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

Dear Mr. Stawick:

IntercontinentalExchange, Inc.("ICE") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed position limits for derivatives (the "Proposal" or "Proposed Rules").

As background, ICE operates four regulated futures exchanges: ICE Futures U.S., ICE Futures Europe, ICE Futures Canada and the Chicago Climate Futures Exchange. ICE also owns and operates five derivatives clearinghouses: ICE Clear U.S., a Derivatives Clearing Organization ("DCO") under the Commodity Exchange Act ("Act"), located in New York and serving the markets of ICE Futures U.S.; ICE Clear Europe, a Recognized Clearing House located in London that serves ICE Futures Europe, ICE's OTC energy markets and also operates as ICE's European CDS clearinghouse; ICE Clear Canada, a recognized clearing house located in Winnipeg, Manitoba that serves the markets of ICE Futures Canada; The Clearing Corporation, a U.S.-based DCO; and ICE Trust, a U.S.-based CDS clearing house. As the operator of U.S. and international exchanges that list both OTC and futures markets, ICE has a practical perspective of the implications of the proposed position limit regime.

Executive Summary

ICE supports aggregate positions limits if properly applied. In promulgating final rules, the Commission should:

- Maintain the current position limit regime by allowing exchange specific spot month position limits;
- Allow higher position limits for financially settled contracts;
- Adopt position limits for the nearby months to expiration instead of an all months position limit;

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- Keep arbitrage and spread exemptions; and
- Not implement onerous account aggregation rules.

Background

Section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] ("Dodd-Frank") gives the Commission the authority to set position limits for exchange traded futures and exchanged traded and over the counter swaps contracts. Section 4a of the Act[2] instructs the Commission to set limits "*as necessary* to diminish, eliminate, or prevent"[3] excessive speculation. Against this backdrop, the Commission has issued the Proposed Rules.

ICE believes that proper regulation is essential for ensuring that market participants— as well as the broader public — have confidence in the price formation process that takes place in our markets. This assurance of integrity lies at the heart of the exchange model. The U.S. energy futures and swaps markets, have permitted commercial and professional market users to hedge future price risk in an efficient and cost-effective manner. In particular, market participants have benefitted from intense competition between multiple exchanges, clearing houses and brokers to a degree unmatched in other markets.

As ICE has commented previously[4], the current position limit regime is outdated and does not take into account the existence of competing markets where economically equivalent contracts are traded across markets. In connection with its existing proposal, ICE supports the Commission's proposal to set aggregate position limits across trading venues for similar products outside of the spot month. Unlike other markets, liquidity is not concentrated at a single exchange or trading venue for energy commodities. Economically equivalent contracts may vary only where they are listed for trading or in how they are settled, and have repeatedly been shown to trade as a single market until the final days of trading. For example, the June 2007 report published by the U.S. Senate Permanent Subcommittee on Investigations entitled, "Excessive Speculation in the Natural Gas Market," focused on natural gas trading by the hedge fund, Amaranth Advisors, in both the NYMEX physical futures market and the ICE swaps market. The report is replete with analysis supporting the conclusion that these two markets, one

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[1]Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173 (July 21, 2010).

[2] 7 U.S.C. § 4a

[3] *Id.*

[4] http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=11688&SearchText=ice

physically settled and the other cash settled, were and are "functionally equivalent" and provide economically identical hedging and risk management functions."[5]

Given competitive markets and the fact that multiple exchanges are able to trade the same energy contract, ICE believes that the Commission, rather than the exchanges, is the appropriate, neutral authority to set and administer aggregate position limits and hedge exemptions for derivatives. Only the Commission is able to view a market participant's positions across all venues, and to administer aggregate position limits in an objective manner that promotes, rather than impedes, market competition.

Policies Underpinning the Proposal

It is often tempting for policy makers to take steps to address what they perceive to be structural problems in markets during times when markets are sending unpopular price signals. While well intentioned, these measures often fail to achieve their desired objectives or, worse, lead to unintended consequences such as increased price volatility and distortion of important price signals that would otherwise have been conveyed by a freely operating market. If policy changes are not narrowly focused and carefully tailored to address actual problems in the market, such changes could ultimately leave our country, its businesses, and American consumers in a worse position in the long run, unable to prepare today for what everyone – policy makers, businesses and consumers alike – agree will be a difficult energy future.

