By Commission Website

February 10, 2014

Ms. Melissa D. Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Position Limits for Derivatives (RIN 3038-AD99) and the Aggregation of Positions (RIN 3038-AD82)

Dear Ms. Jurgens:

Olam International Limited ("Olam") appreciates the opportunity to submit these comments in connection with the above-referenced notices of proposed rulemaking establishing position limits and aggregation requirements for agricultural and exempt commodities. Olam operates a broad range of international agribusinesses that are engaged in the production, processing and/or merchandising of a wide variety of agricultural commodities, including: cocoa, coffee, cotton, sugar, grains and dairy products. Olam uses a variety of U.S. and non-U.S. exchange-traded futures and options and over-the-counter derivatives to hedge its cash market exposure. Our comments are limited to the matters identified below, and we do not otherwise express a view with respect to other provisions of the proposed rules.

Olam believes that the Commodity Futures Trading Commission ("Commission") should allow the exchanges to continue to set position limits and accountability levels rather than expanding speculative position limits at the federal level. Should the Commission insist on implementing speculative position limits, Olam urges the Commission to revise the proposed regulations and related guidance by: (i) adopting spot-month position limits based on exchange estimates of deliverable supply; (ii) refraining from implementing non-spot-month limits until it has complete and accurate open interest data; (iii) reaffirming the Commission's longstanding view that commercial enterprises may separately hedge their gross cash market positions regardless of their net cash market positions; (iv) recognizing position limit exemptions for intermarket and intramarket spread positions; (v) confirming that a non-transferable repurchase right granted in connection with a hedged commodity transaction does not have a position limit impact; and (vi) expanding the definitions of an eligible entity and independent account controller so that they may be utilized by foreign market participants that perform a similar role or function subject as such to foreign regulation.

I. Overview of Olam International Limited

Established in 1989 and headquartered in Singapore, Olam is a leading integrated producer, processor and global supply chain manager of agricultural commodities. We operate in over sixty countries, across sixteen platforms and serve more than 13,600 customers worldwide. The company has a direct presence in 65 countries and supplies high quality, reliable and traceable agricultural commodities to many internationally recognized companies located throughout the world.

Supply Chain

Olam's core supply chain business involves buying, storing, shipping and delivering a variety of agricultural commodities (*e.g.*, cocoa, coffee, sugar, grains, cotton, palm oil, dairy and rubber) from the farm gate in the producing countries to the factory gate of our customers in the destination markets.

Midstream

In addition, Olam also operates in the midstream part of the value chain by processing some of its raw materials. For example, Olam owns food processing plants including coffee manufacturing, cocoa grinding and sugar milling.

Upstream

Olam has also built and continues to build evolving upstream businesses by growing several agricultural commodities. For example, Olam owns and operates coffee, palm and rubber plantations in Africa, coffee and cocoa plantations in Asia, coffee plantations in Brazil, grain farms in Russia and Argentina and dairy farms in Russia and Uruguay.

II. The Commission Should Continue to Allow Exchanges to Set Speculative Position Limits

Olam believes the Commission's concerns related to the potential harm from "excessive speculation" could be better dealt with by exchanges through existing market surveillance programs on a contract-by-contract basis, rather than through federally mandated speculative position limits. Exchanges, in coordination with the Commission, have developed an expertise in maintaining orderly markets, including setting appropriate reporting levels, position limits and accountability levels for the energy, metals and agricultural markets. This system provides the flexibility necessary to prevent disruptive speculation while preserving transparent and liquid markets. Should the Commission insist on implementing speculative position limits, Olam urges the Commission to consider the suggestions below.

III. The Commission Should Adopt Spot-Month Limits Based on Exchange Estimates of Deliverable Supply

Any federal position limit structure that includes spot-month position limits should be based on current and accurate deliverable supply estimates. The Commission's proposal would establish separate spot-month limits for physically delivered and cash settled contracts based on current exchange limits. The Commission invited comment on whether it should set spot-month limits based on the alternative deliverable supply estimates provided by CME Group. Olam believes that the Commission should utilize the alternative estimates of deliverable supply provided by CME Group and should perform a similar analysis for core referenced futures contracts listed on other exchanges including ICE Futures U.S.

