February 10, 2014

Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Position Limits for Derivatives
RIN 3038-AD99

Dear Ms. Jurgens:

ICE Futures U.S. ("ICE Futures" or "Exchange") appreciates the opportunity to comment on the proposed rulemaking issued by the Commodity Futures Trading Commission ("CFTC" or "Commission") setting forth new rules on position limits for derivatives. ICE Futures is a U.S. designated contract market owned by Intercontinental Exchange, Inc. ("ICE").ICE operates regulated derivatives exchanges and clearing houses in the United States, Europe, Canada and Singapore. This letter specifically addresses implications of the rulemaking for the physical-delivery agricultural markets of ICE Futures; a separate comment letter has been submitted contemporaneously regarding the Commission's proposed rules on position aggregation.

As background, the Exchange lists contracts in a broad array of international, soft agricultural commodities, including sugar, coffee, and cocoa, as well as contracts in legacy commodities, such as cotton. ICE Futures and its predecessor exchanges, which date back to 1870, have a strong history of overseeing position limits, accountability levels and exemption requests for the Coffee "C"®, Cocoa, Sugar No. 11®, FCOJ-A and Sugar No. 16 futures and options contracts. This extensive, direct experience has guided the Exchange's evaluation of the implications of the proposed rulemaking to the continued maintenance and oversight of these markets by ICE Futures.

The rules and procedures developed and used by the Exchange to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of its markets as those needs and practices have developed over time. As discussed below, the proposed rules conflict with commercial market practices for some of our commodities and could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts. In addition, the proposed rules would broadly transform the role of

the Commission in the daily administration of position limits and the granting of hedge exemptions, from an oversight role to direct regulation of markets over which the Exchange and other exchanges, respectively, currently exercise such authority. Given the significant time and resources that such an undertaking would require and the time sensitive nature of exemption requests, we believe that the current structure—whereby the Commission oversees certain domestic agricultural commodities while the listing exchanges oversee their other products—reflects an efficient allocation of responsibility and resources that ensures commercial market participants will be able to continue to hedge their risks in a timely manner.[1]

Should the Commission determine to move forward with aspects of the proposed rules, it should do so with a long transition period following adoption of final rules and in a manner that does not compromise hedge exemptions which have previously been granted or positions which market participants have established in good faith reliance on the current rules.

Summary

- The Commission should adopt accountability levels rather than position limits for non-spot month positions; if the Commission nonetheless determines to adopt such limits, it should not do so until reliable Part 20 data is available.

- Sugar No. 11 should not be subject to any Federal position limits because it has no connection to U.S. interstate commerce.

- The proposed rules are modeled on practices in domestic agricultural markets that have no relevance to the international agricultural markets operated by ICE Futures and conflict with commercial market practices. As a consequence, the proposed rules could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts.

- Exchange Sugar contracts differ fundamentally from other physical-delivery agricultural products and should not be subject to the proposed restrictions on the definition of bona fide hedging during the last three trading days of the expiring contract month.

- Anticipatory hedging should be permitted for more than 12 months of unfilled anticipated requirements and unsold anticipated production to conform to current practice and contract month listing cycles. Further,

[1] Parenthetically, the Commission would not be adding any layer of information that was not otherwise available to the Exchange in relation to monitoring positions and considering exemptions, because instruments equivalent to the Exchange's agricultural contracts do not trade more than de minimis volume on other CFTC regulated markets. Consequently, the Exchange already has a complete picture of the relevant positions held by participants in its markets, and does not require the Commission to combine information across markets.

merchants should be able to hedge anticipated merchandising needs on the same basis as other hedgers may do so.

- The Commission should confirm that the Exchange may grant intermarket spread exemptions for Exchange and NYSE Liffe Cocoa positions held outside of the spot month.

- The proposed requirements for cross-commodity hedges are difficult to meet and should be revised so that the risk management practices of commercial entities requiring these hedges are not compromised.

Current Exchange Procedures

Currently, the Exchange has position accountability rules for single month and all months combined positions in the Coffee "C", Cocoa and Sugar No. 11 contracts. Spot month position limits also exist for each of these contracts. Sugar No. 16 is subject to single month and all month combined position limits. Lastly, Cotton No. 2® and Frozen Concentrated Orange Juice ("FCOJ") have position limits for all three categories: spot month, single month and all months combined. The different procedures for these products reflect the differences in the related commercial markets.

