ISDA Safe, Efficient Markets

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January 17, 2012

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

Re: Position Limits for Futures and Swaps (RIN 3038-AD17)

Dear Mr. Stawick,

The International Swaps and Derivatives Association, Inc.[1] ("ISDA") and the Securities Industry and Financial Markets Association[2] ("SIFMA") are writing in response to the interim final rule regarding Position Limits for Futures and Swaps adopted by the Commodity Futures Trading Commission (the "Commission") at its October 18, 2011 public meeting and published in the Federal Register on November 18, 2011 (the "Position Limits Rule").[3] The Position Limits Rule establishes new federal position limits for 28 physical commodity futures and options contracts ("Core Referenced Futures Contracts") and swaps that are economically equivalent to such contracts (collectively, "Referenced Contracts"), including interim spot-month position limits on cash-settled Referenced Contracts. We appreciate the opportunity to comment on the Interim Final Rule.

In prior submissions to the Commission, we have shared our concerns regarding the position limits rule (ISDA/SIFMA letters dated January 11, 2011 and March 28, 2011) and we incorporate those concerns by reference herein. In brief, we remain deeply concerned with the Position Limits Rule, and we disagree with premises upon which the Commission has based its adoption of the Rule.[4] We believe the Commission should withdraw the interim spot-month position limits on cash-settled Referenced Contracts until *after* it has collected and analyzed the data needed to make the statutorily required finding, and should then adopt any such limits only to the extent that it finds, upon a complete examination of that

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[1] ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985 and today has over 800 member institutions from 54 countries on six continents. Our members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the risks inherent in their core economic activities. For more information, please visit: www.isda.org.

[2] SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, please visit: www.sifma.org

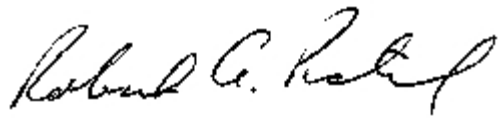
[3] Position Limits for Futures and Swaps, 76 Fed. Reg. 71,626 (Nov. 18, 2011).

[4] March 2011 Comment Letter at 2-6.

data, that: (1) excessive speculation exists in the markets for cash-settled Referenced Contracts, (2) limits on cash-settled Referenced Contracts are "necessary" to "diminish, eliminate, or prevent" the burden on interstate commerce caused by that excessive speculation, and (3) the imposition of position limits and levels of the limits imposed by the Commission are "appropriate." This is the only approach consistent with the Commission's statutory responsibilities and the only course adequate to ensure the Commission does not impair liquidity and price discovery in the markets for cash-settled Reference Contract and the ability of end-users throughout the U.S. economy to use those contracts to hedge against risk. It also is the only approach consistent with the evidence in the existing rulemaking record, which plainly does not support any increased position limits regulation. With this letter we are submitting for the record declarations that further substantiate the significant, immediate, and unjustified costs that will result from the Position Limits Rule.

We appreciate the opportunity to provide these comments.

Sincerely,



Robert Pickel
Chief Executive Officer
ISDA

Kenneth E. Bentsen, Jr.
Executive Vice President
Public Policy and Advocacy

Attachments

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION and SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, Petitioners, v. UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Respondent.	Case No. 11-1469

Declaration of Dr. Craig Pirrong

1. I have been retained to evaluate whether participants in markets subject to the CFTC's rule on Position Limits for Futures and Swaps (17 CFR Parts 1, 150, and 151) would suffer irreparable harm if the rule is not stayed pending the outcome of the present legal action. Based on my analysis, and my extensive knowledge of and experience in the commodity markets subject to the rule, I conclude that market participants would suffer irreparable harm if implementation of the rule is not stayed. In particular, they would incur costs even before the rule goes into effect, and further costs as long as the rule is in effect. Market participants would not be able to recoup these costs if the rule is eventually invalidated.

2. These costs arise from three sources.

3. First, market participants will incur costs to comply with the rule. Even prior to the rule going into effect, they will have to invest in systems and devise procedures to ensure compliance. Moreover they will have to devote personnel and other resources to monitor compliance as long as the rule is in effect. Since the rules are extensive, and touch upon virtually every segment of the derivatives marketplace, all major market participants will necessarily incur these costs. Moreover, these costs will be sunk, and hence unrecoverable, once they are made.

4. Second, many market participants will have to adjust their trading strategies in order to comply with the rule. That is, as the result of the rule they will not be able to utilize their preferred trading strategies, but will instead be forced to utilize inferior strategies that impose additional risks on them, or reduce their returns. They will suffer from these higher risks and lower returns as long as the rule is in force, and will not be able to recoup the costs associated with the higher risks or recover the lost returns caused by the rule during the period of its operation even if it is eventually struck down.

5. Third, the rule is likely to reduce liquidity and risk bearing capacity in the affected markets. These reductions will raise the costs that market participants incur to hedge risk. Moreover, they will induce market participants to utilize more costly ways to manage their risk exposures. As a result of the greater risks, firms are likely to incur higher financing costs that will lead to reduced investment and employment. These costs will exist for as long as the rule is in effect and impairs liquidity and risk bearing capacity, and cannot be recovered if the rule is eventually eliminated.

Background and Qualifications

6. I am Professor of Finance, and Director of the Global Energy Management Institute at the Bauer College of Business of the University of Houston. Prior to joining the faculty of the University of Houston in January, 2003, I was the Watson Family Professor of Commodity and Financial Risk Management at Oklahoma State University. I assumed this endowed professorship in 2001 after holding research and teaching positions at the University of Michigan, the University of Chicago, and Washington University. My *curriculum vitae* is attached. It lists all of the publications that I have authored in the last ten years. It also lists cases in which I have testified as an expert at trial or by deposition within the preceding four years.

7. I have researched the economics of financial, futures, and securities markets for most of my academic career. I have published scholarly articles concerning financial, securities and futures markets. I have written articles on the behavior of futures prices, the organization and governance of futures exchanges, and various aspects of futures market regulation, including the regulation of market manipulation and speculation. My publications are set out in my curriculum vitae, which is included as Exhibit A.

8. As an academic and a consultant, I have been deeply involved for about 20 years in issues relating to commodity futures markets, commodity prices, and the economics of commodity market manipulation. My research has been published in a wide variety of scholarly journals. I have been a peer reviewer for many journals, including the American Economic Review, the Journal of Finance, the Journal of Law and Economics, the Journal of Futures Markets, Economic Inquiry, the Journal of Economic

Behavior and Organization, the Journal of Business, and the Journal of Business and Economics Statistics.

9. Much of my research has focused specifically on issues of market manipulation. I have published a book (titled *The Economics, Law, and Public Policy of Market Power Manipulation*), as well as ten economics, finance, and law review articles on this subject.

10. I was the primary author of a study commissioned by the Chicago Board of Trade ("CBOT"), later published as a book titled *Grain Futures Markets: An Economic Appraisal*. That study analyzed the economics of the delivery system for CBOT corn, wheat, and soybean futures contracts, specifically focusing on how to revise that system to make it less vulnerable to manipulation. I recommended the adoption of a multiple delivery point system, and specifically analyzed the pricing and hedging implications of such a system. A part of this research on multiple deliverable contracts was published in a peer-reviewed journal.

11. I have consulted with commodity exchanges in Sweden and Germany regarding the design of futures contracts, including the design of the delivery mechanisms for wood pulp, European wheat and European pigs.

12. In 1997 and 1998 I served as a member of the CBOT's Grain Delivery Task Force ("GDTF"). This body was charged by the exchange with the responsibility of designing new delivery terms for CBOT corn and soybean futures contracts. Such a redesign was mandated by the United States Commodity Trading Futures Commission ("CFTC") because the old delivery mechanism had become unduly susceptible to manipulation. The terms recommended by the GDTF were adopted by a large majority of the CBOT

membership, and approved by the CFTC (with some modifications for soybeans) in May, 1998.