The Commission should continue to rely on the exchange's experience and expertise in calculating deliverable supply and should set the spot-month limit at approximately 25 percent of the deliverable supply as calculated by the exchanges. Olam believes that relying on current estimates of deliverable supply that are provided by the exchanges and verified by the Commission would support higher spot-month limits. Failing to implement spot-month limits at these higher levels may limit the liquidity available to Olam and other bona fide hedgers and may impede price discovery in the spot month.

IV. The Commission Should Not Adopt Non-Spot-Month Speculative Position Limits Until it has Obtained Complete and Accurate Open Interest Data

The proposal would establish non-spot-month speculative position limits based on 10 percent of the open interest for the first 25,000 contracts and 2.5 percent of the open interest thereafter. Olam appreciates the work of Commission staff in collecting open interest data. We are concerned, however, that the Commission's open interest calculations did not include data from many over-the-counter transactions. We understand that, due to perceived inaccuracies certain data, the Commission did not include open interest information collected through large trader reporting or swap data repositories. We urge the Commission to refrain from adopting non-spot-month speculative position limits until it is able to incorporate reliable swap data. If the Commission implements non-spot-month speculative position limits based on a portion of the open interest, these limits will be overly restrictive.

In addition, while we do not believe that trade options should be subject to position limits, if they are, the Commission should also consider trade options when calculating open interest.

V. Market Participants Should Remain Free to Separately Hedge Cash Market Positions Regardless of Their Net Cash Market Position

The proposed regulations included interpretive guidance that would limit bona fide hedging treatment for market participants that engage in gross hedging, *i.e.*, separately hedging (or refraining from hedging) related long and short cash market positions. Specifically, the Commission provided the following guidance:

> [A] merchant may have sold a certain quantity of a commodity for deferred delivery in the current year (*i.e.*, a fixed-price cash sales contract) and purchased that same quantity of that same commodity for deferred receipt in the next year (*i.e.*, a fixed-price cash purchase contract). Such a merchant would be exposed to value risks in the two cash contracts arising from different delivery periods (that is, from a timing difference). Thus, although the merchant has bought and sold the same quantity of the same commodity, the merchant may elect to offset the price risk arising from the cash purchase contract separately from the price risk arising from the cash sales contract, with each offsetting commodity derivative contract regarded as a bona fide hedging position. However, if such a merchant were to offset only the cash purchase contract, but not the cash sales contract (or vice versa), then it reasonably would appear the offsetting commodity derivative contract would result in an increased value exposure of the enterprise (that is, the risk of changes in the value of the cash commodity contract that was not offset is likely to be higher than the risk of changes in the value of the calendar spread difference between the nearby and deferred delivery period) and, so, the commodity derivative contract would not qualify as a bona fide hedging position.[1]

The Commission based this guidance on the "economically appropriate test," which provides that bona fide hedging transactions or positions must be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise. The Commission added that, in determining whether a position is economically appropriate to the reduction of risks, an enterprise generally should take into account all inventory or products that it owns or controls or has contracted for purchase or sale at a fixed price.

A. The Commission's Limitation of Gross Hedging is not Consistent with the Historical Application of the Economically Appropriate Test

The Commission's current interpretation of the "economically appropriate test" represents a significant departure from the longstanding view that a trader may classify any long or short derivatives position that is offset by its gross cash position as a bona fide hedging position irrespective of the trader's net cash market position.[2] Although it was recently added to section

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1 Position Limits for Derivatives, 78 Fed. Reg. 75680, 75709 (December 12, 2013).

2 *See* Definition of Bona Fide Hedging and Related Reporting Requirements, 42 Fed. Reg. 42748, 42750 (August 24, 1977) ("One commentator objected to the provisions of the proposed enumerated listing in paragraph (2) which continue to permit persons to classify as bona fide hedging any purchase or sale for future delivery which is offset by their gross cash position irrespective of their net cash position (so called 'double hedging'). The Commission is not persuaded by this commentator's statement that the provisions operate to the detriment of domestic agricultural producers. In addition, the Commission refers to the numerous written and oral comments it has previously received on the topic of hedging gross positions. In summary, these comments were to the effect that net cash positions do not necessarily measure total risk exposure and in such cases the hedging of gross cash positions does not constitute 'double hedging'.")

