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June 29, 2012

*Via Electronic Mail*

David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Comment on Aggregation, Position Limits for Futures and Swaps (RIN 3038-AD82)**

Dear Mr. Stawick:

The Commodity Markets Council ("CMC") welcomes the opportunity to submit the following comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") regarding its Proposed Rulemaking on Aggregation, Position Limits for Futures and Swaps ("the proposed rule").

CMC is a trade association bringing together exchanges and their industry counterparts. The activities of our members represent the complete spectrum of commercial users of all futures markets including energy and agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange and the New York Mercantile Exchange. CMC is uniquely positioned to provide the consensus views of commercial and end users of derivatives. Our comments represent the consensus view of CMC members.

CMC supports the petition on this subject submitted by Hunton & Williams LLP, on behalf of The Working Group of Commercial Energy Firms, and Sutherland, Asbill & Brennan LLP, on behalf of the Commercial Energy Working Group ("the petition"). We believe that further relief from the amended aggregation requirements are necessary to prevent commercial firms from incurring significant costs and engaging in restructuring their business practices, thereby potentially adversely impacting market liquidity.

CMC believes that the 50 percent ceiling for disaggregation relief in Part 151.7(b)(1)(ii) should be eliminated. Aggregation is appropriate only when one entity controls the trading activity of another entity or has unfettered access to trading information of such other entity that could be used to facilitate its own trading. Absent such control and access to information, aggregation should not be required, regardless of the percent ownership or equity interest in the owned entity. For example, in the context of a limited partnership, a limited partner may own a majority of the partnership and be entitled to the majority of its profits, although day-to-day control of the partnership actually vests with the general partner. Further, it is particularly true in connection with joint ventures that majority ownership does not necessarily equate to the majority owner's control of the owned entity's trading activity.

As the petition states, the costs incurred by market participants to comply with the Commission's proposed rule are significant. Entities will be subject to the costs of developing the systems and business structure necessary to aggregate positions, and the costs of filing a disaggregation notice, both simultaneously. While the costs of the former will likely far outweigh the latter, both costs will not be mutually exclusive and will overlap. Thus, the ultimate costs incurred by market participants will exceed the Commission's estimate of \$5.9 million.

The automatic application of the aggregation requirements to persons holding in excess of 50 percent ownership or equity interest would force market participants to share information and coordinate trading, which is exactly what the CFTC seeks to prevent. Such sharing of information may also raise antitrust concerns, notwithstanding the Commission's clarification that an information sharing exemption will be granted provided such initial sharing of information does not give rise to a "reasonable risk" of violating federal laws. Under the final Position Limits rule, affiliated entities will be required to assign position

limits among several accounts that are presently traded independently of, and in competition with, each other. CMC is concerned that continuous correspondence and negotiations between affiliated entities will expose them to charges of collusive and anticompetitive behavior. Given the nature of trading, it is highly impractical to ask the opinion of counsel as to whether information sharing at any point during intra-day trading gives rise to a "reasonable risk" of federal antitrust laws being violated. As such, in practice, affiliated entities will be unable to avail themselves of the protection seemingly afforded by the information sharing exemption as it is currently constructed in Part 151.7(i).

Under the proposed Aggregation rule, companies that invest in commercial firms, but which may or may not trade on their own behalf, will be obliged to oversee the daily trading activities of their affiliates despite the passive nature of their ownership. An investor might consequently choose to relinquish ownership of the owned entity with potentially adverse impacts that result from reduced participation in any one market, such as reduced liquidity and increased price volatility.

It is also possible under the proposed rule that inadvertently inaccurate position reports would be submitted to the Commission. Financial and physical positions across multiple entities will need to be reported to the CFTC on an aggregated basis. As a practical matter, such positions would be very difficult if not impossible to report accurately; hence such reports may not provide correct insight into the entities' trading portfolios. Permitting disaggregation where appropriate would provide the Commission with a more granular and accurate view of each entity's portfolio.

In conclusion, CMC respectfully suggests the 50 percent ceiling for disaggregation be eliminated, and that the operative factor for determining whether aggregation requirements must be imposed on affiliated entities should be actual trading control (or the lack thereof), regardless of the percentage of equity ownership.

CMC thanks the CFTC for the opportunity to present its views on this subject. If you have any questions or would like to discuss further, please do not hesitate to contact me via email at [christine.cochran@commoditymks.org](mailto:christine.cochran@commoditymks.org) or via phone at (202) 842-0400 - ext. 101. Thank you in anticipation of your attention to these comments.

Regards,

A handwritten signature in black ink, appearing to read "Christine M. Cochran". The signature is written in a cursive style with a large initial "C" and "M".

Christine M. Cochran  
President