February 10, 2014

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

RE: Aggregation of Positions
RIN 3038-AD82

Dear Ms. Jurgens:

ICE Futures U.S., Inc. ("ICE Futures" or "Exchange") submits these comments in response to the Notice of Proposed Rulemaking dated November 15, 2013 (the "Notice") regarding modifications to Part 150 of the Commission's regulations. 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. We appreciate the opportunity to submit comments on this important subject and encourage the Commission to carefully consider all of the comments it receives before moving forward with any final rulemaking.

Summary

- Aggregation should be based on ownership and control, not solely on ownership.
- The proposed exemption from aggregation for greater than 50% owned-entities is structured in a way that makes it largely unavailable to market participants.
- The Commission should make clear that the current reporting regime for large trader positions would be maintained and not affected by the new aggregation rules.
- The Commission should provide clarity on issues related to EFRPs and block trades among affiliated members of an aggregate group.

Owned Entity Exemption from Aggregation

The proposed amendments to Part 150, with certain limited exceptions, generally track the aggregation rules that were included in the Part 151 Regulations which formed part of the Commission's earlier position limit rulemaking that was not implemented. The Commission received extensive comments on the Part 151 aggregation proposal, many of which challenged the idea that aggregation should be automatic, without regard to the independence of trading

decisions and control. The Exchange has always considered both ownership and control when determining whether to aggregate owned entities for position limits, and believes that any decisions about aggregation should be made on a case by case basis after considering all of the relevant facts. There are numerous instances in our markets where companies with 100% common ownership nonetheless operate in a manner where there is complete independence of decision-making and control of the trading decisions. The Exchange does not automatically aggregate such commonly owned entities, and based on the comment letters submitted in response to the original Part 151 amendments, it would seem that market participants across a broad variety of futures markets agree with this approach. [1]

In the Notice the Commission has proposed reasonable criteria and a notice filing process to support disaggregation where the ownership interest in an owned entity is less than 50%; but it does not otherwise extend those criteria to instances where there is a greater ownership interest. The standards put forth by the Commission are relevant measures of independence whether the owned entity is a wholly-owned subsidiary or less than 50% owned. Instead, the Commission has proposed additional, unworkable, tests for majority-owned entities and an exemption application process that is completely open-ended. Moreover, the exemption would not be available to any firm which is required under GAAP to file consolidated financials with its parent.

The exemption in the proposed Regulation for majority-owned entities conditions relief on the ability of the owned entity to certify that all of its positions are bona fide hedging transactions or, alternatively, that non-hedging positions are no greater than 20% of the applicable position limit. The Commission does not explain in the Notice why a hedging standard was grafted into the exemption. However, it would seem that any firm that can attest to all its positions being bona fide hedges would also be eligible for a hedge exemption from applicable speculative position limits, and therefore would not need disaggregation relief. To the extent that a firm might nonetheless want to rely on the hedging representation, the Commission has further restricted that option by narrowing the scope of the hedging definition in its companion rulemaking on position limits. If adopted, the narrower definition will make it even more difficult for a firm to make the hedging representation called for by the proposed exemption. Consequently, commercial firms seeking disaggregation of majority-owned entities would be left with no recourse but to rely on the 20% prong of the test.

The Commission has given no justification for selecting a speculation threshold of 20%, or any percentage, as an appropriate measure, and we believe the extent to which a firm engages in non-hedging activity is not dispositive of whether disaggregation is appropriate; rather, the existence of independent trading control and decision making should be the sole relevant consideration. Even if this factor were meaningful, it would be impossible for a trader to ensure compliance with any such benchmark from day to day, particularly if the trader carries option positions. Because the futures equivalent position of an option will fluctuate daily based on the delta ratio published each day, the position size and consequently compliance with any percentage standard will also change daily. If the position exceeds the 20% test at any time as a result of such changes, the proposed Regulation requires immediate aggregation for at least 3 months—a period of time that seems randomly selected. In such a case, it appears that a new

[1] See, e.g., June 2012 letters from Commodity Markets Council and The Working Group of Commercial Energy Firms, respectively.

request for exemption may be filed only if and when *all* the positions of the owned entity qualify as bona fide hedges. As a result, it seems likely that reliance on the 20% prong of the test will be a risky undertaking for any firm that uses options in its trading strategy. This leaves the Commission's proposed exemption for majority-owned entities largely unavailable to market participants.