13. I provided expert testimony in a case related to market manipulation, *In re* Soybean Futures Litigation, Nos. 89 C 7009, 90 C 11th 8 (N.D. Ill. 1995). I have also been retained by the CFTC as an economic expert in a commodity manipulation case and I also served as an expert in manipulation matters by the Winnipeg Commodity Exchange, pursuant to enforcement actions undertaken by the WCE. In addition, I have provided expert testimony in other manipulation cases, American Agric. Movement v. Board of Trade, 848 F. Supp. 814 (N.D. Ill. 1994), *aff'd in part*, *rev'd in part sub nom*. Sanner v. Board of Trade, 62 F.3d 918 (7th Cir. 1995), and Kohen v. Pac. Inv. Mgmt. Co., 2007 U.S. Dist. LEXIS 56389 (N.D. Ill. 2007). I provided expert testimony in Energy Transfer Partners, L.P., a FERC case. My research has also been cited in a 7th Circuit Court of Appeals decision on manipulation. Board of Trade v. SEC, 187 F.3d 713, 724 (7th Cir. 1999) (Easterbrook, J.).

14. I have testified before the House Agriculture Committee (which has jurisdiction over futures markets and exchanges) on matters relating to energy market speculation.

15. I have taught courses on derivatives at the graduate and undergraduate levels for eighteen years. These courses have covered the pricing of derivatives instruments, including futures and swaps on the commodities referenced by the position limit rule, the use of derivatives for hedging and speculative purposes, manipulation, and the economic effect of speculation. I currently teach the PhD course in futures and options in the Bauer College of Business at the University of Houston, and an MBA course in energy derivatives.

16. My book on commodity pricing, *Commodity Price Dynamics: A Structural Approach*, published in October by the Cambridge University Press, analyzes the economics of commodity price dynamics in detail. This analysis in the book specifically addresses the economic effects of speculation, and the economic consequences of restricting speculation.

17. I am currently director of the Global Energy Management Institute ("GEMI") at the Bauer College of Business of the University of Houston. GEMI is a world leader in energy finance education. Moreover, GEMI routinely hosts educational events for energy professionals, including a well-attended energy trading conference held every year.

Participants in the Affected Markets Will Incur Irrecoverable Compliance Costs Prior to the Rule Going Into Effect, and Additional Costs Throughout the Entire Period It Is In Effect

18. The position limit rule has many facets that collectively affect virtually every aspect of the derivatives marketplace in the United States for the affected commodities. In particular, in addition to the quantitative limits themselves, the sections of the rule pertaining to bona fide hedge exemption, aggregation, position "see through", and position visibility together will impose obligations and restrictions on virtually every large market user, not solely on large financial participants in the commodity derivatives markets. These users will have to invest in systems and create procedures to ensure compliance with these various sections of the rule, and incur costs to remain in compliance as long as the rule is in effect.

19. For instance, the rule sets out very detailed criteria for determining whether a market participant that uses the futures and swaps markets in the affected commodities to hedge

risks can accumulate a position that is larger than the speculative limit.[1] The "bona fide hedging exemption" requires users of the affected contracts to document that its trades in these contracts satisfy the criteria established by the Commission to qualify for the exemption. This requires that those claiming the exemption must document that the position hedged by futures or swaps contracts falls under one of the enumerated exemptions. The description of the information that those claiming the exemption must collect and report in the form required by the Commission takes up three full pages of the rule.

20. Any market participant that uses the contracts subject to the rule to manage risks will necessarily incur costs to collect and report the information required to obtain a hedge exemption. This will entail the creation of new information systems, or adaptation of existing information systems, to collect the information and produce reports acceptable to the Commission and the development of procedures defining the utilization of these systems. Those claiming a hedge exemption will need to make the expenditures necessary to create these systems and procedures before the rule goes into effect. By their nature, these costs are largely sunk once incurred: software or procedures created to ensure compliance with the rule have virtually no alternative use. In addition, those claiming the exemption will necessarily incur ongoing costs to ensure compliance with the rule while it is in effect, and to produce the reports required by the Commission. These include compensation for personnel responsible for ensuring compliance and

[1] "Hedging" refers to the use of derivatives contracts such as futures and swaps to reduce exposure to risk, typically price risk. For instance, a holder of inventory of crude oil can reduce his exposure to changes in the price of oil by selling oil futures contracts. The futures position earns a profit if prices decline: the seller can repurchase the contract he sold at a price lower than the price at which he sold it. This gain offsets, in whole or in part, the loss in the value of inventory that occurs due to the price decline. There is no free lunch, of course. If prices rise, the value of the inventory rises but there is a loss on the futures position. The fact that gains (losses) on one position (e.g., the inventory) are offset by losses (gains) on the other (e.g., the futures) implies that this combined--"hedged"--position is less risky than either part is by itself.

costs associated with modifying and upgrading systems. Again, by their very nature, these costs are sunk once incurred. Given the sunk nature of the up-front costs of creating the infrastructure necessary to ensure compliance with the hedging exemption rule and the ongoing costs of ensuring compliance, market participants claiming the exemption will be able to recover virtually none of the costs they incur from the time that the rule is initiated.[2]

21. The position limit rule also obligates market participants with positions in multiple accounts meeting certain criteria to aggregate these positions for the purpose of determining compliance with the limits. To adhere to this aggregation requirement, market participants (including *inter alia* commodity pool operators, fund managers, futures commission merchants) who hold positions in multiple accounts will have to incur costs to create systems and procedures to collect and combine information from these multiple accounts. Moreover, they will have to incur costs on an ongoing basis to operate these systems to aggregate information from multiple accounts. By their nature, these costs are sunk once the rule goes into effect and is in operation, and cannot be recovered if the rule is invalidated.

22. The position limit rule permits those holding positions in multiple accounts to apply for an exemption from the aggregation requirement. The costs incurred to apply for the exemption are sunk once made, and cannot be recouped if the rule is eventually struck down.

[2] The rule reports capital and startup costs in "annualized" terms, e.g., 76 FR 223 at 71682. These costs are depreciated on a straight-line basis over five years. *Id*. at fn. 518. Thus, taking the cost estimates presented in the rule as correct, the costs that would be incurred but not recovered even before the rule goes into effect is on the order of five times the capital and startup cost estimates presented in the rule.

23. The position limit rule also requires persons holding positions above certain threshold levels ("visibility levels") to file reports to the Commission on positions in the referenced commodities. Compliance with this requirement entails the costly creation and operation of systems and procedures to track positions and file the necessary reports. These costs are sunk once incurred, and cannot be recovered if the rule is eliminated.

24. The position limit rule permits some market participants to claim a hedge exemption on positions for which the counterparty is a bona fide hedger. To utilize this "pass through" exemption, the position holder (such as a swap dealer) must obtain from its counterparty a representation that the trade qualifies as an enumerated hedge. It must do so at the time every trade is executed, and must retain records of this representation. Compliance requires the costly development of systems and procedures (e.g., the modification of confirmation documents), and again, these costs are sunk once incurred. Compliance further requires incurring costs on an ongoing basis to obtain and record the necessary information on every trade, and to monitor the proper functioning of the process. These costs are incurred as long as the rule is in force, and cannot be recovered if the rule is eventually invalidated.

25. The rule will impact a significant number of firms. The rule presents estimates of affected entities: for instance, it states that the bona fide hedging reporting requirements will affect 200 firms (76 FR 223 at 71682). Visibility and aggregation requirements would also affect a large number of firms (76 FR 223 at 771682-71683).

26. In sum, the rule imposes a variety of obligations on a broad range of market participants. Compliance with these rules requires payment of sunk costs from the time the rule goes into effect, and which cannot be recovered if the rule is eliminated.

Participants in the Affected Markets Will Be Forced to Forego Preferred Trading Strategies Throughout the Entire Period the Rule Is In Effect

27. As soon as the rule goes into effect, some market participants will have to cease utilizing their preferred trading strategies, and will forego the benefits of these strategies as long as the rule is in effect. These foregone benefits are an irrecoverable cost arising from the rule, and are incurred throughout the rule's existence.