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

ICE Futures also grants exemptions for the Cotton contract, even though cotton is an enumerated commodity. Our procedures provide that, in the case of a traditional hedger, an exemption is not granted unless it is supported by the filing of a Form 304 by the trader with the Commission. For non-traditional hedgers, the Exchange will not grant an exemption until one has been granted by the Commission.

The Commission Should Adopt Accountability Levels Rather than Position Limits for Non-Spot Month Positions.

The CEA grants the Commission discretion to adopt accountability levels rather than hard limits with respect to non-spot months. The exchanges have successfully used position accountability levels for over a decade to deter excessive speculation and manipulation while allowing the markets to continue to serve their price discovery and

hedging purposes. The Commission has not suggested that accountability levels are ineffective at deterring excessive speculation or manipulation. Moreover, it is widely acknowledged, including by the Commission, that the threat of manipulation outside of the spot month is greatly diminished. Accordingly, the long successful track record of the exchanges supports the continued use of flexible accountability levels, rather than their replacement with hard position limits. A position accountability framework would allow the Commission to make determinations on the basis of the relevant facts presented in a particular case, and thereby curtail needless restrictions on the marketplace as a whole. As an alternative, the Commission could defer administration of accountability levels to the exchanges, in the first instance, given their resources and experience.

If the Commission nonetheless determines to impose non-spot month position limits, it should use the most recent and complete open interest data available from all sources and not rely on stale or incomplete data. Proposed Appendix D to Part 150 sets forth initial position limit levels for referenced contracts using the formula in the proposed regulations for Single Month and All Months levels, but does not include Part 20 data because the Commission did not consider the data to be reliable. In light of the inclusion of Part 20 data in proposed Regulation §150.2(e)(4)(ii), non-spot month limits should not be imposed until the CFTC has reliable Part 20 data to include in determining position limits.

Sugar No. 11 Should Not Be Subject to Federal Position Limits

The Exchange strongly believes that Sugar No. 11 should not be a core referenced futures product subject to Federal position limits and that the current regulatory regime for this contract should remain in effect. This means that position limits and position accountability levels would continue to be established by the Exchange subject to CFTC review and approval, and exemptions would continue to be granted by the Exchange pursuant to the rules and procedures which have worked effectively to date and which reflect the commercial market practices of the international raw sugar market.[2] Sugar No. 11 is the international benchmark for raw sugar trading and prices the delivery of raw cane sugar, free-on-board the receiver's vessel in the country of origin of the sugar.

A very small amount of the raw cane sugar it represents may be legally imported into the United States in accordance with tariff-rate quotas established by the U.S. sugar support program. These limited sugar imports are hedged in the Exchange's domestic Sugar No. 16 contract. Given these facts, the Sugar No. 11 contract does not meet the statutory test or the Commission's own standards for inclusion in Federal position limits—specifically, it neither has a major significance to U.S. interstate commerce nor a sufficient nexus to create a single market across multiple venues. For these reasons, and as further explained in the July 15, 2013 letter to the Commission from the Exchange and its World Sugar Committee members (attached as Exhibit 1), the Commission should not include the

[2] The current position accountability levels for Sugar No. 11 are well *below* the position limits that would be set by the CFTC's 10/2.5 percent formula.

Sugar No. 11 contract as a referenced product or otherwise subject it to Federal position limits.

<u>The Proposed Rules Conflict with Long-standing Commercial Market Practices Involving International Agricultural Commodities</u>

The Commission has limited the definition of bona fide hedging position in the proposed rules and set forth a specific, narrow list of enumerated hedging positions that will be recognized. In doing so, the Commission will prohibit long-standing risk management practices which are authorized by the Commodity Exchange Act ("CEA") and which have been used by commercial market participants for decades. At the same time, the proposed regulations do not provide a process with firm time limits for the Commission or its staff to act upon requests from market participants for non-enumerated hedging exemptions. The limitation on the definition of bona fide hedging position coupled with the absence of an effective administrative process to grant non-enumerated hedge exemptions is likely to have an adverse effect on commercial market participants.

