchanges and clearinghouses based in three countries. ICE has filed a separate comment letter addressing the rulemaking as applied to energy markets whereas this letter addresses implications of the rulemaking for the agricultural markets of ICE Futures.

As background, the Exchange is New York's original futures exchange tracing its history to 1870, when the New York Cotton Exchange was founded. The Exchange lists a broad array of soft agricultural commodities, including sugar, coffee, and cocoa, as well as cotton and frozen concentrate orange juice. ICE Futures and its predecessor exchanges have a long, successful history of overseeing position limits, accountability and exemption requests for the Coffee "C"®, Cocoa, Sugar No. 11® and Sugar No. 16 futures and options contracts. In light of this extensive, direct experience, the Exchange has the expertise to evaluate the merits and implications of the proposed rulemaking to our agricultural markets.

The proposed rules, if adopted, would broadly expand the role of the Commission into the administration of position limits and the granting of hedge exemptions with respect to commodities over which the Exchange currently exercises such authority. Indeed, as proposed, the Commission would assume this role for all designated contract markets that perform the same function with respect to their own contracts. Given the significant resources that such an undertaking would require on the part of the Commission and the time sensitive nature of exemption requests, we believe that the current structure—whereby the Commission oversees certain enumerated agricultural commodities while the listing exchanges oversee their own products—reflects an

efficient allocation of responsibility that ensures commercial market participants will be able to continue to hedge their risks in a timely manner. Moreover, in contrast to energy markets (where equivalent instruments trade significant volume on multiple regulated markets, none of which has a complete picture of a trader's aggregate position across those markets), the agricultural markets of ICE Futures represent the sole U.S. regulated venue for these commodities and in some cases the global benchmark. Therefore, the Commission would not be adding any layer of information that was not otherwise available to the Exchange in relation to the decision-making on position limits and exemptions.

In addition, the rules and procedures developed and used by the Exchange to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of its markets. As discussed below, the proposed rules conflict with commercial market practices for some of our commodities and could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts. In light of all these facts and the other points discussed in this letter, we believe there would be no benefit to the Commission assuming front line responsibility for reviewing and granting exemption requests in the Exchange's agricultural commodities, and we urge the Commission not to do so.

Current Exchange Procedures

Currently, the Exchange has position accountability rules for single month and all months combined positions in the Coffee "C", Cocoa and Sugar No. 11 contracts. Spot month position limits exist for all of these contracts, and Sugar No. 16 is subject to single month and all month combined position limits. Cotton No. 2® and Frozen Concentrated Orange Juice ("FCOJ") have position limits for all three categories.

ICE Futures procedures permit the granting of spot month exemptions only for a specific delivery month based on an applicant's near-term hedging needs. This approach permits Exchange Market Surveillance staff to consider current market conditions when reviewing exemption requests and to make reasoned decisions that are limited to a particular delivery month. This approach differs from the methods we understand are used by the Commission in administering exemptions for enumerated agricultural products, as the Commission does not currently differentiate between the spot month, single month and all months combined position that a hedger may hold and does not otherwise limit exemption requests to a specific delivery month.

ICE Futures also grants exemptions for the Cotton contract, even though cotton is an enumerated commodity. Our procedures provide that, in the case of a traditional hedger, an exemption is not granted unless it is supported by the filing of a Form 304 by

the trader with the Commission. For non-traditional hedgers, the Exchange will not grant an exemption until one has been granted by the Commission.

Hedging of Unfixed Price Obligations

The proposed rules include provisions that generally extend the program that currently exists for the enumerated agricultural commodities, such as cotton, to numerous other commodities including sugar, coffee and cocoa. However, the proposed rules do not recognize that commercial market practices in the non-enumerated commodities differ from those in the enumerated products and that, consequently, merely extending the current Commission program to these commodities will create a flawed system. Unless the Commission considers and modifies its proposed rules to account for the differing commercial practices in sugar, coffee and cocoa, serious consequences may flow to commercial participants in those markets. In particular, we are concerned that the proposed rules could prohibit such participants from fully managing their commercial risk through futures, options and OTC instruments that are cleared through entities regulated by the Commission.