28. For instance, the rule limits the types of transactions in the referenced commodities that qualify as bona fide hedges. Some trades that market participants currently utilize pursuant to risk management objectives will be treated as speculative, and hence subject to position limits (and visibility requirements) under the rule. Some firms will respond to this constraint by using less efficient or more costly hedging strategies--or will hedge less--in lieu of the strategies that do not receive bona fide hedging treatment under the rule. Given that they could have utilized these alternative strategies in the absence of the rule, but didn't, this substitution necessarily makes the firms worse off: i.e., it imposes costs or additional risks on them. These costs are incurred as long as the rule is in effect, and cannot be recovered if the rule is eventually eliminated.

29. Firms are also likely to substitute other, more costly ways to manage risk. It has been known since the work of the pioneering scholar of derivatives markets, Holbrook Working, that derivatives hedges are a temporary substitute for a transaction in a physical market channel to be executed later.[3] By raising the cost of derivatives hedges, some market participants will substitute transactions in physical marketing channels in their place. These substitutes include long term contracts and vertical integration. Thus,

[3] Holbrook Working, Hedging Reconsidered, 35 J. Farm Econ. (1953) 544-561.

firms may vertically integrate because it is costlier to use derivatives market transactions to manage the risk of price changes at different segments of the value chain. These integration decisions are costly to reverse, once made. Firms may also use alternative contracting methods to manage risk. As an example, they are more likely to enter into long term contracts to lock in prices with suppliers or buyers because it is more costly to manage these risks through derivatives markets. These long term contracts are costly to exit, and hence many are likely to remain in force even if the rule is struck down.

30. As another example, the rule may also constrain the size of some popular commodity investment vehicles, such as commodity exchange traded funds (ETFs) that hold positions in the referenced commodities. As a result, some investors may decide not to purchase any ETFs, or will be forced to purchase ETFs they consider less desirable. Precluding investors from buying the funds that they prefer imposes a cost on them; this cost is incurred as long as the rule constrains their choice; and cannot be recouped if the rule is struck down.

31. As yet another example, the pass through rule denies bona fide hedge treatment to some transactions that facilitate the efficient transfer of risk. Specifically, a financial intermediary (such as a swap dealer) can obtain a hedge exemption only on positions in which a bona fide hedger is the direct counterparty. At present, many of these intermediary's trades are indirectly with a firm that would be considered a bona fide hedger, and hence facilitate risk transfer. For instance, a swap dealer may buy an oil swap contract from a hedge fund, and the hedge fund may buy an oil swap contract from an oil producer that would be considered a bona fide hedger: the economic substance of this chain of transactions is that the oil producer is transferring risk to the swap dealer.

Under the position limit rule, however, the swap dealer would not receive pass through treatment on this transaction. Since the rule limits the non-hedge positions that any market participant can hold, it limits the swap dealer's capacity to make this sort of trade. Thus, the rule will constrain market participants' ability to make transactions that facilitate efficient risk transfers. Binding constraints impose costs, and these costs accumulate as long as the rule that creates the constraint exist, and cannot be recovered once the rule is no longer in place.

32. The more restrictive aggregation requirements included in the rule also raise the costs that banks, fund managers, commodity trading advisors, insurance companies, and commodity pool operators incur to manage multiple accounts. To mitigate the impact of the aggregation requirements, some of these entities are likely to reorganize their operations. These reorganizations are costly, and costly to reverse, and are hence likely to persist even if the rule is struck down. The costs of the reorganization are sunk once made, and the reorganizations that are too expensive to reverse will result in higher costs even if the rule is eliminated.

33. And of course, firms that cannot utilize a bona fide hedging exemption that are directly constrained by the rule necessarily forgo trades that they believe to be the best way to achieve their risk-return objectives. Those subject to the constraints will realize poorer risk-return performance as long as the rule is in effect, and cannot recover the lost performance if the rule is terminated.

The Rule Will Impair Market Liquidity and Risk Bearing Capacity As Long As It Is In Effect

34. It is well known, and the statute and the Commission acknowledge, that purely financial participants in derivatives trading provide liquidity and risk bearing capacity to the

market. A primary purpose of futures and swaps markets is to facilitate the transfer of risk from hedgers, who incur a high cost to bear it, to financial participants, who incur a lower cost. Although the participation of financial firms in physical commodity derivatives is sometimes criticized, this reflects a fundamental misunderstanding of how derivatives markets work. Hedgers cannot reduce their risk exposure unless there is someone willing to assume it. That is what purely financial participants do, and hence their trading is necessary to permit hedging. In essence, financial participants in commodity derivatives markets serve the same role as investors in stock or bond markets. Indeed, some financial participants in commodity derivatives view them as another asset class to include in an investment portfolio.

35. Moreover, some financial participants incur lower costs than others to bear risk. Basic economics implies that at the margin, the cost of bearing risk is equalized across all active participants in the market. Basic economics further implies that requiring some traders to reduce their positions--as binding speculative position limits do--therefore raises the cost of bearing risk.

36. This is true because some participants who are willing to bear some risk are prevented from doing so. The risk must therefore be borne by others who incur a higher cost: we know that they incur a higher cost because if they did not, they would have borne the risk prior to the imposition of the binding limit.

37. Thus, binding position limits will force some financial participants and hedgers to bear more risk than they should, and some financial participants to bear less risk than they should. This distortion in the allocation of risk is costly.

38. More generally, position limits will limit the risk bearing capacity in the market. Some financial participants with the capacity and willingness to take on risk that hedgers want to shed will be unable to do so. This forces the hedgers to bear more risk than they would like, which imposes costs on them.

39. Some financial participants stand willing to buy or sell on short notice. These market participants supply "liquidity" to the market, and permit hedgers to enter and exit positions quickly and cheaply in response to changed circumstances. By constraining the positions that some liquidity suppliers can hold, position limits will reduce market liquidity. This means that hedgers will trade at less favorable prices when they try to establish or terminate their hedge positions. That is, hedgers will incur higher transactions costs to manage risks in the presence of position limits.

40. Reducing the amount of hedging by raising the costs of risk transfer and reducing liquidity has adverse effects on investment and employment. For instance, an important reason for hedging is to reduce financing costs: by managing risk, some firms are able to borrow more cheaply, or issue equity at better prices. Making hedging more costly, either directly through restrictions on hedging exemptions, or indirectly, by reducing the capacity of financial participants to absorb that risk or by reducing liquidity, will result in less hedging. This, in turn, will be associated with higher costs to finance capital investment--resulting in less investment, and less employment in the affected industries. This lower investment and employment will persist at least as long as the rules are in effect, and indeed longer, because firms will make costly-to-reverse changes in response to the impairment in their ability to manage risk through derivatives markets. Thus,

even if the rule is eliminated, some of the higher costs resulting from the rule will persist long afterwards.

41. Moreover, the effects of increasing the cost of risk incurred by firms are no different than the effects of raising other more tangible expenses (such as labor costs). These costs will ultimately be passed on to consumers, or to the firms' suppliers.

42. The position limit rule will have the most pronounced impact on the energy industry because heretofore energy derivatives have not been subject to these limits, and the energy industry is the largest commodity market and user of commodity derivatives. By value, approximately 80 percent of the exchange traded commodity futures and options are on energy products. By raising the costs of managing and transferring risks, the position limit rule will raise the cost of energy to consumers, and reduce the prices that producers of energy receive.