The proposed rules are rooted in, and generally extend, the program that currently exists for the enumerated agricultural commodities, such as corn and wheat, to numerous other commodities including World sugar, coffee and cocoa. Some aspects of the current and proposed rules are based on a definition of bona fide hedging that was largely developed decades ago, driven by practices in domestic agricultural markets. That approach cannot reasonably be expected to properly account for commercial market practices that have evolved over time. Additionally, the proposed rules do not recognize that commercial market practices in the non-enumerated commodities differ and that extending the current Commission program to these commodities will create a flawed system. For example, there are fundamental differences between the grains and the coffee and cocoa markets. Grains are characterized by extremely uniform quality; while there are several deliverable qualities for each futures contract, each of these stands in a transparent price relationship with each other and there is liquidity for each of the deliverable qualities. Therefore, should a long holder with a bona fide hedge exemption receive a quality which is not immediately satisfactory to an existing sale, he can immediately sell out of the delivery received and buy the quality needed in the cash markets at a spread as per the prevailing market conditions. Thus the fundamental hedging function of the futures contract is preserved.

In contrast, the coffee and cocoa markets are characterized by many different quality standards including origin, age and location. Commercial contracts for coffee typically require the delivery of specific origin and quality standards that are needed to achieve the unique flavor profile of the coffee that a roaster will produce. Such contracts also require delivery to a specific location. By contrast, the Coffee "C" futures contract permits the delivery of 20 different origins at warehouses located in four ports in the United States and three ports in Europe. Thus, it is not practical for commercial market participants to source coffee from the Exchange. Similarly, the contract terms for raw sugar, which reflect commercial market practices, are fundamentally different from those of the enumerated commodities. Sugar No. 11 is not a warehouse contract and there currently

are 30 deliverable growths. On the business day after last trading day, the receiver learns of the location of the sugar. The receiver must then charter boats to pick up the sugar within the 2.5 month delivery period provided for in the contract rules. It is unreasonable to use standards that were developed for contracts that provide for delivery through warehouse receipts at exchange licensed warehouses to an FOB delivery contract with a 2.5 month delivery period.

Given these fundamental market differences, we urge the Commission not to subject the Exchange's soft commodities to the same definitions and rules which govern the grain markets. Unless the proposed rules are modified to account for the differing commercial practices in sugar, coffee and cocoa, they could prohibit market participants from using futures and options to fully manage their commercial risk in these products, which could have serious consequences and undermine the proper functioning of the market.

The proposed rules ignore commercial market practices in our commodities in other important respects. For example, the proposed rules recognize offsetting unfixed-price cash commodity sales and purchases as hedging transactions provided that the positions are not held in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or during the time period for the spot month in such contract—which in the case of the Sugar No. 11 and Sugar No. 16 contracts is the last three days of trading. This requirement conflicts with provisions in many commercial sugar contracts that permit the price to be fixed as late as the last trading day of the delivery month and without an offsetting unfixed-price contract in another month. This practice reflects the long delivery period that exists for Exchange and many commercial sugar contracts. Allowing the price to be fixed through last trading day minimizes flat price risk exposure for both parties to the contract for the 2.5 month delivery period.

Physical contracts for coffee and cocoa may also permit prices to be fixed into the notice or delivery period. In reviewing and granting exemption requests today, the Exchange takes the practices of the underlying commercial market into account and thus has granted exemptions for unfixed-price commitments during the last three trading days. The Commission's surveillance staff is fully aware of the Exchange's practices in this regard and has never identified this as an area of regulatory concern.