4a(c)(2)(A)(ii) of the Commodity Exchange Act ("CEA"), the requirement that bona fide hedging transactions or positions must be economically appropriate to the reduction of risk in the conduct and management of a commercial enterprise is not new. As the Commission acknowledged, this language mirrors the Commission's definition of bona fide hedging, which was originally adopted in 1977.[3]

Both the Commission and its predecessor, the Commodity Exchange Authority, have consistently allowed market participants to claim bona fide hedging relief when hedging their gross cash market positions. In Administrative Determination No. 167 (February 13, 1959), the Administrator of the Commodity Exchange Authority stated, "[T]here has never been any question as far as I am aware that a long futures position against a fixed-price sales commitment lawfully qualifies as a bona fide hedge within the meaning of the Commodity Exchange Act. In other words, there is no requirement in the statute that restricts a merchant or processor to hedging his net position only. If he sees fit to do so, he may hedge his fixed-price purchase commitments by selling futures and at the same time hedge his fixed-price sale commitments by buying futures."[4]

For its part, the Commission requested comments on the definition of "bona fide hedging" shortly after the agency was formed in 1975.[5] The Commission specifically asked whether it should permit hedging exemptions only for net (and not gross) cash positions. The Commission took the then-unusual step of convening public hearings on this subject to ensure that it had an opportunity to obtain the views of the exchanges, market participants and other interested parties. Based on the data and information presented, the Commission conclusively determined that net cash exposure does not accurately measure total risk exposure due to a variety of factors, including, but not limited to: differences in the timing of cash commitments, the locations of inventory and differences in grades or types of the cash commodity involved.[6]

After evaluating these comments, the Commission announced that it intended to leave unchanged the provisions of the definition of "bona fide hedging" and would continue to allow market participants to claim bona fide hedging relief when they used futures contracts to offset the price risk of all or a portion of their gross cash market positions. The Commission explained that it was not persuaded that gross hedging was detrimental to the markets and that a market participant could continue to classify as a bona fide hedge any purchase or sale of futures contracts that was offset by its gross cash position regardless of that person's net cash position.[7]

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[3] 42 Fed. Reg. 42748 (August 24, 1977).

[4] Letter from Roger R. Kauffman, Administrator, Commodity Exchange Authority, to Reid Bondurant, Cotton Exchange (February 13, 1959) (on file with author).

[5] Definition of Bona Fide Hedging Request for Comment, 40 Fed. Reg. 34627 (August 18, 1975).

[6] Bona Fide Hedging Transactions or Positions, 42 Fed. Reg. 14832, 14834 (March 16, 1977).

[7] 42 Fed. Reg. 42748, 42750 (August 24, 1977).

B. The Commission's Limitation on Gross Hedging Would Impose a Substantial Burden on Commercial Enterprises

The limitation on gross hedging assumes a level of control and coordination that simply does not exist for many merchants like Olam. Olam operates through several distinct legal entities that trade through their own accounts and are responsible for their own profits and losses. Under the proposed regulations, Olam, which owns multiple legal entities, will be required to aggregate positions held by these entities even if their trading decisions are independently controlled. While Olam accepts the aggregation requirements, the limitation on gross hedging is particularly problematic for independently operated legal entities that are aggregated based on the ownership interest of a common parent. For example, assume Olam operates a procurement warehouse and a merchandising facility through two separate legal entities. The procurement warehouse has purchased twenty million pounds of cotton and has hedged this inventory with a short position of 400 spot-month futures contracts. A trader at the merchandising facility sells twenty million pounds of cotton and elects not to hedge the position, because she is aware of several large offers and believes she will be able to fill the commitment by the end of the day. She purchases fifteen million pounds of cotton by the end of the day and hedges the remaining portion of the fixed-price sale by purchasing 100 spot-month futures contracts.

Under the Commission's guidance, the instant the trader at the merchandising facility enters into the fixed-price sale, the company has exceeded the speculative position limit, because its cash market position is flat and its short futures position exceeds the 300 contract spot-month limit. To avoid violating the speculative position limit, the warehouse would need to lift its hedge or the merchandising facility would need to establish a long futures position prior to or contemporaneously with the execution of the cash market sale. This is true even if the warehouse and the merchandising facility operate through independently controlled business units, separate legal entities and trade through separate and distinct trading accounts.