43. The costs arising from distorted risk bearing are incurred as long as binding position limits are in place. Moreover, the costs incurred while the rule is in effect cannot be recovered after it is not. Furthermore, since the position limit rules will cause firms to make costly-to-reverse changes to their operations, the rule will impose costs on commodity producers, consumers, and merchandisers that would persist even after such time the rule was struck down. That is, these cost-raising effects of the rule will outlive the rule itself, because some of the costs result from changes in investment or contracting practices that are costly to reverse, and hence will persist even if the rule is eliminated.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 9th day of January, 2012 at St. Louis, Missouri

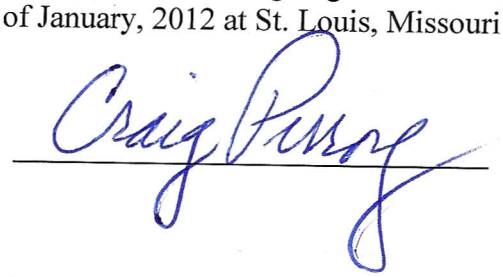


Exhibit A

CRAIG PIRRONG

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EDUCATION

Ph.D., UNIVERSITY OF CHICAGO, December, 1987.
Thesis: An Application of Core Theory to the Study of the Organization of Ocean Shipping Markets.

M.B.A., UNIVERSITY OF CHICAGO, March, 1983.
Concentrations in finance, economics and econometrics.

B.A., THE UNIVERSITY OF CHICAGO, June, 1981.
Major in economics.

THE UNITED STATES NAVAL ACADEMY, July, 1977-August, 1979.

EMPLOYMENT

BAUER COLLEGE OF BUSINESS, UNIVERSITY OF HOUSTON, Houston, TX. Professor of Finance and Director, Global Energy Management Institute, 2003-present.

OKLAHOMA STATE UNIVERSITY, Stillwater, OK. Watson Family Professor of Commodity and Financial Risk Management and Director, Center for Risk Management, 2001-2003.

WASHINGTON UNIVERSITY, OLIN SCHOOL OF BUSINESS, St. Louis, MO.
Assistant Professor of Finance, 1996-2001.

UNIVERSITY OF CHICAGO, GRADUATE SCHOOL OF BUSINESS, Chicago, IL. Visiting Assistant Professor of Finance (October, 1994-August, 1996).

UNIVERSITY OF MICHIGAN, SCHOOL OF BUSINESS ADMINISTRATION, Ann Arbor, Michigan. Assistant Professor of Business Economics and Public Policy (January, 1989-June, 1996).

LEXECON, INC., Chicago, Illinois. Economist (November 1987-December, 1988).

GNP COMMODITIES, Chicago, Illinois. Senior Investment Strategist (1986-1987).

PUBLICATIONS

Articles

"The Economics of Central Clearing: Theory and Practice." ISDA Discussion Papers Series, 2011.

"Squeeze Play: The Dynamics of the Delivery End Game." *Journal of Alternative Investments*, 2011.

"Derivatives Clearing Mandates: Cure or Curse?" *Journal of Applied Corporate Finance*, 2010.

"The Inefficiency of Clearing Mandates." *Cato Policy Analysis*, 2010.

"No Theory? No Evidence? No Problem!" *Regulation*, 2010.

"The Clearinghouse Cure." (Lead article.) *Regulation*, 2009.

"Clearing Up Misconceptions on Clearing." *Regulation*, 2008.

"The Price of Power: The Valuation of Power and Weather Derivatives." *Journal of Banking and Finance*, 2008.

"The Thirty Years War." *Regulation*, 2005.

"Detecting Manipulation in Futures Markets: The Ferruzzi Soybean Episode." *American Law and Economics Review*, 2004.

"Price Discovery and Data Hubs." *The Utility Project*, 2004.

"Got a Match? The Right Way to Report Energy Prices." *World Energy*, 2003.

"The Case for an Independent Gas Price Repository." *World Energy*, 2003.

"Securities Market Macrostructure: Property Rights and the Efficiency of Securities Trading." *Journal of Law, Economics, and Organization*, 2002.

"Securities Market Regulation: A Twenty-five Year Retrospective." *Regulation,* 2002.

"The Clinton Regulatory Legacy: Securities Regulation." *Regulation*, 2001.

"Manipulation of Cash-Settled Futures Contracts." *Journal of Business*, 2001.

"A Positive Theory of Financial Exchange Organization." *Journal of Law and Economics*, 2000.

"The Organization of Financial Exchange Markets: Theory and Evidence." *Journal of Financial Markets*, 1999 (lead article).

"Electronic Exchanges Are Inevitable and Beneficial." *Regulation*, 1999.

"Self-Regulation of Private Organized Markets." *New Palgrave Dictionary of Economics and the Law*, 1998.

"The Inefficiency of U.S. Commodity Manipulation Law: Diagnosis and a Proposed Cure." *Research in Law and Economics*, 1997.

"Metallgesellschaft: A Prudent Hedger Ruined or a Wildcatter on NYMEX?" *Journal of Futures Markets*, 1997.

"Liquidity and Depth on Open Outcry and Automated Exchanges: A Comparison of the LIFFE and DTB Bund Contracts." *Journal of Futures Markets*, 1996.

"Price Dynamics in Physical Commodity Spot and Futures Markets: Spreads, Spillovers, Volatility and Convergence in Refined Petroleum Products," with Victor Ng. *Journal of Empirical Finance*, 1996.

"The Self-Regulation of Commodity Exchanges: The Case of Market Manipulation." *The Journal of Law and Economics*, April, 1995.

"The Welfare Costs of Arkansas Best: the Pareto Inefficiency of Asymmetric Taxation of Hedging Gains and Losses." *The Journal of Futures Markets*, April, 1995.

"Mixed Manipulation Strategies in Commodity Futures Markets." *The Journal of Futures Markets*, February, 1995.

"The Efficient Scope of Private Transactions Cost Reducing Institutions: The Case of Commodity Exchanges." *The Journal of Legal Studies*, January, 1995.

"Commodity Futures Market Regulation: The Inefficiency of the Anti-Manipulation Provisions of the Commodity Exchange Act." *Regulation*, Fall, 1994.

"Commodity Market Manipulation Law: A (Very) Critical Analysis of the Existing Doctrine and A Proposed Alternative." *Washington and Lee University Annual Review of Securities and Commodities Law*, September, 1994.

"Fundamentals and Volatility: Storage, Spreads, and the Dynamics of Metals Prices," with Victor Ng. *The Journal of Business,* April, 1994.

"Regulation: Futures Trading and Institutional Investors." *The American Enterprise,* January-February, 1994.

"Multiple Delivery Points, Pricing Dynamics, and Hedging Effectiveness in Futures Markets for Spatial Commodities." *The Journal of Futures Markets,* August, 1994.

"Contracting Practices in Bulk Shipping Markets: A Transactions Cost Explanation." *Journal of Law and Economics*, October, 1993.

"Manipulation of the Commodity Futures Market Delivery Process." *Journal of Business*, July 1993 (lead article).

"Reforming the Contract Designation Process." *Journal of Financial Engineering*, March 1993.

"Removing Undue Regulatory Impediments to the Use of Futures and Options by Institutional Investors." *Journal of Financial Engineering*, March 1993. (Reprinted in Futures International Law Letter, October, 1992.)

"Application of Core Theory to the Analysis of the Ocean Shipping Industry." *Journal of Law and Economics*, April 1992.

"The Economic Geography of Grain Markets and Futures Delivery Specification: Manipulation, Price Discovery, and Hedging Effectiveness." *Review of Futures Markets,* 1992.

"Resolving the Thrift Crisis" with V. Bernard, R. Kormendi and E.Snyder. *Journal of Applied Corporate Finance*, Autumn 1989.

Contributions to Books

"Exchanges as Manufactured Markets." Forthcoming in E. Brousseau and G-M. Glachant (eds.) *Manufacturing Markets: Legal, Political and Economic Dynamics*. Cambridge University Press, 2011.

"Structural Models of Commodity Price Dynamics." In H. Geman (ed.), *Encyclopedia of Quantitative Finance*. Wiley, 2010.

"Lattice Approaches to Pricing Derivatives." In R. Kolb and J. Overdahl (eds.), *Companion to Financial Derivatives*. Wiley, 2010.

"Energy Derivatives." In R. Kolb and J. Overdahl (eds.), *Companion to Financial Derivatives*. Wiley, 2010.