In its Proposed Rules, the Commission has proposed significant changes to the position limit regime for derivatives. Protecting the integrity of the derivatives markets from excessive speculation is a laudable goal, but it is important to note that the Commission has neither demonstrated nor determined that excessive speculation exists in the derivatives markets. As the Commission states in the Proposal, a finding of excessive speculation may not be required by the Act. However, it is vitally important that the Commission take action that reasonably addresses these issues. Tying position limits to excessive speculation, especially without a finding of excessive speculation, could lead

[5] *"The data analyzed by the Subcommittee, together with trader interviews, show that NYMEX and ICE are functionally equivalent markets. Natural gas traders use both markets; employing coordinated trading strategies…The data show that prices on one exchange affect the prices on the other."* ("Excessive Speculation in the Natural Gas Market", U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Sen. Carl Levin, Chairman, June 25, 2007, p. 3.)

"The ICE natural gas swap and the NYMEX natural gas futures contract perform the same economic functions." (Ibid, p. 29).

"*In sum, the structure of the ICE swaps and NYMEX futures contracts, the virtually identical prices of these two contracts, and the testimony of traders provide compelling evidence that the NYMEX natural gas futures contract and the corresponding ICE natural gas Henry Hub swap are economically indistinguishable financial instruments for risk-management purposes."* (Ibid, p. 36).

the Commission to play the role of price authority. Every unpopular price may lead to allegations of excess speculation and calls for the position limits to be adjusted.

In this regard, ICE notes that no quantitative investigation or quantitative study has demonstrated that speculation was the cause of increased commodity prices in 2008. Indeed, it is telling that commodities for which there was no active futures market experienced similar or even larger price increases as those for which there are active futures markets. In fact, the Commission's analysis of the oil markets in 2008 found no direct relationship between the run up in energy prices and speculative activity.[6] Subsequent enhancements to position reporting, including disaggregated historical and current large-trader reports, have also demonstrated that the U.S. energy markets offer a healthy balance of commercial and speculative interest, while failing to tie price increases with speculative buying. When setting policy, it is also critically important to recognize that deep, liquid markets, with broad speculative participation, are better at price discovery and are less susceptible to manipulation.

ICE believes that position limits should be set to prevent manipulation around contract expiry and delivery and to prevent delivery disruptions, and not with a goal to influence commodity price levels. In determining position limits, the Commission should consider the entire size of the relevant markets– both exchange-traded and OTC and both domestic and domestically linked. This is very important because the Proposed Rule may set position limits before the mandatory trading and clearing provisions of Dodd-Frank are fully in effect. Thus, the Proposed Rules will come at a time of significant flux in derivatives markets as market participants bringing business normally conducted bilaterally onto exchanges. By implementing an onerous position limit regime and limiting all financial and physically delivered contracts to deliverable supply, the Commission may inadvertently restrict the ability of market participants to put positions onto exchanges and clearing houses at the same time that Congress is requiring more, or all, positions be cleared and exchange traded.

Further, the Commission should set position limits not based upon current activity alone, but to permit growing participation in the derivatives markets. Failing to accurately assess market size and thus, liquidity needs, in setting position limits, accountability levels and appropriate exemptions will likely result in artificially low limits and create barriers to a well-functioning, centrally cleared, regulated and competitive derivatives market in the U.S.

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[6] Interagency Task Force, *Interim Report on Crude Oil*, July 2008. http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/itfinterimreportoncrudeoil0708.pdf. *See also,* IOSCO Task Force on Commodity Markets, *Final Report*, March 2009 (stating that the proposition that the activity of speculators has systematically driven commodity market cash or futures prices up or down on a sustained basis is not supported). https://www.iosco.org/library/pubdocs/pdf/IOSCOPD285.pdf

Finally, Section 737(a)(2)(C) of Dodd-Frank instructs the Commission to set position limits that "will not cause price discovery in the commodity to shift to trading on…foreign boards of trade." The Commission should be aware that over the next few years, price discovery of commodities will shift naturally from the U.S. because demand from developing nations like China and India will greatly increase. Thus, in the futures, U.S. consumption will not be the sole determining factor for commodity prices. The central issue for the Commission is whether the proposed limits will constrain trading in the U.S. and serve as a catalyst to increase movement of trading from the U.S. to foreign markets.