The problem illustrated by this simple example will be very complex for companies like Olam that operate through numerous business units around the world. In order to comply with the Commission's guidance, there may be a need to establish a centralized hedging desk that constantly manages the enterprise's global cash market and futures positions on a real-time basis. Establishing a centralized hedging desk would be financially burdensome and difficult to implement.

While we agree that the overall risk of the company increased when the trader in the example above entered into the fixed-price sale, we firmly believe that this risk should be attributed to the unhedged cash market sale not the hedged cash market inventory, particularly, when two business units with a common parent operate through separate profit and loss centers. Allowing market participants to continue to hedge their gross positions regardless of their net cash market positions would enable merchandisers to continue to provide cash market liquidity by taking calculated risks without creating unnecessary speculative position limit concerns. This approach would also be consistent with the Commission's historical guidance on gross hedging.

VI. The Commission Should Recognize Exemptions for Intermarket and Intramarket Spread Positions in the Spot Month

Under the current position limit rules, exchanges are permitted to grant exemptions for certain spread or arbitrage positions in both spot and non-spot months. These exemptions play an important role in several commodity markets. Although the proposed regulations allow exchanges to grant exemptions for non-spot-month intramarket and intermarket spread positions, they eliminate the spot-month spread and arbitrage exemptions for physically delivered contracts that are currently recognized by some exchanges.

ICE Futures U.S., for example, recognizes a spot-month "cash and carry" exemption for certain physically delivered warehouse commodities, namely, the exchange's coffee, cocoa and frozen concentrate orange juice contracts. Exchanges grant cash and carry exemptions when the spread differential between the spot-month and next contract month exceeds the cost of carrying the position. Under these circumstances, Olam could achieve a positive financial outcome by taking delivery of a commodity in an expiring contract and delivering it during the next delivery period. The cash and carry exemption plays an important economic role because it helps stabilize the price relationship between the nearby and second delivery month. Without this exemption, these commodities are likely to experience greater price volatility during the expiration period.

In addition, a market participant with a long position in a deliverable physical commodity may be unable to utilize the futures market to liquidate a position. The ability to deliver physical commodities is particularly important during periods of financial stress when futures markets perform an important role of matching willing physical buyers and sellers while minimizing credit risks. As illustrated by these examples, removing cash and carry exemptions may cause unnecessary stress to the market at the worst possible times.

Certain exchanges have also granted exemptions for intermarket arbitrage positions. These arbitrage exemptions help ensure price continuity in an increasingly global marketplace. To provide the most utility, exchanges must be allowed to grant hedge exemptions for offsetting positions in the same commodity regardless of whether those positions were establish on a U.S. or a foreign exchange. If Olam can receive a favorable outcome by transferring hedges from one exchange to another, the exchanges should be permitted to recognize an exemption to the speculative position limits as we are incurring little risk and performing an important price discovery function. The Commission should also work with the exchanges to develop procedures that would allow the Commission to recognize an intermarket spread exemption granted by an exchange as a bona fide hedge for purposes of the Commission's position limits. We urge the Commission to recognize intramarket and intermarket spread exemptions in physically delivered contracts.

VII. The Commission Should Confirm that a Non-Transferable Repurchase Right Granted in Connection with a Hedged Commodity Transaction does not have a Position Limit Impact

ICE Futures U.S. Rule 4.06 allows market participants to engage in hedged commodity repurchase transactions in which a party providing inventory financing for storable physical commodities enters into an exchange of futures for physical ("EFP") transaction and grants their counterparty the non-transferable right, but not the obligation, to execute a second EFP within a specified time period that will have the effect of reversing the first EFP.[8] These transactions help commercial enterprises reduce exposure to price volatility and stabilize cash flow. For example, a merchant that owns a sizeable cash market position and corresponding short futures position may be required to make substantial variation margin payments in a volatile market. To stabilize its cash flow and improve its balance sheet, such a merchant may sell its cash market position to a financial institution that is willing to buy the hedged commodity position and grant the merchant the right to repurchase it, in exchange for a fee.