"Pricing Power Derivatives: Theory and Matlab Implementation." In J. London, *Modeling Derivatives Applications in Matlab, C++, and Excel*. Financial Times Press, 2006.

"Market Microstructure Issues." In A. Kleit (ed.), *Electric Choices: Deregulation and the Future of Electric Power*. Rowan and Littlefield, 2006.

"The New Economy: Implications for the Organization and Structure of Securities Markets." In D. Jones (ed.), *The New Economy Handbook*. The Academic Press, 2003.

"Pricing Forwards and Options Using the Mesh-Based Partial Differential Equation Approach." R. Jameson (ed.), *Energy Modelling and the Management of Uncertainty*. Risk Publications, 1999. (Republished in 2005).

"Pricing Energy Derivatives," with Kaushik Amin and Victor Ng. Chapter 4 in R. Jameson (ed.), *Managing Energy Price Risk*. Risk Magazine Publications, 1994. (Republished in 1999 and 2004).

"The Market for Treasury Securities: Microstructure and Market Power." Chapter 1 in P. Knapp (ed.), *The Treasury Securities Market*: *The Scholars' Assessment*. Homewood, IL: Business One Irwin, 1994.

"The Economics of Risk Based Capital Requirements." Chapter 33 in K. Lehn and R. Kamphuis (eds.), *Modernizing U.S. Securities Regulation*. Homewood, IL: Business One Irwin, 1993.

Books

Models of Commodity Prices. Cambridge University Press, 2011.

Corners and Squeezes: The Economics, Law, and Public Policy of Financial and Commodity Market Manipulation. Kluwer Academic Publishers, 1996.

Grain Futures Contracts: An Economic Appraisal. With R. Kormendi and D. Haddock. New York: Kluwer Academic Publishers, 1993.

The Origins and Resolution of the Thrift Crisis. With V. Bernard, R. Kormendi and E. Snyder. New York: Kluwer Academic Publishers, 1989.

PAPERS PRESENTED

"The Economics of Clearing." Columbia Program in the Law and Economics of Capital Markets Workshop, 9 December, 2010.

"The Mutalization of Default Risk, Fungibility, and Moral Hazard: The Economics of Default Risk Sharing in Cleared and Bilateral Markets." Laval University, Quebec, 11 November, 2010. Notre Dame Center for the Study of Financial Regulation Conference, 21 May, 2011.

"OTC Derivatives Clearing and the Prevention of the Next Crisis: A Contrarian View." Columbia University, Conference on "The Financial Crisis: Can We Prevent a Recurrence," 6 March, 2010.

"Stochastic Volatility and Commodity Price Dynamics." Texas A&M University, 31 October, 2008. Institute of Financial Mathematics Conference, Champuloc, Italy, 21 January 2008.

"The Price of Power." Commodities 2007. University of London, 17 January, 2007.

"Modeling Issues in Commodity Markets." Commodities 2007. University of London, 18 January, 2007.

"Momentum In Futures Markets." 2005 European Finance Association Meetings, Moscow, Russia, 25 August, 2005. University of Illinois, September, 2006.

"Upstairs, Downstairs." 2003 European Finance Association Meetings, Glasgow, 27 August, 2003.

"Upstairs, Downstairs." 2003 Midwest Finance Association Meetings, St. Louis, March 2003.

"The Price of Power." 2002 European Finance Association Meetings, Berlin, 28 August, 2002.

"The Price of Power." 2002 Bachelier Finance Society Second World Congress, Crete, 12 June, 2002.

"Technological Change, For-Profit Exchanges, and the Self-Regulation of Financial Markets." American Law and Economics Association Meetings, New York, 7 May, 2000.

"Manipulation in Power Markets." University of California Energy Institute Restructuring Conference, Berkeley, 17 March, 2000.

"A Positive Theory of Financial Exchange Organization." International Society of the New Institutional Economics Meetings, Paris, 18 September, 1998.

"A Positive Theory of Financial Exchange Organization." American Law and Economics Association Meetings, Berkeley. 8 May, 1998.

"Efficient Deterrence of Manipulation in Futures Markets." American Law and Economics Association Meetings, Chicago. 6 May, 1996.

"Raising Revenue in the Worst Way: The Economic Effects of Asymmetric Hedge Taxation." Virginia Tech Symposium on "Hedge Taxation After *Arkansas Best*: Law, Economics, and Public Policy." 21 July, 1993.

"Fundamentals and Volatility: Storage, Spreads, and the Dynamics of Metals Prices." National Bureau of Economic Research Summer Institute Workshop on Asset Pricing. 20 July, 1993. American Finance Association Meetings, 3 January, 1993.

"Price Dynamics in Physical Commodity Spot and Futures Markets." Econometric Society Meetings, 7 January, 1993. Western Finance Association Meetings, June, 1993. ORSA/TIMS Meetings, November, 1993.

"Still Nature's Metropolis?" Kalo Hineman Symposium on Grain Futures Market Delivery Issues at the Commodity Futures Trading Commission, 15 September, 1991.

"Maintaining the Integrity of the Futures Delivery Process: The Economics of Manipulation and its Deterrence." American Bar Association/Virginia Tech Conference on Market Manipulation, 9 November, 1990.

"Multiple Delivery Points: Manipulation, Liquidity, and Basis Risk." American Bar Association/Virginia Tech Conference on Market Manipulation, 10 November, 1990.

Seminar presentations at North Carolina State University, Vanderbilt University, Southern Methodist University, the Federal Reserve Bank of Atlanta, the University of Missouri, the University of Kansas, Arizona State University, Babson University, Yale University Law School, the Michigan Business and Law Schools, the University of Chicago, the Tuck School of Business at Dartmouth University, North Carolina State University, the University of Alberta, Virginia Tech University, Washington University, Columbia University Law School, and the Commodity Futures Trading Commission.

CURRENT RESEARCH ACTIVITY

Papers Under Review

"Rocket Science, Default Risk, and the Organization of Derivatives Markets." First round, *Journal of Law and Economics*.

Selected Working Papers

"The Industrial Organization of Trading, Clearing, and Settlement in Financial Markets."

"The Valuation of Power Options in a Pirrong-Jermakyan Model."

"Momentum in Futures Markets"

"Bund for Glory, or, It's a Long Way to Tip a Market."

"Upstairs, Downstairs: Electronic vs. Open Outcry Markets."

"The Macrostructure of Electronic Financial Markets."

"The Organization of Electronic Financial Markets."

"Third Markets and the Second Best."

"The Price of Power: Valuation of Power and Weather Derivatives."

"Manipulation of Power Markets."

"The Economic Implications of *Arkansas Best*: Asymmetric Tax Treatment of Hedge Income, Hedging Effectiveness, and Price Discovery."

"The Effects of *Arkansas Best* on Hedge Ratios."

"Brave New World? The Prospects for Computerized Futures Trading."

"A Structural Model of Cross Hedging Risk."

"Two Cheers for Follow-on Research in Pharmaceutical Markets."

"The Asset Management Incentives Implicit in FSLIC Assisted Acquisition Agreements."

"Futures Markets as Implicit Loan Markets: The Case of Grains."

Research in Progress

Momentum in Futures Markets.

Storable Commodity Price Dynamics and Commodity Derivatives Pricing.

Power Price Dynamics.

Pricing Contingent Claims on Power and Weather.

Clearing Mechanisms in Derivatives Markets: Efficiency and Distributive Issues.

Rights Aspects of Commodity Exchanges

Reports

"Woodpulp Futures: Establishing the Essential Facts." Report to OM Stockholm, 1996.

"Agricultural Futures Exchange in Germany for Europe: Feasibility-Design-Implementation." Report to the Warentermiborse, 1995.

"Strengthening the Winnipeg Commodity Exchange Canola Futures Franchise." Report to the Winnipeg Commodity Exchange, 1995.

"The Costs and Benefits of Adding Local Traders to the Deutsche Terminbörse." Report to the Deutsche Terminbörse, 1994.