Considering the these factors, ICE respectfully offers the following comments regarding the framework outlined in the Commission's Proposed Rules.

Aggregate Spot Month Position Limits

The Commission proposes to adopt an expanded version of the designated contract market position limit regime and set position limits at 25% of deliverable capacity for physically delivered contacts. This limit would be applied to exchanges on an aggregate basis, but financial and physically settled contracts will have separate limits. Historically, a 25% spot month limit is necessary to prevent corners and squeezes in a physical contract. In agricultural contracts, this is appropriate as the markets are physical and no meaningful cash-settled contracts presently exist. However, in the energy markets there is robust participation and liquidity in financially settled energy contracts, which do not make claims on physical supply. In fact, today the vast majority of energy contracts are cash settled. These products serve an important function in the market, providing market participants with the ability to hedge exposure to the final contract settlement price without basis risk and allowing them to avoid the potential burdens of physical delivery that is attendant to a physically delivered contract.

Limiting positions across exchanges based upon deliverable supply could have negative consequences for firms requiring risk management of and/or exposure to energy prices. For example, certain energy contracts, such as Henry Hub natural gas or West Texas Intermediate crude oil, represent the national or international price of a commodity, and are used by firms to approximate the national price of that commodity in their hedging strategies. These firms are not participants in the physical delivery process and the location of the physical hub is of no importance. What is important, however, is their ability to hedge their exposure to an established benchmark. For example, the market created an OTC financially settled WTI swap contract specifically to allow hedgers, who reference CME's WTI futures settlement price in their physical crude oil purchase and sale contracts, to hedge the expiration price used in such contracts. Without such a mechanism, it is impossible to hedge the final futures settlement price, as a party would be forced to trade out of its position before final settlement or take delivery of physical crude oil at expiration.

In addition, aggregating positions across exchanges in the spot month will severely limit the size of the energy markets. This is a radical change from current practice and the Commission's previous proposal for position limits for energy contracts which allowed for limits at each exchange.[7] In the case of Henry Hub, absent an exemption, a trader can take to delivery 1,000 contracts in the CME physically settled contract (commodity code NG), the CME financially settled contract (commodity code NN), and the ICE financially settled swap (commodity code H)[8] for a total of 3,000 contracts. Under the Proposal, a trader can only take 2,000 contracts into delivery (1,000 in the financially settled contract, 1,000 in the physically settled contract), a 1/3 decrease in the total amount of contracts available to any trader. This decrease could severely hamper the ability of firms to efficiently hedge their exposure given that hedgers need speculators in the market. In addition, an aggregate spot month position limit may limit the competition among Swap Execution Facilities ("SEFs") envisioned by Dodd-Frank because the aggregate spot month limit will provide little room for a new market to compete given that the size of the energy market will be frozen at a set level of contracts at the spot month. A trader is unlikely to participate on a SEF without the ability to trade in the spot month.

Finally, the Commission should be aware that a low aggregate limit may shift price discovery from key benchmark contracts. As noted, 25% of the deliverable supply at Henry Hub is roughly equivalent to 1,000 NG contracts, which is relatively small compared to other delivery points like the Alberta AECO natural gas hub, which has a far larger deliverable capacity. Shifting price discovery from a long standing contract like Henry Hub may have a significant impact on existing physical supply contracts, such as long term natural gas delivery contracts to power generators. Before implementing this limit, the Commission should study whether aggregated spot month position limits will artificially constrain these markets.

ICE recommends that the Commission adopt the spot month position limit rules from its 2010 position limit proposal under which each exchange is permitted to set spot month position limits based upon deliverable supply. This rule would address the

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[7] Federal Speculative Position Limits on Referenced Energy Contracts, 75 Fed. Reg. 4143 (January 26, 2010).

[8] ICE's Henry Hub swap is a quarter size of the CME NG futures contract, but for the purposes of the example, the Henry Hub swap is converted to the NG equivalent (i.e. each contract is 10,000 mmbtus).

Commission's concerns about corners and squeezes during delivery, while allowing enough capacity for traders to participate in these contracts at expiration. In addition, exchange specific spot month limits will allow for more competition as new entrants such as SEFs will have room to grow. To satisfy its concerns about trading across exchanges, the CFTC could monitor spot month trading from an aggregate basis across all SEFs and exchanges for impact on price.