The failure to fully recognize unfixed-price commitments as hedging transactions poses significant issues for commercial participants in the World sugar market as well as the cocoa and coffee markets. This could have the effect of prohibiting these participants from continuing to use risk management strategies that have worked well for years.[3] As previously noted, commercial sugar contracts generally provide one of the parties to the contract with the right to fix the price against a specific Sugar No. 11 delivery month by a specific date, which can be as late as the last trading day for the futures contract. It is obvious from the large quantity of EFPs/AAs (Exchange for Physicals or Against Actuals) posted during the last trading month of any Sugar No. 11 contract-- up to and including last trading day-- that many commercial contracts are priced in this manner

[3] We refer your attention to the discussion of this important point in the Exchange's July 15, 2013 letter attached as Exhibit 1.

during this period. For example, during September 2013, the last trading month for the October 2013 contract, EFPs transacted in that contract totaled 164,939 lots. In addition, 53,004 lots of EFSs were posted. Total volume in the October 2013 contract (including EFPs/EFSs) was 1,553,037**.** Eliminating the ability to fix the contract price in a manner consistent with current cash market practice will not only change commercial market practice in the long term, but applying any change in the short term will negatively affect parties to existing commercial contracts.

The Sugar No. 11 and Sugar No. 16 contracts also differ from many other physical delivery contracts because they have a single notice day, which occurs *after* the last trading day, whereas other contracts have multiple notice days which occur prior to the last trading day. The proposed rules recognize this difference to some extent by providing that restrictions to the definition of bona fide hedging which apply during the lesser of the last five days of trading or the spot month will apply, in the case of Sugar contracts, only to the last three trading days. However, a review of volume data for these periods for the Exchange's physical-delivery agricultural contracts shows there is a fundamental difference among these contracts because the Sugar contracts are still actively traded during this period while volume in the cocoa, coffee, cotton and FCOJ contracts is minimal. This data is shown below.

AVERAGE TRADING VOLUME FOR LAST 5 TRADING DAYS FOR COCOA, COTTON, COFFEE AND FCOJ AND LAST 3 TRADING DAYS FOR SUGAR NO. 11 AND SUGAR NO. 16

	2011	**2012**	**2013**
Cocoa	11	12	12
Coffee	19	10	8
Cotton	129	13	17
FCOJ	49	53	30
Sugar No. 11	24,504	20,952	27,665
Sugar No. 16	211	257	278

Based on the fundamental differences demonstrated by this data, the Exchange believes that there should be no restrictions on the definition of bona fide hedging during the last three trading days of Sugar No. 11 and Sugar No. 16 contracts. If a situation arises where the Exchange believes that a restricted definition is appropriate, it can be addressed through the terms of the exemptions granted by the Exchange for that particular delivery month.

Anticipatory Hedges

The proposed definition of bona fide hedging enumerates two transactions that are currently used by commercial entities utilizing Exchange contracts to hedge their commercial risks. These positions are hedges of unfilled anticipated requirements and hedges of unsold anticipated production. However, the proposed rules impose a restriction of twelve (12) months of anticipated requirements and anticipated production--

which conflicts with the hedging programs of many entities that typically hedge larger quantities than provided for in the definition.

Coffee and cocoa are perennial crops, with life cycles, depending on the agronomical practices followed, of between ten years and multiple decades. As a result, it is of critical importance for producers to be able to access the futures markets for hedging purposes when the opportunity arises. Given the high volatility in prices, it is common, at least for well-capitalized, large scale, producers, to execute such hedges, contributing to market efficiency and price discovery. Similarly, industrial end users have a legitimate demand to hedge their supply risk beyond twelve months in order to reduce the volatility in their business, which in turn reduces volatility of prices at the retail level. Exchange contracts have a listing cycle of 24 months or more to accommodate the hedging needs of its commercial participants.

Positions held by commercial participants, including producers, processors, merchants and other users, in contract months more than twelve months out generally are anticipatory hedges. The failure to recognize these positions as hedges would severely limit risk management programs currently in place for many commercial entities utilizing Exchange markets. The justification for the proposed restriction seems to be based on historical precedent in other products, which is not particularly instructive given the evolution of markets and hedging practices in the decades following the initial adoption of the bona fide hedging definition. The Exchange therefore proposes that hedging of more than twelve months of anticipated requirements or anticipated production be permitted, provided that the positions are established in a contract month that corresponds with the timing of the anticipated requirements or production.