More fundamentally, however, the exemption is not self-executing; in order to be eligible for disaggregation under this particular exemption, a formal application with numerous certifications must be filed with the Commission--- but there is no time frame for action by the Commission or requirement that the Commission respond to the exemption request at all. Such a process seems intended to discourage or avoid exemption requests.[2] Because traders must be in compliance with applicable position limits at all times, an open-ended process such as the one proposed makes it highly unlikely that any firm will actually seek an exemption. Given all of these circumstances, a firm having a majority ownership interest in an owned entity will have no choice but to aggregate unless one of the other, narrowly-focused exemptions is applicable to its particular set of circumstances and regulatory status. At a minimum, the Commission should establish an objective process under which exemption requests can filed and action by the staff in response to the filing must be taken by a specified time following the exemption request..

Other Aspects of the Proposed Rulemaking

The Commission has requested feedback on whether the proposed regulations are concise and has asked for comments to identify areas which might require further clarity.

Position Reporting. The Exchange believes the Notice creates uncertainty regarding the impact which the proposed amendments would have on the reporting of large trader positions. In the Exchange's experience, reporting firms currently aggregate accounts for reporting purposes by ownership and control, mirroring the aggregation procedures currently in effect at the Exchange. Any additional aggregation, as needed, is then applied in the market surveillance system of the Exchange based upon our knowledge of the firms' relationships and discussions with the firms. If reporting firms must modify their procedures to aggregate and report positions based on ownership alone, it would create significant confusion to market participants who rely on such data, particularly in the spot month, as it would reflect open interest calculated on the basis of a completely different set of rules.[3] In the discussion accompanying the Federal Register

[2] The Commission's requirement that the owned entity not be required to consolidate its financials with those of the parent under GAAP further ensures the unavailability of the disaggregation exemption.

[3] For example, if two entities are wholly-owned subsidiaries of the same parent company, operate separately and have accounts at the same reporting FCM, the positions of the subsidiaries are currently reported to the Exchange *separately* in large trader reports and open interest, and each firm is subject to spot month position limits which restrict the size position they may hold during the notice period of physically delivered commodities, absent the availability of an exemption. Under the Commission's aggregation rules, however, both firms could carry large positions on opposite sides of the market but would only report a small aggregate position. If the contracts held on one side were lifted or rolled (due to the needs of one firm), the other firm's position would be left exposed and the firm would immediately need an exemption or could be forced to precipitously reduce its positions. This could be highly disruptive to the market during the period leading up to the time when spot month position limits take effect, during which time open interest is closely monitored by traders as a gauge of liquidity and a factor which influences the timing of their own transactions, such as rolling positions. Such unexpected trading, especially if it results in

release of November 18, 2013 adopting the final rules on Ownership and Control Reports, the Commission stated that "[a]ll reporting parties should continue to provide position reporting based on control of a special account." However, the Part 151 aggregation proposal did not provide such clarity and resulted in some confusion regarding whether reporting of large trader positions and, consequently, open interest, would need to be made consistent with the proposed aggregation rules. It therefore would be helpful for the Commission to make clear that the current reporting regime would be maintained and not affected by whatever form the final aggregation rule takes.

Transactions Between Aggregate Members. The proposed rules create uncertainty regarding the interplay between aggregation and the position limits which have been proposed in a separate rulemaking. For example, the Commission should confirm that an exchange will continue to be permitted to grant separate exemptions to commonly owned affiliates when the affiliates are required to be aggregated. The Commission should also confirm that if firms that are aggregated submit separate Form 204s to the Commission, that the quantities reported roll up to the aggregate level for position limit purposes. It should clarify whether position limits apply at both the aggregate and entity level.

In addition, the aggregation rules raise issues related to EFRPs among affiliated members of an aggregate group. The Exchange permits commonly owned entities that are under separate decision-making and trading control to transact EFRPs and block trades with each other. If these entities will be required to aggregate positions for limit purposes, the Commission should indicate whether it would consider EFRPs and block trades executed between such firms to be prohibited trades under the CEA.

The Exchange appreciates the opportunity to comment on the Commission's proposed rulemaking. If you have any questions regarding the matters addressed in this letter, please contact Susan Gallant at 212.748.4030, or the undersigned at 212.748.4083.

Sincerely,

Audrey R. Hirschfeld
SVP and General Counsel
ICE Futures U.S., Inc.

cc: Riva Adriance
Mark Fajfar
Stephen Sherrod

---

large volume and changes in open interest, could obscure the value of open interest data and could be highly disruptive to an orderly liquidation of the expiring contract.