"Derivatives Exchanges, Liquidity, and Locals: A Look to the Future." Catalyst Institute Report, 1994.

"Is There a Future for Stock Branch Indices?" Catalyst Institute Report, 1994.

"The Contribution of Dual Trading to the Liquidity of New York Mercantile Exchange Energy Contracts" (with NERA). Report for the New York Mercantile Exchange submitted to the Commodity Futures Trading Commission in support of NYMEX's application for a waiver from the dual trading ban contained in the 1992 CFTC re-authorization bill.

"Political Rhetoric and Stock Price Volatility: A Case Study." Catalyst Institute Report, 1993.

"The Relation Between Oil and Gasoline Futures and Spot Prices" (with Victor Ng). Report submitted to the New York Mercantile Exchange, 1992.

"An Economic Analysis of the Grain and Oilseed Delivery Mechanism at the Chicago Board of Trade." Report submitted to the Chicago Board of Trade, 1991.

"Crisis Resolution in the Thrift Industry: Beyond the December Deals" (with Victor Bernard, Roger Kormendi, and Ted Snyder). Reported submitted to the Federal Home Loan Bank Board, 1989.

Refereeing Activities

American Economic Review; *Economic Inquiry*; *International Journal of Law and Economics*; *Journal of Business*; *Journal of Economic Dynamics and Control; Journal of Economics and Finance*; *Journal of Finance*; *Journal of Financial Markets*; *Journal of Futures Markets*; *Journal of Industrial Organization*; *Journal of Law and Economics; Journal of Quantitative Financial Analysis; Journal of Risk; Review of Financial Studies; Journal of Economic Behavior and Organization; Journal of Business and Economic Statistics; Managerial and Decision Economics; Journal of Economics and Business*.

FELLOWSHIPS

Oscar Mayer Fellow, University of Chicago (1983-1986)

RESEARCH GRANTS

Montreal Exchange grant to evaluate feasibility of introducing new commodity futures contracts. OM Stockholm and OMLX, London grant to study the feasibility of a pulp futures market and to design pulp futures and futures options contracts, 1996.

Winnepeg Commodity Exchange grant to study the contracts, rules, and bylaws of the WCE, with the objective of making recommendations to revise them in order to improve the performance of the Exchange's markets, 1994.

Catalyst Institute/DTB Deutsche Terminbörse grant to study the effects of attracting local traders to the DTB, 1994.

Catalyst Institute/DTB Deutsche Terminbörse grant to study the feasibility of new currency derivatives contracts, 1994.

Catalyst Institute/DTB Deutsche Terminbörse grant to study the feasibility of stock branch index derivatives, 1994.

Virginia Tech Center for Study of Futures and Options Markets grant to study the economic implications of the Internal Revenue Service policy on the taxation of hedging gains and losses 1993.

Warner Lambert Corporation grant for the study of competition in pharmaceutical markets 1990-1991.

Chicago Board of Trade grant to study grain futures market delivery issues 1990-1991.

EXECUTIVE TEACHING

Bayerische Vereinsbank, 1995

Anheuser-Busch, 1996.

Energy Power and Risk Management Courses and Conferences, March, June, September, and December, 1999, May 2000.

Peabody Coal Co., 2000.

HSM II Program, Olin School of Business, Washington University, Spring 2000.

PERSONAL

Born 10/20/59. Married to Terry Lehman Pirrong. Two children: Renee Elise (born 11/4/89) and Genevieve Corinne (born 5/7/94). Hobbies: history (especially U.S. Civil War), agonizing over Chicago sports teams, and exercise.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION and SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, Petitioners, v. UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Respondent.	Case No. 11-1469

DECLARATION OF MICHAEL A. CAMACHO
IN SUPPORT OF PETITIONERS' MOTION FOR STAY OF RULE

I, Michael A. Camacho, hereby declare as follows:

1. I am the head of Global Sales and Structuring, Global Investor Products and Global Agriculturals for JPMorgan Chase & Co. ("J.P.Morgan"), a global financial services firm with professionals in more than sixty countries. In that role, I am responsible for running certain sales and trading functions of the Commodity business and am part of the Commodity management team at J.P.Morgan's investment bank. I therefore have extensive experience in commodities markets and trading, as well as an informed understanding of J.P.Morgan's capabilities and systems related to such trading and compliance with applicable laws and regulations.

2. I am providing the information set forth in this declaration on behalf of J.P.Morgan in connection with the legal challenge brought by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association to the final rule and interim final rule of the U.S. Commodity Futures Trading Commission ("CFTC") establishing position limits on certain contracts related to commodities ("Rule"). I have personal knowledge with respect to the information set forth in this declaration.

3. Preparing to comply with the Rule would be extremely burdensome, and would impose immediate, irreversible costs on J.P.Morgan that will number in the millions of dollars. It also would consume numerous personnel hours and subject J.P.Morgan to incalculable opportunity costs in the form of lost business. J.P.Morgan would never be able to recover these losses if a court ultimately concludes that the Rule is invalid.

4. It is my understanding that important aspects of the Rule will take effect 60 days after the CFTC and the U.S. Securities and Exchange Commission ("SEC") jointly issue a separate rulemaking that will define the term "swap." Although J.P.Morgan has no way of knowing for certain when this definition will be issued, J.P.Morgan appreciates that it could happen at any time. For the purpose of updating its compliance systems, J.P.Morgan is assuming that the key aspects of the position limits Rule will take effect on April 1, 2012.

5. If it is not first invalidated, the Rule will impose many significant changes, some of which include new spot-month position limits on commodity options, futures, and swaps (that is, the caps that would apply to positions in a particular month or in all months combined), new provisions related to the bona fide hedging exemption (which is an important exception to the limits), and new provisions dictating when market participants will be required to aggregate their positions across different (and perhaps numerous) entities or accounts for purposes of applying the limits. Importantly, the Rule for the first time establishes position limits for swaps, which have no formal definition yet but generally involve an exchange of payments based on the value of one or more commodities or other financial interests.

6. To comply with the Rule, J.P.Morgan would need to design, test, and implement a host of new systems. Given that "swap" could be defined imminently, and because it will be difficult and time-consuming to implement the required systems, J.P.Morgan had to begin this process immediately to ensure that it could satisfy the new requirements by the compliance date. J.P.Morgan has thus already begun to incur costs as a result of the Rule, and while those costs are mounting by the day, most will be incurred in the next few months running through the implementation date and thereafter.

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8. Creating such systems to comply with the Rule will be enormously challenging. The futures and options contracts that were subject to positions limits previously are traded on centralized exchanges. Those exchange-traded contracts are standardized to provide for uniformity in trading. They each identify a specific commodity, quantity, and delivery location and delivery date. For example, a single NYMEX Henry Hub Natural Gas futures contract covers 10,000 million British thermal units of natural gas for delivery at a particular place (the Henry Hub in Louisiana) in a given month. Therefore, market participants who trade in NYMEX Henry Hub Natural Gas futures are trading based on these same standardized terms. This standardization, together with the developed market data and centralized trading infrastructure that is currently available with respect to trading in options and futures, makes it feasible for J.P. Morgan to monitor its position in those contracts.

9. Unlike futures and exchange-traded options, swaps are not traded on an exchange. Instead, they are traded "over the counter" (OTC) between contract-

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ing parties. Furthermore, swaps are not standardized or uniform. They can vary widely in terms of what rights are exchanged, the amount or volume of those rights, and the timing or duration of those rights. Swaps may involve more than one commodity and multiple timeframes. Moreover, there is currently no centralized repository that collects data on the key terms of each swap, and it does not appear that any such repository will be operational for at least the next twelve to eighteen months.

10. These characteristics of swaps will make it substantially more difficult to determine and monitor J.P. Morgan's positions in them for purposes of the Rule than it is monitor its positions in exchange-traded options and futures.