Olam is concerned that the non-transferable right to enter into a second EFP transaction granted in connection with these hedged commodity repurchase transactions could be deemed an option on a commodity and, therefore, a swap. We believe that these hedged commodity repurchase agreements are the type of commercial agreements, contracts and transactions the Commission intended to exclude from the definition of a swap.[9]

In the adopting release for the further definition of swap, the Commission stated that commercial agreements, contracts or transactions that involve customary business arrangements (including the purchase, sale lease or transfer of inventory) will not be considered swaps.[10] In determining whether agreements, contracts and transactions entered into by commercial entities are swaps, the Commission indicated that it would consider whether the agreement, contract or transaction: (i) contains payment obligations, whether or not contingent, that are severable; (ii) is traded on an organized market or over-the-counter; and (iii) whether they are entered into by commercial entities as principals to serve an independent commercial or business purpose other than for speculative, hedging or investment purposes.[11]

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[8] On November 1, 2013, the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange and Commodity Exchange submitted proposed rule revisions that, among other things, would expressly allow a party providing inventory financing for a storable agricultural, energy or metals commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, and grant to the counterparty the non-transferable right, but not the obligation, to execute a second EFP during a specified time period in the future which will have the effect of reversing the original EFP.

[9] Further Definition of "Swap," "Security-Based Swap,"' and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48246-48248 (August 13, 2012).

[10] 77 Fed. Reg. 48208, 48247 (August 13, 2012).

[11] Id.

The hedged commodity repurchase transactions satisfy all of these criteria. These transactions are entered into by commercial entities acting as principal, do not contain severable payment obligations and are not traded on an organized marketplace, but rather, are privately negotiated between two commercial parties. Each party to the transaction has an independent business purpose; the commercial enterprise is interested in improving its balance sheet and stabilizing its cash flows and the financial entity is interested in earning a financing fee. These transactions, taken on the whole, strongly resemble a structured finance lending relationship. In other contexts, the Commission has acknowledged that similar repurchase transactions are "functionally similar to collateralized loans, whereby cash is exchanged for unencumbered collateral."[12]

Any ambiguity related to the treatment of these transactions could inhibit legitimate inventory management transactions that are relied upon by many commercial enterprises. For these reasons, the Commission should confirm that the non-transferable right, but not the obligation, to execute a second EFP that is granted by a party providing inventory financing in connection with a transaction of these type will not have a position limit impact for either party.

VIII. The Commission Should Expand the Definition of Eligible Entity and Independent Account Controller to Include Foreign Entities that are Perform a Similar Role or Function Subject as Such to Foreign Regulation.

We urge the Commission to expand the definition of "independent account controller" and "eligible entity" to include foreign entities that perform a similar role or function subject as such to foreign regulation.

Under the current position limit rules, certain eligible entities have relied upon the independent account controller exemption to disaggregate client positions that are controlled by an affiliated independent account controller. To qualify for the independent account controller exemption, the eligible entity must be a commodity pool operator, the operator of a trading vehicle which is excluded or exempt from registration under certain Commission Regulations, a commodity trading advisor, a bank or trust company, a savings association, an insurance company or the separately organized affiliates of any of the above entities and the independent account controller must be registered as, or an associated person of, a registered futures commission merchant, introducing broker or commodity trading advisor.

Invenio Commodity Financials Pte. Ltd. ("Invenio"), an affiliate of Olam, operates as a Registered Fund Management Company in Singapore. Invenio manages non-U.S. client accounts that trade U.S. futures, options and swaps. This entity operates outside the U.S., does

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[12] Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 Fed. Reg. 78776, 78790 (December 19, 2011).

not have U.S. clients or customers and, therefore, is not subject to a U.S. registration requirement. Expanding the definition of eligible entity and independent account controller to include foreign registrants would allow entities like Invenio to obtain the same relief available to their U.S. registered counterparts without imposing an unnecessary regulatory burden.

IX. Conclusion

Thank you again for the opportunity to submit these comments. If the Commission has any questions regarding the matters discussed above, please contact the undersigned at 908-988-1928 or Stephan.Ariyan@Olamnet.com

Sincerely,

Stephan Ariyan
Vice President, Market Compliance