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By Commission Website

March 31, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 206581

Re: RIN 3038–AD15 and 3038–AD16: Position Limits for Derivatives, 76 Fed.Reg. 4752 (January 26, 2011)

Dear Mr. Stawick:

Katten Muchin Rosenman LLP ("Katten") appreciates the opportunity to submit these comments in connection with the Commodity Futures Trading Commission's ("Commission's") proposed rules establishing position limits for derivatives in agricultural and exempt commodities. Katten's Futures and Derivatives Group advises a broad range of domestic and international banks and brokerage firms, fund managers, trading advisors and proprietary trading firms on all aspects of exchange-traded futures and over-the-counter derivatives. Several of our proprietary trading firm clients engage in algorithmic, high-frequency trading programs.

The proposed rules would substantially modify the position limit and position accountability rules that currently apply to the trading of various agricultural, energy and metals derivative products. Specifically, the Commission's proposal identifies 28 "core" physical delivery futures contracts ("core referenced futures contracts"),[1] and would apply aggregate limits on a futures equivalent basis across all derivatives that are (i) directly or indirectly linked to the price of a core referenced futures contract, or (ii) based on the price of the same underlying commodity for delivery at the same delivery location as that of a core referenced futures contract, or another delivery location having substantially the same supply and demand fundamentals.

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[1] These core referenced futures contracts include: Chicago Board of Trade Corn, Oats, Rough Rice, Soybeans, Soybean Meal, Soybean Oil and Wheat; Chicago Mercantile Exchange Feeder Cattle, Lean Hogs, Live Cattle and Class III Milk; Commodity Exchange, Inc. Gold, Silver and Copper; ICE Futures U.S. Cocoa, Coffee C, FCOJ-A, Cotton No.2, Sugar No. 11 and Sugar No. 16; Kansas City Board of Trade Hard Winter Wheat; Minneapolis Grain Exchange Hard Red Spring Wheat; and New York Mercantile Exchange Palladium, Platinum, Light Sweet Crude Oil, New York Harbor No. 2 Heating Oil, New York Harbor Gasoline Blendstock and Henry Hub Natural Gas. Proposed Rule 151.2.

To date, the Commission has received approximately 5,500 comments on the proposed rules, and we do not intend to add unnecessarily to the task that awaits the Commission staff in analyzing these comments prior to recommending further Commission action. We, therefore, limit our comments to three issues: (i) the Commission's statutory authority; (ii) the Commission's exemptive authority; and (iii) exemptions for positions held by independent account controllers.

The Commission's Statutory Authority

We concur with the views expressed by a number of commenters, including the Futures Industry Association, the Securities Industry and Financial Markets Association, and the International Swap Dealers Association, that the proposed rules exceed the authority granted the Commission in section 4a(a)(1) of the Commodity Exchange Act ("Act"), as amended by section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The provisions of that section clearly require the Commission, prior to imposing position limits with respect to any commodity derivatives contract, to find that such limits "are necessary to diminish, eliminate, or prevent . . . sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity." We disagree with the Commission's view, and find no support in the provisions of section 4a(a)(1), that it may "impose position limits prophylactically, based on its reasonable judgment that such limits are necessary."[2] We, therefore, join with these industry participants and urge the Commission to defer adoption of position limits until it has had the opportunity to collect and analyze the data necessary to make the finding required by the Act.

The Commission's Exemptive Authority

If the Commission nonetheless elects to move forward and promulgate final rules, we encourage the Commission to be certain that the position limit rules make appropriate allowance for the vital function that proprietary trading firms and others serve in providing liquidity to the markets. Such entities are not directional traders. Rather, they seek arbitrage opportunities among related products traded on the same or different markets. As such, their activities are not the cause of "sudden or unreasonable fluctuations or unwarranted changes in the price of [a] commodity." To the contrary, the market making activities of these traders enhance market liquidity, thereby facilitating the execution of transactions by other market participants and reducing the spreads to which they might otherwise be subject.

We believe the Commission may grant appropriate relief to such market makers in one of two ways, either separately or together. First, the Commission may exercise its broad exemptive authority under section 4a(a)(7) of the Act, which authorizes the Commission to "exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class

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2 76 Fed.Reg. 4752, 4754 (January 26, 2011).

of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits." Second, in lieu of strict position limits, the Commission, consistent with current practice, could authorize the several designated contract markets ("DCMs") to adopt position accountability rules. Such rules would permit each DCM to establish accountability levels for a trader that would take into account the purposes for which a trader's positions may exceed a specified level as well as the trader's risk management positions across related products and across markets.

Independent Account Controller Exemption

Finally, provided the investment is passive and trading is conducted by independent account controllers, we encourage the Commission to withdraw its proposal to require the aggregation of positions held by financial entities in which an investor may own, directly or indirectly, a 10 percent or greater interest. Positions held by such entities are generally eligible for disaggregation under current procedures, and there is no evidence that these positions are disruptive to the markets or that the relief from aggregation provided by this exemption has been (or could be) used to circumvent the position limit requirements. Moreover, these entities may not even be aware that they share limited common ownership. Requiring disclosure of such ownership interests and the aggregation of positions among such entities could significantly disrupt the business and trading activities of these entities with no apparent regulatory benefit. In the absence of a reasoned basis for changing its existing policies, the Commission should not revise its current policy that independently controlled positions need not be aggregated.

Conclusion

Thank you again for the opportunity to submit these comments. If the Commission has any questions regarding the matter discussed above, please contact the undersigned at 312.902.5241 or arthur.hahn@kattenlaw.com.

Sincerely,

Arthur W. Hahn