11. The systems necessary to monitor positions in swaps on a real-time basis would be very complex and costly. J.P.Morgan would have to design systems operating on multiple platforms that can collect data on swaps, filter the data through a central database, and then inform traders if the firm is approaching position limits. Necessary modifications to current systems would include everything from creating new processes through which the system will track trading activity in real time to developing new graphical interfaces that will display position-limit information on the computer screens of traders.

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13. Adding to the complexity and cost of designing systems to monitor compliance with position limits for swaps is the difficulty of correlating swaps to futures contracts, which would be required under the Rule to determine whether a limit has been reached. Position limits currently are framed in terms of the net position a trader holds in standardized futures and options contracts traded on exchanges. Under the Rule, those limits also would be extended to swaps that are directly or indirectly linked to the price of a standardized futures contract or that of the standardized futures contract's underlying commodity. It will difficult in many circumstances to decide how a swap counts against a position limit because, as explained above, swaps are not standardized and often do not match up with the futures contracts that are.

14. The systems that we develop to monitor compliance with position limits must be able to determine which of the numerous counterparties with which J.P.Morgan enters into swap transactions qualify for bona fide hedging exemptions. That adds yet another layer of complexity to the creation of new systems.

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15. In addition to investing substantial resources to develop adequate computer systems, J.P.Morgan also will have to expend significant resources on training its personnel. J.P.Morgan would need to train its traders to use the new systems and teach them when exemptions to the position limits apply. It will need to train compliance personnel as well. All of that training must be completed well in advance of the compliance date.

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REDACTED

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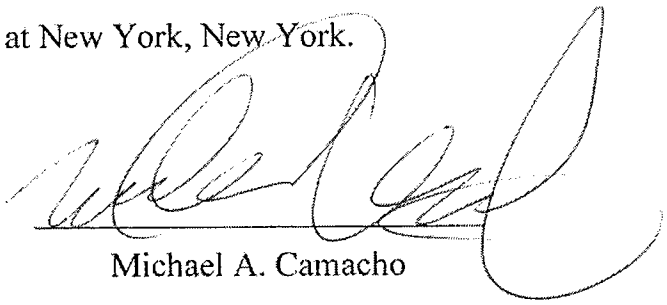
19. In addition to these out-of-pocket costs, J.P.Morgan would incur irreparable and incalculable losses in the form of opportunity costs resulting from

the Rule. The new limits imposed by the Rule are expected to cause J.P.Morgan to lose existing customers or to turn away opportunities to work with new customers. For example, there is a risk that customers will choose to transact with firms that specialize in foreign commodity markets that do not have position limits or that customers will forego executing swaps altogether.

20. Because J.P.Morgan's clients often sign contracts with a duration of at least a year (and often longer), it will be difficult or impossible to win back the business of clients who feel compelled to work outside the United States with other firms as a result of the Rule. Despite J.P.Morgan's competitiveness as a leader in the commodities market, there is a significant risk that some customers may never return after undertaking the burden of rearranging their financial services relationships.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of January, 2012 at New York, New York.



Michael A. Camacho

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION and SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, Petitioners, v. UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Respondent.	Case No. 11-1469

DECLARATION OF ROGER JONES IN SUPPORT OF PETITIONERS' MOTION FOR STAY OF RULE

I, Roger Jones, hereby declare as follows:

1. I am the Global Head of Commodities for Barclays Capital, the investment banking division of Barclays Bank PLC ("Barclays"), a global financial services firm. Barclays provides corporate, government and institutional clients with a full spectrum of solutions to their strategic advisory, financing and risk management needs.

2. As the Global Head of Commodities, I am responsible for the oversight and management of the commodities trading business at Barclays. I therefore have extensive experience in commodities markets and trading, as well as

an informed understanding of Barclays' capabilities and systems related to such trading and compliance with applicable laws and regulations.

3. I am providing the information set forth in this declaration on behalf of Barclays in connection with the legal challenge brought by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association to the final rule and interim final rule of the U.S. Commodity Futures Trading Commission ("CFTC") establishing position limits on certain contracts related to commodities ("Rule"). I have personal knowledge with respect to the information set forth in this declaration.

4. It is my understanding that key aspects of the Rule will take effect near the beginning of April 2012, depending on when a related rulemaking is completed.

5. Preparing to come into compliance with the Rule by that time will impose significant, unrecoverable costs and injury to the business of Barclays. Although both the CFTC and various commodity exchanges currently impose position limits on futures and options contracts in certain commodities, the Rule creates substantial additional requirements. Those changes include the imposition of position limits on swaps for the first time, the loss of certain bona fide hedging exemptions, the establishment of new reporting requirements, and the modification of rules related to the aggregation of positions held by different legal entities.

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More generally, the requirements imposed by the new Rule are extraordinarily complex and will require a significant amount of interpretation and guidance on how they impact any individual entity or group of entities. Barclays will invest significant resources in interpreting the Rule as it applies to myriad different circumstances.

6. The extension of position limits to swaps will require Barclays to create and implement new systems for monitoring compliance.

REDACTED

7. Adding further cost to the construction of systems to monitor swaps positions is that, unlike for futures and options contracts, where complete data about a firm's positions can be obtained from the firm's clearing broker, there is currently no source from which similar comprehensive data can be obtained for swaps positions. Barclays must therefore develop new approaches to monitoring

and managing positions. This will entail significant additional development costs and management time, which will not be recoverable if the Rule is ultimately vacated or amended.

8. The Rule will cause Barclays to incur significant costs in creating information technology and infrastructure to capture, monitor, and manage the limits—particularly if the Rule is not stayed and Barclays must rush to develop these systems by April 2012. The challenge in developing these new capacities will be exacerbated by the fact that the key term "swap" has not yet been fully defined and the scope of the Rule is not yet clear for non-U.S. entities. Those open questions make it impossible to identify the full set of data that new systems must capture.

9. Aside from the information technology and infrastructure for monitoring position limits, Barclays will also have to develop systems that comply with the new reporting requirements imposed by the Rule, including the filings necessary to invoke bona fide hedging exemptions. These systems must have the capacity both to determine when reporting is required and to capture daily information that must be included in the filings.

10. Given the typical development timelines required to build robust, custom fit-for-purpose systems, Barclays will have to start designing new systems immediately, and it will be extremely difficult and costly to build the required

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systems in time for the Rule's initial implementation dates; systems that will not be necessary if these Rules are vacated.

11. The Rule's changes to aggregation requirements will also impose significant costs on Barclays.

REDACTED

12. Additionally, certain exemptions from the Rule's aggregation requirements will force Barclays to obtain costly legal opinions regarding federal-law prohibitions on sharing information between entities. Such opinions will be useless if the Rule is ultimately vacated.

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14.

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15. As initially proposed by the CFTC, the Rule contained an exemption for owned "non-financial" entities, but that provision was eliminated from the final Rule, making it difficult for Barclays to retain a greater than 10% interest in entities that may trade any of the contracts subject to the Rule, even as a passive

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investment.

REDACTED

16.

REDACTED

17. Multiplying all of these costs and impacts is the fact that Barclays is currently working to come into compliance with myriad new regulations in the United States and abroad. The immense expenditure of resources that is required to implement the Rule will strain Barclays' ability to implement compliance

systems for these other new requirements—despite significant uncertainty that the Rule will ultimately be implemented in its current form.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 9th day of January, 2012 at London, England.

Roger Jones

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION and SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, Petitioners, v. UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Respondent.	Case No. 11-1469

DECLARATION OF SIMON GREENSHIELDS
IN SUPPORT OF PETITIONERS' MOTION FOR STAY OF RULE

I, Simon Greenshields, hereby declare as follows:

1. I joined Morgan Stanley (the "Company") in 1983 and have served as Managing Director since 1992 and as Co-Head of the Global Commodities Division since 2008. The Company is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. The Company's employees serve clients worldwide, including corporations, governments, institutions and individuals. As Managing Director and Co-Head of the Global Commodities Division, I am responsible for the day-to-day management of commodities trading and marketing within the Insti-

tutional Securities business segment of the Company. I have thus developed extensive experience in commodities trading and an understanding of the Company's ability to track information concerning commodities trading and comply with certain related laws and regulations.