Spot Month Limits for Financially and Physically Settled Contracts

The Commission should be commended for recognizing the distinction between financially settled and physically settled contracts by proposing that a trader in a financially settled contract be permitted, based upon a conditional position limit, to take a speculative position five times the spot month position limit for the physical contract if the trader exits the physically settled market in the spot month. However, this conditional limit should be refined to fit the market as it currently operates, which is based upon the needs of market participants. In this regard, the Commission should consider (i) whether forcing these participants to leave the physically settled contract a full three days in advance of expiration is appropriate given the differences between physically and financially settled contracts, and (ii) whether having speculative traders exit the physical contract in this manner will impair price discovery by reducing liquidity and concentrating pricing power among a smaller group of market participants. Previous Congressional and Commission reviews of the energy markets have found that financially and physically settled contracts behave differently at expiration. As the Senate Permanent Subcommittee on Investigations states in its Report on Excessive Speculation in the Natural Gas Market:

> "[B]ecause the final settlement price for the ICE swap is defined to be the final settlement price of the NYMEX futures contract for the same month, the most significant divergence in price between the two contracts often ***occurs during the final 30 minutes of trading for the NYMEX contract***, which is used to compute the final NYMEX contract price. (The NYMEX final settlement price is computed by taking the volume-weighted average price of all trades during the final 30-minute period.) Most of the trading during these final 30 minutes will occur on NYMEX rather than ICE, and hence the NYMEX price often will "lead" the ICE price during this period. Based on the ICE and NYMEX data reviewed by the Subcommittee, as well as trader interviews, this final settlement

> period is the only period in which it can be categorically stated that one exchange "leads" the other in price."[9] (emphasis supplied)

Given compelling findings by the Commission and Congress that physically and financially settled contracts trade differently on the last day of expiration, ICE recommends that the Commission adopt a separate position limit regime for financially settled contracts, adopting the five times deliverable supply limit as the limit (or higher if the Commission adopts aggregate spot month limits across exchanges). Alternatively, if the Commission choses to keep the conditional limit as written, the Commission should remove the three-day prohibition from the conditional limit or limiting the "no trade" period for the physically delivered contract to a narrower window of trading than the final three days of trading.

Finally, if the Commission decides to adopt an aggregate spot month limit across exchanges, it should increase the conditional limit. As noted above, an aggregate spot month limit will decrease the amount of contracts available for traders to take into delivery. To accommodate current levels of participation, the Commission should increase the conditional limit to at least ten times the speculative limit.

Position Limits in Non-Spot Months

The Proposal also sets aggregate position limits in all contract months. The limits would be set by the Commission as a specific percentage of the current open interest in the referenced contracts. As noted previously, Dodd-Frank's mandatory trading and clearing requirements are likely to drastically change the exchange traded derivatives markets as participants move business that is traditionally conducted bilaterally onto exchanges. While the Commission is taking a phased approach, setting position limits while the market is in flux could artificially constrain trading. Again, this could discourage trading on U.S. exchanges and force trading overseas.

The Proposal sets two limits, one limit set on the overall market and one limit set by contract class. The class limits would be set on two classes: futures and options and all swaps. Setting limits on economically equivalent classes undercuts the Commission's rationale for setting limits on the swaps markets in the first place. Exhaustive hearings by Congress and the Commission over the last several years have concluded that economically equivalent contracts traded on two separate exchanges operate as a single aggregate market. For example, testifying before the House Agriculture Committee, Subcommittee on General Farm Commodities and Risk Management, in September 2007, Dr. James Newsome, former Commission Chair and then President of NYMEX, stated

[9] Id, p. 34.

"the two competing trading venues [ICE and NYMEX] are now tightly linked and highly interactive and in essence are simply two components of a broader derivatives market."[10] Further, as outlined in the Commission's Report on Exempt Commercial Markets, one of the Commission's underpinnings of regulations for exempt commercial markets (ECMs) was that financially settled contracts could be arbitraged (and therefore affect) a physically settled contract.[11] Against this backdrop, the idea of imposing limit on a class of economically equivalent contracts is logically flawed. As the Commission has noted, the swaps and futures markets operate as one, at least until expiration. Setting limits by class is unnecessary and the Commission should adopt one aggregate limit for all economically equivalent contracts.