For example, proposed Regulation §151.5 specifies that any trader with a position in excess of position limits must submit a Form 404 filing containing information on stocks owned and open fixed-price purchase and sale commitments not later than the business day following the day on which a limit is exceeded. Apparently an exemption decision would be based only on the information contained in this Form. The proposed regulations do not include any provisions for collecting information for unfixed-price commitments. This is troubling in light of the fact that proposed Regulation §151.5(2) includes unfixed sales and purchases as enumerated hedging transactions so long as the positions are not maintained during the last five trading days of a referenced contract. Moreover, commercial contracts in sugar may permit the price to be fixed as late as the last trading day of the delivery month. In reviewing and granting exemption requests today, the Exchange takes the practices of the underlying commercial market into account and thus has granted exemptions for unfixed-price commitments during the last five trading days.[1]

The failure to fully recognize unfixed-price commitments as hedging transactions poses significant issues for commercial participants in the world sugar market. Most commercial sugar contracts are structured without a fixed-price and thus may not be considered hedging transactions under the proposed regulations. This could have the effect of prohibiting commercial participants in the world sugar market from using risk management strategies that have worked well for years. Commercial sugar contracts

[1] Commission staff members are fully aware of the Exchange's procedures in this regard.

generally provide one of the parties to the contract with the right to fix the price against a specific Sugar No. 11 delivery month by a specific date, which can be as late as the last trading day for the futures contract, as mentioned above. It is obvious from the large quantity of EFPs/AAs (Exchange for Physicals or Against Actuals) posted during the last trading month of any Sugar No. 11 contract up to and including last trading day, that many commercial contracts are priced in this manner during this period. For example, during February 2011, the last trading month for the March 2011 contract, EFPs transacted in that contract totaled 86,231 lots. In addition, 73,867 lots of EFSs were posted. Total volume in the March 2011 contract (including EFPs/EFSs) was 1,324,759. Sugar 11 also differs from many other physical delivery contracts because it has a single notice day, which occurs after the last trading day, whereas other contracts have multiple notice days which occur prior to the last trading day.

Anticipatory Hedges and Unforeseen Hedging Needs

Proposed Regulation §151.5(c) requires that any trader who wishes to exceed position limits in order to hedge unsold anticipated commercial production or unfilled anticipated commercial requirements submit a Form 404A filing at least ten days before positions would exceed applicable limits. This filing would include information about the trader's production or requirements for the relevant commodity for the past three years. The Commission indicates that it will review the data and determine whether to approve an exemption after determining whether all or a portion of the anticipated production or requirements should be deemed bona fide hedging. Although the regulation contemplates a response to be issued within 10 days, the Commission may ask for additional information and no time frame is given for a response in that situation. At the very least, the Commission should commit to providing a response by a day certain so that a commercial participant is not prohibited, by delay or inaction on the part of the Commission, from establishing what it considers to be a risk management position in a timely manner.

As noted above, the proposed regulations require a hedger to submit a Form 404 filing no later than the business day following the day the limits were exceeded. ICE Futures rules currently provide that, if a trader exceeds a position limit due to sudden unforeseen increases in its bona fide hedging needs, the trader may request an exemption within five or ten days, depending on the contract, and if the exemption is granted, then the trader will not be considered in violation of the position limit rules. ICE Futures recommends that a similar approach be taken by the Commission and codified in the proposed rules.

Spot Month Position Limits for Sugar Contracts

As written, §151.3(3) provides that spot month position limits for the Sugar No. 11 (SB) and Sugar No. 16 (SF) contracts would take effect several weeks after the last trading day for any futures contract. The Exchange suggests the following language for SB to replicate current Exchange rules that determine when the spot month position limit is in effect:

> "At the close of business one business day after the fifteenth calendar day of the calendar month preceding the delivery month or the first business day after the fifteenth should the fifteenth day be a non-business day and terminating at the end of the delivery period."