The proposed rules on anticipatory hedging also fail to recognize the critical role merchants play in the international softs markets. These entities provide liquidity and take on counterparty risk for producers, end-users and other commercial market participants. The proposed definition of “bona fide hedging position” includes in the section on hedges of a physical commodity “assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising.” While this language clearly includes anticipated merchandising, comparable language is not included in the section defining “enumerated hedging positions”. As a consequence, a merchant cannot obtain an exemption for positions representing anticipated merchandising needs. The Exchange urges the Commission to expand the definition of enumerated hedging positions to recognize this activity which is significant to Exchange markets in these agricultural products. Such an expansion of the definition would create parity in the treatment of anticipated production/ownership and anticipated merchandising needs.

Spread Exemptions

The proposed regulations provide exchanges with the authority to grant exemptions for intermarket and intramarket spread positions provided that such exemptions relate to contracts held outside of the spot month for physical-delivery contracts. This

requirement eliminates the spot month cash and carry exemption that is currently recognized by the Exchange for contracts involving certain warehoused commodities---specifically, coffee, cocoa and FCOJ. ICE Futures has strict procedures that set the terms by which these exemptions may be granted and the spread differential at which the trader will be obligated to liquidate positions. These procedures and the general terms under which they are granted have been in place for these contracts for many years. They are well understood by participants in these markets, and actual experience with cash and carry exemptions has created an expectation among market participants that - if the appropriate supply and price relationships exist in a given expiry – market participants will apply for and be granted cash and carry exemptions, and that proper application of the terms as the expiry approaches will assist in an orderly expiration. Based on past experience in administering cash and carry exemptions and input from market participants (including participants who have not themselves applied for such exemptions), our Control Committee members and Market Surveillance staff strongly believe that when there are plentiful supplies, the availability of such exemptions serves an economic purpose in the days leading up to first notice day, because the exemptions help maintain an appropriate economic relationship between the nearby and next successive delivery month.

The important economic function played by this spread exemption in the case of coffee and cocoa is explained by the lack of uniformity of the physical product, which depends not only on the age of the certificate for coffee but more importantly on its origin, grade, port of storage, harvest season, and the demand for the various combinations of attributes. These differing characteristics mean that commercial hedgers rarely meet Exchange requirements for long spot month hedge exemptions because there is no certainty that the Exchange certified product they receive will meet the very specific provisions found in their coffee and cocoa commercial contracts. Thus, when there are plentiful certified stocks, this can create an imbalance in the expiring contract month because holders of certified stocks are eligible for short hedge exemptions while few traders qualify for long hedge exemptions. This may result in the nearby spread trading at a differential that is wider than the full cost of carry, which could result in the expiring month failing to converge with cash prices. Thus, by providing commercial market participants with the opportunity to compete for the ownership of certified inventories beyond the limitations of the spot month position limit, the Exchange helps to maintain a balanced market and ensure an orderly liquidation. ICE Futures therefore urges the Commission not to exclude spot month positions from eligibility for spread exemptions.

The proposed rules also should be clarified with respect to exemptions for intermarket spread positions. The definition describes an intermarket spread position as a "long position in a commodity derivative contract in a particular commodity at a particular designated contract market or swap execution facility and a short position in another commodity derivative contract in that same commodity *away from that particular designated contract market or swap execution facility*."[4] This definition is not limited to

[4] This definition also has an apparent inadvertent shortcoming as it only applies to a long position at a designated contract market. It would be more accurate to refer to a long (short) position at the designated

referenced contracts; therefore the Exchange interprets the proposal as permitting it to grant exemptions for spread positions held in the Exchange's Cocoa contract and the NYSE Liffe Cocoa contract. This arbitrage activity is an important source of liquidity to the market. Accordingly, the Exchange requests that the Commission confirm that intermarket spread exemptions may be granted by the Exchange with respect to ICE Futures and NYSE Liffe cocoa positions held outside of the spot month. In addition, while the proposed rules support the grant of an intermarket spread exemption, a trader granted such an exemption would still be subject to the Federal position limit for Cocoa. Therefore, a procedure should be developed to allow the CFTC to recognize the intermarket spread exemptions granted by the Exchange. [5]