2. I am providing the information set forth in this declaration on behalf of the Company in connection with a suit brought by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association to challenge the final rule and interim final rule ("Rule") of the U.S. Commodity Futures Trading Commission ("CFTC") establishing position limits for 28 commodities futures and options contracts (known as the "core referenced contracts"), as well as related swaps and swaptions. In particular, this declaration supports the plaintiffs' motion to stay the effective date of the rule during the litigation. I either have personal knowledge with respect to the information set forth in this declaration or have relied on information provided to me by individuals under my supervision or those individuals in other divisions within the Company who regularly provide support and services to the Company's commodities businesses.

3. The Rule would significantly expand the types of commodities and contracts that are subject to hard position limits. For instance, the Rule would establish position limits for energy and metals markets and would make those limits as well as limits for agricultural products applicable to swaps and swaptions con-

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tracts for the first time. The effects would be far-reaching, and the costs for the Company and those it does business with would be great. In this Declaration, I focus on the costs and irreparable harm that will be incurred in the very near term in the absence of a stay by this Court, as well as other likely consequences if a stay is not granted by this Court.

4. The Company has begun to incur costs in an effort to understand the requirements to develop systems that would enable it to comply with the Rule. If the effective date of the Rule is not stayed, the Company will incur additional costs immediately.

REDACTED

These extensive expenditures of time and effort could not be recovered if the Rule is invalidated.

5. Absent a stay, many of the most burdensome requirements of the Rule will take effect 60 days after the CFTC and the U.S. Securities and Exchange Commission complete a related rulemaking. The Company cannot predict precisely when that rulemaking will be completed, but we understand it may be within the next three to twelve weeks and thus may require the Company to comply within 60 days thereafter. Consequently, the Company must undertake immediate efforts toward compliance unless and until the effective date of the Rule is postponed. These efforts represent a significant challenge as the same technical, legal, compli-

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ance, operations and other resources required to comply with the Rule have to be diverted from efforts to comply with other initiatives, including developing and implementing procedures and systems to comply with Dodd Frank and other rule-makings with comparably short compliance deadlines. The cost of this lost opportunity resulting from the diversion of resources cannot be recovered if the Rule is subsequently invalidated.

6. The Company would have to overhaul its existing information technology systems and build, modify and implement new systems to account for the broader range of financial instruments that will be subject to position limits under the Rule.

REDACTED

7. This amount does not include costs the Company would need to incur to develop and implement systems sufficient to comply with the Rule's ownership and control aggregation requirements. These requirements dictate the circumstances in which positions in different accounts would have to be considered together for purposes of applying the new limits. They are among the most onerous requirements that the Rule would impose. In addition to these costs, as explained below, the aggregation requirements may require immediate action to divest ownership interests in certain entities or forbear from acquisitions in others, actions that likely will not be able to be reversed causing harm that will be irreparable.

8. Among other things, the Rule alters the longstanding policy of the CFTC and its staff to exempt certain ownership relationships from the aggregation standards that have been applied by the CFTC and the exchanges. Those policies, which are self-executing, generally permitted eligible entities to not aggregate separate accounts they own, or in which they have a 10% or more ownership or equity interest, but do not control. If the Rule takes effect, the Company would be required to file a notice for an exemption for each eligible account to demonstrate that it qualifies for one of the limited exemptions under the Rule. Before the Company could file the notice, it would have to determine whether the account could qualify for the limited exemption. If it could not, for certain entities, the only available solution may be to divest certain ownership interests. The decision to di-

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vest is irreversible; once the interests are divested, there is no effective way to "re-invest" without incurring the risk of loss or additional unrecoverable expenses. Additionally, pending the outcome of the litigation, the Company may be discouraged from making additional investments in certain entities that may be trading futures or swap contracts related to the 28 referenced contracts because of the difficulty of assessing or predicting the impact on aggregation.

9. To comply with the new aggregation requirements, the Company would have to identify all entities in which it owns at least a 10% interest.

REDACTED

Once identified, the Company will have to contact many of these entities, many of which the Company does not have a controlling interest, and coordinate with each of them to determine the extent of its current activities related to the 28 core referenced contracts, as well as its plans to engage in such activities in the future and whether the entity is eligible for an exemption.

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10. In addition, merely to administer such a program, the Company would have to develop in the near term a system capable of collecting and compiling up-to-date information regarding those entities' futures and swap positions. This would require establishing connectivity between the Company's information technology systems and the systems of those other entities that would enable the Company to map and track their futures contracts and swap contracts related to the 28 referenced contracts that would be subject to limits under the Rule. The ability to capture this information assumes that an entity in which the Company has only a small, passive investment with no control over operations would be willing to (a) share its trading information with the Company and (b) modify or build systems that will communicate their futures and swap positions in a timely fashion to the Company.

REDACTED

11. In addition to the costs incurred by the Company in developing and building its own systems to comply with the Rule, the Company anticipates incur-

Material Under Seal Deleted

ring costs in an effort to ensure that those entities in which the Company has a 10% or more ownership interest and that trade futures and swap contracts related to the 28 referenced contracts provide their trading and position information to the Company in a timely manner so that the Company can comply with the aggregation requirements of the Rule. Assuming entities that the Company does not control are even willing to share their trading and position information with the Company, they will incur costs to build and implement their own internal systems to connect to the Company's infrastructure.

REDACTED

12. Moreover, efforts to comply with the Rule could create difficult challenges for the Company, and indeed other market participants, to comply with other federal, state and foreign laws as well as internal risk management policies and other prudential standards, such as those that bank holding companies are required to maintain by the Federal Reserve Board. For instance, if an entity in which the

Company has a 10% or more ownership interest but does not control, trades futures and swap contracts related to the 28 referenced contracts, and does not qualify for any of the exemptions from aggregation, the Company would be required to aggregate that entity's positions with its own. Since the Company is not in a position to control the trading of an entity in which it owns only a minority interest, the entity could execute trades that cause the Company to breach its position limits. Therefore, the Company may have to reduce a futures or swap position, potentially resulting in the Company having an unhedged position. This may compel the Company to reduce its holdings in other instruments to avoid a breach of its Value-at-Risk ("VAR") limit, one of the prudential standards monitored by the Federal Reserve. In addition, requiring an entity to share its trading information with the Company may cause the Company difficulty in complying with state law (e.g., fiduciary obligations) and foreign laws (e.g., privacy laws). While an exemption from aggregation exists if a party obtains a legal opinion that states that sharing information violates U.S. federal law, (i) it is unclear if this exemption will apply in some circumstances where a potential violation of federal law could occur notwithstanding the ability of two entities to share information, and (ii) there is no comparable exemption for violation of state or foreign laws. If a market participant incurs costs in defending itself for alleged violations of such other laws, such costs are unlikely to be recovered. Likewise, if a market participant is compelled to di-

vest its interests in these entities to avoid such potential violations, such decisions to divest likely will cause irreparable harm as they cannot be reversed or can only be reversed by incurring the risk of loss and additional costs in reinvesting.

13. In addition to immediate costs of the nature described above, which are necessary to put the Company in position to comply with the Rule, I anticipate that the Rule will result in a significant irreparable loss of business. If the Company hits its limits and must turn customers away for particular trades, it may drive those customers away with respect to trades in other commodities as well as in other products offered by the Company. It is expected that the position limits will, in some instances, drive customers to competitors with smaller positions in the commodities markets, even though those customers may have preferred to remain with the Company because of its ability to provide better terms such as credit and pricing. Even if the Rule is invalidated, the Company cannot expect to win back the customers it loses, at least in the near term. For example, many customers enter into financial services contracts with a duration of one year, and some enter into longer contracts. Accordingly, even if the Rule were invalidated after a few months of litigation, there would be some customers that could be lost to competitors and could not be regained, if at all, until their lengthy contracts expired.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 9th day of January, 2012 at Purchase, New York.

Simon Greenshields