Furthermore, the Commission should consider whether "all month" position limits are necessary or appropriate in energy markets for the long-dated portions of the trading curve. While hard limits in the expiration month and months surrounding the expiration month are appropriate, blanketing such limits across all contract months may have unintended effects on the proper operation of markets, such as draining speculative liquidity from the longer dated portions of the trading curve where it is most needed. It is axiomatic that the farther into the future an expression of price is made by a speculative market participant, the less connected or relevant such an expression is likely to be to the current spot market price. To promote greater liquidity in longer dated portions of the price curve, which would benefit commercial users attempting to hedge long dated risk,the Commission should consider implementing its "all month" limit only on the front portion of the trading curve – for example, the first eighteen contract months – and maintain a position accountability regime for longer dated portions of the trading curve beyond that period.

It is important to consider that large speculative traders are often the only market participants willing to assume price risk in long dated portions of the trading curve where commercials are attempting to layoff price risk. As such, one potential impact of an "all month" regime is that such parties could choose to exit the longer dated portion of the market, sapping valuable liquidity from commercial market users and their ability to hedge long dated risk. Hard position limits in the first eighteen months of a contract and position accountability levels in the remainder of the contract would encourage speculative participants to assume risk in out months and give commercial participants the ability to hedge exposure farther in the future.

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[10] Testimony of Dr. James Newsome, Chief Executive Officer, New York Mercantile Exchange, before the Subcommittee on General Farm Commodities and Risk Management, United States House of Representatives (September 26, 2007).

[11] Commodity Futures Trading Commission Report on Exempt Commercial Markets (October 2007). http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf

The Commission should note that setting aggregate hard position limits across contract months and trading venues adopts the current position limit regime for agricultural markets. This regime was designed for domestic agricultural markets, which are primarily seasonal markets, and one can understand why an "all month" position limit regime could be important in such a market given the potential impact of positions held in all months on less liquid, seasonal markets. By comparison, energy markets such as crude oil are not seasonal markets per se and present different time horizons for hedging price risk. For example, farmers may be primarily interested in hedging price risk for the following season's crops. In comparison, energy companies generally hedge price risk far into the future given the long lead times for energy exploration and extraction. Imposition of "all month" position limits for these markets could sap vital speculative liquidity from long dated portions of the pricing curve, making future price signals less accurate and potentially inhibiting commercial market participants from being able to hedge long-dated price risk. This is not simply a theoretical concern – if markets are inhibited from sending accurate future price signals that reflect rising demand, important energy infrastructure may not be built today that will be needed to meet tomorrows energy needs.

A position accountability regime rather than a hard position limit regime for all months would serve the Commission's purpose concerning monitoring positions further out the curve. As noted above, the Commission could proscribe aggregate limits in the nearby months, where price discovery principally occurs and allow position accountability levels for contracts months further out the curve. Accountability level regulation, by design, is intended to serve as an early warning system that triggers heightened surveillance by the exchange and puts the trader "on notice." Position accountability levels are set low for this very reason.[12]

Bona Fide Hedge Exemptions

The Commodity Exchange Act states that, **"[**n]o, rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be *bona fide* hedging transactions or positions . . . Dodd-Frank directs the Commission to define a *bona fide* hedge exemption as off sets of cash market transactions. This new definition of a *bona fide* hedging transaction is far more limited than the current Commission regulation § 1.3(z)(1) and will constrain the ability of firms to use the derivatives markets to hedge. Added to the narrowed exemption in Dodd-

[12] The current position accountability levels for ICE OTC's Henry Hub contract are approximately 1% of open interest, far lower than the proposed concentration limits.

Frank, the Commission's procedure for granting and maintaining *bona fide* hedge exemptions is needlessly complex and will impose a large operational burden on market participants. In addition, the elimination of spread and arbitrage exemptions will impede the price discovery process on derivatives exchanges.

In general, the Proposal extends the program for granting *bona fide* hedges that currently exists for the enumerated agricultural commodities to energy contracts. However, the proposed rules do not recognize that commercial market practices in these markets differ from those in the enumerated agricultural 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, serious consequences may flow to commercial participants in those markets. In particular, we are concerned that the Proposed Rules could needlessly prevent such participants from fully managing their commercial risk through futures, options and OTC instruments that are cleared through entities regulated by the Commission.