The SF contract currently does not have a spot month position limit, but does have a single month and all months combined position limit of 1,000 contracts, the minimum provided under current Commission regulations. This position limit regime has worked well for this small contract and its predecessor, Sugar 14 (SE). If the Commission insists on imposing a spot month position limit for SF, the Exchange recommends that it take effect at the close of business on the sixth business day prior to the last trading day and terminate at the end of the delivery period.

Elimination of Spread Exemption

The proposed regulations eliminate the spread and arbitrage exemption that is currently recognized by the Exchange. This type of exemption is currently used by the Exchange to grant spot month cash and carry exemptions for the Coffee, Cocoa and FCOJ contracts, all of which are warehoused commodities. ICE Futures has strict procedures that set the terms by which these exemptions may be granted and the spread differential at which the trader will be obligated to liquidate positions. We believe that the availability of such exemptions serves an economic purpose in the days leading up to first notice day in situations where there are plentiful supplies, because they help maintain an appropriate economic relationship between the nearby and next successive delivery month.

ICE Futures has a history of granting exemptions for arbitrage positions held in the Cocoa and Sugar No. 11 contracts against cocoa and sugar positions held in contracts traded at LIFFE. For Cocoa, the arbitrage against the cocoa contract traded in London is an important source of liquidity to the market, and in Sugar, hedging the white sugar premium is a well-established strategy for hedgers involved in the commercial markets for both products. We therefore urge the Commission not to eliminate the spread and arbitrage exemptions.

Position Limit Calculation Formula

The chart provided by the Commission setting forth the Non-Spot Month-Position Limit for contracts using the formula in the proposed regulations and 2010 data shows a minimum position limit of 2,500 contracts. This means that Sugar No. 16, which had average open interest of 12,447 contracts, has the same 2,500 contract position limit as FCOJ, which had average open interest of 39,795 contracts. This simply does not make any sense.

Proposed Regulation §151.4(d)(1) states that non-spot position limits would be fixed by the Commission at 10% of the first 25,000 contracts of average all-months-combined open interest with a marginal increase of 2.5% thereafter. The data in the chart indicates that the Commission has interpreted this formula to result in a minimum position limit of 2,500 contracts. ICE Futures suggests that a more appropriate interpretation would be 10% of the first 25,000 contracts which would result in a Sugar No. 16 position limit of 1,200 contracts, slightly above the current position limit, which has never caused any issues.

Aggregation

The proposed regulations include provisions that establish stricter aggregation standards than those currently in force. A limited exemption is provided to disaggregate positions in certain situations. To receive the exemption, the requestor must submit an application to the Commission containing extensive information. No time frame is provided for a response to the application, raising the possibility that the requestor might have to operate for an extensive period of time without knowing how its positions will be treated and whether it will be in violation of applicable limits. It is possible that the proposed change in aggregation standards could impact operations in ways that may not have been anticipated by the Commission. For example, the Exchange has rules and procedures regarding EFPs/EFSs and ex-pit transfers between affiliates. If the positions of affiliates which are currently viewed separately for position limit purposes have to be aggregated under the new standards, will that have an impact on the ability of these firms to transact EFPs/EFSs with one another or effect ex-pit transfers? How will the proposed standards impact open interest? If accounts that currently are reported separately in large trader reports and for open interest have to be aggregated under the proposed regulations, it could result in a reduction in open interest, which could have a market impact if it is a significant reduction. Accordingly, the Commission should study this issue more carefully and satisfy itself that there will not be unintended, harmful market consequences, before it determines whether to introduce this change.

ICE Futures appreciates the opportunity to comment on the proposed regulations. Please do not hesitate to contact the undersigned if you have any questions regarding our comments.

Sincerely,

Audrey R. Hirschfeld
Senior Vice President and General Counsel
ICE Futures U.S., Inc.