Cross-Commodity Hedges

The proposed definition of bona fide hedging includes the offset of risks arising from a commodity other than the cash commodity underlying a commodity derivative contract provided that there is a close correlation between the fluctuations in the values of the two commodities. The proposed rule establishes a non-exclusive safe harbor based on two factors which must be considered. The qualitative factor, which is consistent with prior practice, requires a reasonable commercial relationship between the commodities. However, a new, unjustified quantitative factor has been added which requires a correlation between returns in daily spot price series of the commodities of at least 0.80 for a period of at least 36 months. The quantitative test fails to recognize that a spot price series may not exist for one or both commodities, or that the illiquidity of a market is an important factor in risk management decisions. As a consequence, commercial entities may be prevented from using cross-hedges to manage legitimate business risks. Cross-hedging is important for commodities that are processed into products that are not traded commodities and in situations where the traded commodity market is illiquid.

For example, the Sugar No. 11 contract is frequently used to hedge Brazilian ethanol because the alternative hedging vehicles are illiquid and cannot be used as effective hedging tools. If the positions established to hedge ethanol are not considered bona fide hedges, the risk management practices of commercial entities involved in this market will be compromised. Our rules, like those of most other exchanges, permit EFRPS involving products which are derivatives, by-products or related products of the commodity underlying the exchange futures contract. This commercial practice would be undermined if transactions in related products are not considered hedges. In a similar vein, the Sugar No. 11 contract is used by commercial entities to hedge the white sugar premium over raw sugar. For example, a refinery that is export oriented may find that its revenue stream is driven by the differential between the cost of procuring raw sugar and white sugar export prices. To protect its refining margin, the refinery will sell the white sugar premium by going short the Liffe No. 5 White Sugar contract and going long the ICE

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contract market and a short (long) position away from that market. This shortcoming also appears in the definition of intramarket spread position.

[5] One possibility would be for the Exchange to provide the CFTC with all documents related to such exemption requests promptly upon completion so that the CFTC may update its records.

Sugar No. 11 contract. If this well established strategy is not recognized as a hedging transaction, because it doesn't meet the cross-hedging test and/or spread requirements, it would be detrimental to such commercial entities. Accordingly, the Commission should eliminate the quantitative test for cross-commodity hedging.

Conclusion

The Exchange appreciates the opportunity to comment on the proposed rules, which make substantial changes to the current position limit regime and differ greatly from the 2011 final position limit rules. We urge the Commission to exercise great caution in making changes to a well-functioning market and to analyze the impact of its proposal on the Exchange's international soft commodities before implementing any changes. If the Commission determines to go forward with the proposed rules, we suggest that it remove the onerous requirements on bona fide hedging, spread, arbitrage and cross commodity exemptions that impact hedgers, which we believe are contrary to the Commodity Exchange Act.

Please contact Susan Gallant at 212.748.4030, or the undersigned at 212.748.4083, if you have any questions or would like to discuss our comments in any respect.

Sincerely,

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

cc: Riva Adriance
Mark Fajfar
Stephen Sherrod

EXHIBIT 1

Atlanta Calgary Chicago Houston London New York Singapore Winnipeg

July 15th, 2013

Mr. Richard Shilts
Director, Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Mr. Shilts:

ICE Futures U.S., Inc. ("ICE" or the "Exchange") submits this letter to clarify for the Commission how the global and domestic sugar market is hedged utilizing the Exchange's different sugar contracts. This explanation clearly demonstrates that the Sugar No. 11 contract should not be included as a Core Referenced Futures Product ("CRFP") that is subject to Federal position limits and that the policies and purposes of the Commodity Exchange Act (the "Act") are properly furthered by including the Sugar No. 16 contract, alone, in such category.

The CFTC's final rule on position limits published in the Federal Register on November 28, 2011 identified 28 CRFPs that would be subject to Federal position limits. These products included the international soft agricultural products (Sugar No. 11®, Coffee "C" ® and Cocoa) traded on ICE, as well as the Exchange's domestic sugar contract, Sugar No. 16. The only commodity among this group that is actually produced in the United States is the raw sugar underlying the Sugar No 16 contract. The other soft agricultural commodities are unique among the CRFP because the physical products deliverable against the respective futures contracts are all produced outside the United States.