For instance, the Proposal eliminates the spread and arbitrage exemption that is currently recognized by exchanges. In ICE's energy contracts, the spread and arbitrage exemptions are vitally important to the functioning of the markets because they allow participants to hedge risk assumed through the normal course of business. ICE uses the spread exemption to allow traders to spread positions between the Henry Hub natural gas contract and natural gas basis points. Hedging basis risk allows a trader to hedge the cost of delivering natural gas to any particular point in the country. Given that the Commission is not aggregating basis contracts as referenced energy contracts, a spread exemption for these transactions is vitally necessary to allow traders to hedge basis risk in natural gas.

The arbitrage exemption is also critical to the energy markets by allowing, as the Commission recognizes, the arbitrage of economically equivalent contracts to create one market.[13] Arbitraging ensures that if one market does not reflect fundamentals, it will eventually be brought back into line with other markets, which greatly decreases the risk of a market being manipulated over the long term. In addition, the open access provisions of Dodd-Frank encourage the listing of economically equivalent swaps by SEFs. Without arbitraging, prices of equivalent swaps on these SEFs could begin to diverge, presenting opportunities for malfeasance by traders. Additionally, divergent prices on economically equivalent contracts could ultimately create misleading settlement prices, which in turn could present greater risk to clearinghouses.

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[13] *See, e.g.*, Commodity Futures Trading Commission Report on Exempt Commercial Markets

In addition, the proposed procedures for granting and maintaining exemptions are unnecessarily complex and will create an extremely large burden on market participants. For example, Proposed Rule §151.5(c) requires that any trader who wishes to exceed position limits 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 certain day 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 *bona fide* hedge position in a timely manner.

The proposed regulations also requires a hedger to submit a Form 404 filing by the business day following the day the limits were exceeded. Most exchanges have rules providing 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 recommends that a similar approach be taken by the Commission and codified in the proposed rules.

Additionally, the reporting requirements for *bona fide* hedging swap counterparties will put an extremely large burden on market participants and will be prohibitively complicated in regards to the Commission accurately tracking bona fide hedging positions. In particular, §151.5(g) states, in part, that "[u]pon entering into a swap transaction where at least one party is relying on a bona fide hedge exemption to exceed the position limits" the participants need to exchange written representation verifying that the swap being transacted qualifies as a bona fide hedging transaction for at least one of the participants. This information needs to be exchanged for each such swap transaction, maintained by the counterparties, and submitted to the Commission in a Form 404s for everyday in which the participant exceeds the limits. This documentation requirement is excessive and will not efficiently meet the Commission's goal of tracking bona fide exposure in swap transactions. This goal could more effectively be accomplished through an annual exemption filing process.

Account Aggregation

Currently, pursuant to the Commission's position limit rules, an account is aggregated for position limit purposes where a person owns 10% or greater of a common entity. However, if an account is independently controlled, then the position is not aggregated. This makes sense, for example, in the case of two independent operating companies of a corporate parent who independently trade under the same corporate entity, because they are not viewed as trading for the same account.

The Proposal establishes 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 timeframe is provided for a response to the application, raising the possibility that the requestor might have to operate for an extensive 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. If accounts that currently are reported separately in large trader reports and for open interest have to be aggregated under the Proposed Rules, it could result in a reduction in open interest, which could have a market impact if open interest is significantly reduced. 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.

The proposal's departure from the Commission's Part 150 standards also may be unworkable and surely will drive up the cost of compliance without offering associated market benefits. Firms with decentralized and international trading operations through multiple independent account controllers would find it extremely difficult, and very costly, to track position limit levels for each of these disparate trading operations in the contracts affected by the proposal.

Conclusion

ICE commends the Commission for undertaking a comprehensive review of the position limit regime for derivatives and we appreciate the opportunity to comment. We ask that the Commission be prudent in enacting a position limit regime and remain mindful of the consequences of miscalculation.

Again, ICE thanks the Commission for the opportunity to comment on the proposed rules.

Sincerely,

R. Trabue Bland
IntercontinentalExchange, Inc.