The Federal Register release of November 28, 2011 states that the criteria for the CRFP is intended to ensure that "those contracts that are of major significance to interstate commerce **and** show a sufficient nexus to create a single market across multiple venues are subject to Federal position limits." Further, the establishment of position limits by the Act is based on the burden on **interstate commerce**. It is in this respect that the Sugar No. 11 contract is unique

from the other soft commodity contracts that are included as CRFP commodities and fails to meet the predicate from which the establishment of position limits is derived.

Sugar No. 11 is the international benchmark for raw sugar trading. It prices the delivery of raw cane sugar, free-on-board the receiver's vessel to a port within the country of origin of the sugar or in the case of landlocked countries, at a berth or anchorage in the customary port of export. There are currently 30 deliverable growths. Sugar No. 11 is distinct from the other soft commodity contracts because a *de minimis* amount of the raw cane sugar it represents may be legally **imported into the United States** due to the U.S. sugar support program that has been in existence since the early 1980s and recently was re-affirmed by the U.S. Senate. This program sets a loan rate that effectively sets a floor for U.S. sugar prices and establishes tariff-rate quotas that permit a limited quantity of foreign sugar to enter the U.S. each year. Quota sugar and Mexican sugar that enters the U.S. under the terms of the NAFTA agreement is hedged in the Sugar No. 16 contract, which has always traded at a higher price than the Sugar No. 11 contract.[1] Consequently, the price of the international Sugar No. 11 contract, while impacting the wholesale price of sugar elsewhere in the world, is not reflective of the sugar price paid by U.S. consumers.[2]

The foreign raw cane sugar priced by the Sugar No. 11 contract does not meet the criteria established by the Commission for inclusion in the CRFP: it is not imported into the United States due to the restrictions of the U.S. sugar support program described above, and therefore is **not stored in the United States**. This sugar **is also not transported within the United States.** Thus, the foreign raw cane sugar priced by the Sugar No. 11 contract places no burden on interstate commerce because it never enters into interstate commerce.

In contrast, **the Sugar No. 16 contract prices the physical delivery of raw cane sugar of U.S. or duty-free foreign origin**, duty paid and delivered to New York, Baltimore, Galveston, New Orleans or Savannah, as selected by the receiver. This contract is used to hedge primarily domestic- grown sugar that is transported and stored in the United States. Thus, the Sugar No. 16 contract (in contrast to the Sugar No. 11 contract) clearly does meet the test of being of major significance to interstate commerce and we agree it should be subject to Federal position limits insofar as the Commission continues to pursue establishing such limits.

[1] While sugar from the United States is deliverable against the Sugar No. 11 contract, the U.S. sugar program has resulted in a higher price for U.S. sugar than the Sugar No. 11 price, which means it has never been economic to deliver sugar grown in the U.S. against the Sugar No. 11 contract.

[2] To assess any degree of closeness in the price relationship between the No. 11 and 16 futures, the Exchange did an analysis of the correlation of daily returns between the front month future of the No. 11 and several other IFUS futures products over the past four-and-one-half years; this analysis showed a lower correlation between the No. 11 and 16 futures (25.34%) than between the No. 11 and Coffee "C" futures (31.33%), and barely higher than the correlation between No. 11 and Cotton No. 2 futures (24.89).

In addition to not entering into interstate commerce, raw cane sugar priced by the Sugar No. 11 contract is subject to commercial market practices that generally do not conform to the practices of the domestic markets upon which the definition of bona fide hedging and other Federal rules are based. The longstanding rules and procedures developed by the Exchange to set position limits and position accountability levels, and to review exemption requests for the Sugar No. 11 contract, were designed to incorporate the specific needs and practices of the commercial participants in this international market. Federal position limit rules conflict with some commercial market practices in the foreign raw sugar market and could negatively impact the ability of commercial participants to manage their risks through futures, options and other instruments that are cleared through entities regulated by the CFTC. Please refer to the Exchange's comment letter on the position limit rules dated March 28, 2011.

The Exchange strongly believes that Sugar No. 11 should not be a CRFP subject to Federal position limits and that the current regulatory regime for this contract should remain in effect. This means that Exchange position limits and position accountability levels would continue to be subject to CFTC review and approval, but would not be dictated by the CFTC. In this connection it should be noted that current position accountability levels for Sugar No. 11 are well *below* the position limits that would be set by the CFTC's 10/2.5 percent formula. Maintaining the current model would also mean that exemptions for Sugar No. 11 would continue to be granted by the Exchange pursuant to the rules and procedures which have worked effectively to date and which reflect the commercial market practices of the international raw sugar market. The Exchange believes the important differences in how the global and domestic sugar markets are hedged using the Exchange's Sugar No. 11 and Sugar No. 16 contracts demonstrate that the Sugar No. 11 contract does not meet the statutory test or the Commission's own standards for inclusion in Federal position limits. The contract does not have a major significance to U.S. interstate commerce or a sufficient nexus to create a single market across multiple venues. For the reasons discussed above, the Sugar No. 11 contract should not be identified as a CRFP or otherwise subject to Federal limits. If the Commission nonetheless intends to include Sugar No. 11 in its upcoming rulemaking on position limits, we believe it would be appropriate to expressly solicit public comment on the propriety of doing so, and request that the federal register notice accompanying any such proposal include targeted questions relating to the character and commercial use of this contract, as well as the potential impact of the proposed limits on commercial market participants.

Because of the significance of this issue, the Exchange consulted with its World Sugar Committee, which serves as an advisory body to the board of directors with respect to matters relating to the Sugar No. 11 contract and is comprised of an international group of individuals who directly, or through their affiliated firms, actively engage in trading world raw sugar. The

Committee unanimously agreed with the positions articulated in this letter and 18 members have co-signed the letter to emphasize the importance of this issue to their businesses.

If you have any questions or would like to discuss any of the matters addressed in this letter, please contact me at 212-748-4150 or Benjamin.Jackson@theice.com .

Sincerely Yours,

Benjamin Jackson
President & COO
ICE Futures U.S., Inc.

cc: Chairman Gensler
Commissioner Chilton
Commissioner O'Malia
Commissioner Wetjen

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Jamal Al Ghurair
Al Khaleej Sugar Co LLC

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Patrice Bougault
Cargill International S.A.

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Soren Hoed Jensen
Copersucar S. A.

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Adam Leetham
Czarnikow Group Ltd

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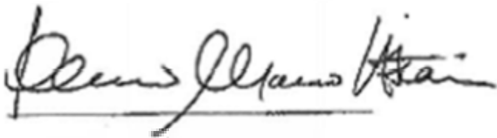

Plinio Nastari
Datagro

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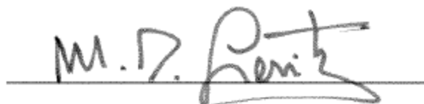

Michael Levitz
E D & F Man

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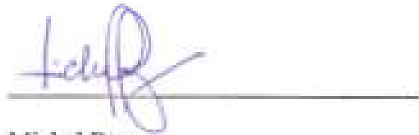

Michel Roy
Glencore Energy UK Ltd

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John Stotts
Infinium Capital Management LLC

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Simon McGuigan
J.B. Drax Honore

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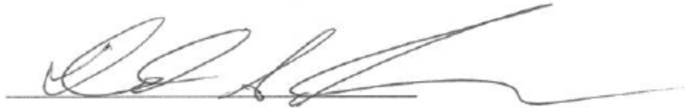

David S. Rossen
Louis Dreyfus Commodities LLC

On behalf of my firm I agree with the views expressed in the ICE Futures U.S., Inc. letter to Mr. Richard Shilts of the Commodity Futures Trading Commission concerning the application of Federal position limits to the Sugar No. 11 futures and options contracts:

Joseph Limone
General Counsel,
Noble Americas Resource Corp.

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Narendra Murkumbi
Shree Renuka Sugars Limited

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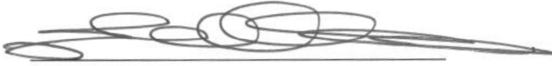

Michael Gelchie
Sierentz North America

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Ludovic Herve
Sucden Americas Corp

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Charles Tozer
Tate & Lyle Sugars

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Sean Diffley
Managing Partner
Tropix Capital Management LLC

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Eric Milhoua
UBS

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DAVID FRANSEN
VITOL S. A.