

July 7, 2014

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

Re: Reopening of Comment Periods – Position Limits for Derivatives (RIN 3038-AD99) and Aggregation of Positions (RIN 3038-AD82)

Dear Ms. Jurgens:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)¹ and the Securities Industry and Financial Markets Association (“**SIFMA**”)² support the Commodity Futures Trading Commission’s (the “**CFTC**” or “**Commission**”) continued efforts to evaluate the unintended impact that its rulemakings, promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”)³, are having on market participants. Similarly, we support the Commission’s efforts to revisit and refine those rules where necessary. These efforts are particularly important in the context of ensuring that the goals of Dodd-Frank, including the goal to bring lower costs and greater flexibility to end-users, are not lost in the implementation effort. We specifically support the Commission’s decision to host a public roundtable to consider additional viewpoints on its proposed rulemakings for position limits (the “**Position Limits Proposal**”)⁴ and aggregation (the

¹ Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: 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, DC, is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

³ Pub. L. No. 111-203 (2010).

⁴ Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013).

“Aggregation Proposal”),⁵ and we appreciate the opportunity to submit this comment letter in response to the Commission’s decision to re-open the comment period for the two outstanding proposals.⁶ As discussed herein, we agree that the Commission must take a careful and deliberate approach to issues related to (i) physical commodity hedges; (ii) the process for providing non-enumerated exemptions from the position limits rules; (iii) spot-month limits and a conditional exemption; and (iv) the aggregation rules.

In connection with supporting the decision to re-open the comment period on the Position Limits Proposal and Aggregation Proposal, we similarly endorse the measures that the Commission has taken to (i) mitigate the burden of the recordkeeping rules in CFTC Regulation 1.35(a),⁷ and (ii) expand the scope of counterparties that will be available for utility special entities when entering into utility swaps.⁸

I. Summary

We reiterate and reincorporate by reference the comments that we have previously submitted to the Commission with respect to the Position Limits Proposal, including the comment letters we submitted on January 11, 2011;⁹ March 28, 2011;¹⁰ January 17, 2012;¹¹ and most recently, February 10, 2014.¹² As explained in our most recent submission:

- We remain of the view that the Commission should not go forward with the Proposal until such time as it is able to demonstrate that the statutory prerequisites to imposing position limits have been satisfied and until such time as the Commission has meaningfully evaluated the costs and benefits of the rules it intends to impose.
- Should the Commission determine to go forward with the Proposal, the Commission should, among other things, abandon those aspects of the Proposal that would impose position limits outside of the spot month. As an alternative to those limits, the Commission should use its existing tools—surveillance capabilities, special call

⁵ Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013).

⁶ Position Limits for Derivatives and Aggregation of Positions, 79 Fed. Reg. 30762 (May 29, 2014).

⁷ See CFTC Staff Letter No. 14-60, available on the Commission’s website at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-60.pdf>; and CFTC Staff

Letter No. 14-72, available on the Commission’s website at:

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-72.pdf>.

⁸ See Exclusion of Utility Operations-Related Swaps With Utility Special Entities From *De Minimis* Threshold for Swaps With Special Entities, 79 Fed. Reg. 31238 (June 2, 2014).

⁹ Available on ISDA’s website at: <http://www.isda.org/speeches/pdf/CFTC-Position-Limits-Pre-Comment.pdf>.

¹⁰ Available on the Commission’s website at:

<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33568>.

¹¹ Available on the Commission’s website at:

<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50066>.

¹² Available on the Commission’s website at:

<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59611>.

authority, and oversight authority of designated contract markets and swap execution facilities—to address concerns related to excessive speculation outside of the spot month.

Separately, with respect to timing and implementation, we believe that the Commission may be able to make the most progress by taking a sequenced approach. Specifically, we recommend that the Commission first focus on reviewing comments and finalizing rules with respect to the Aggregation Proposal. That would allow the Commission to continue to assess comments and study the potential impact of the position limit rules without the undue pressure that would accompany an effort to finalize both sets of rules simultaneously. In addition, providing market participants with time to review and understand the final aggregation rules prior to moving forward with the Position Limits Proposal will help identify and avoid unintended consequences that may occur if the limits themselves are finalized before a complete analysis of their potential impact is possible.

II. *Bona Fide Hedging*

With respect to the proposal to provide exemptions from position limits rules for bona fide hedging positions, we support and endorse those comments that urge the commission to recognize the actual hedging practices of commercial market participants. An unworkable hedge exemption will significantly raise costs for end-users and, as a direct consequence, increase prices for the U.S. consumer, the very constituency lawmakers seek to protect. Therefore, the Commission should ensure that the scope of its definition of bona fide hedging positions adequately covers trading and hedging programs that utilize gross hedging, cross-commodity hedging, and/or anticipatory hedging strategies. See, for example, the bona fide hedging comments from the Commercial Energy Working Group (Feb. 10, 2014),¹³ Coalition of Physical Energy Companies (Feb. 10, 2014),¹⁴ Morgan Stanley (Feb. 10, 2014),¹⁵ National Grain and Feed Association (Feb. 10, 2014),¹⁶ National Council of Farmer Cooperatives (Feb.10, 2014),¹⁷ Futures Industry Association (Feb. 7, 2014),¹⁸ American Gas Association (Feb. 10, 2014),¹⁹ Natural Gas Supply Association (Feb. 10, 2014),²⁰ SIFMA Asset Management Group (Feb. 10, 2014),²¹ American Petroleum Institute (Feb. 10,

¹³ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59693>.

¹⁴ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59662>.

¹⁵ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59708>.

¹⁶ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59681>.

¹⁷ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59613>.

¹⁸ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59595>.

¹⁹ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59632>.

²⁰ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59673>.

²¹ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59709>.

2014),²² National Cattlemen’s Beef Association (Feb. 10, 2014),²³ and National Association of Wheat Growers (Feb. 10, 2014).²⁴

In addition to encouraging the Commission to take a workable and practical approach to defining bona fide hedging position, we reiterate the comments from our February 10, 2014 submission that focus on the utilization of existing Commission and exchange tools to accomplish the goals of the Position Limits and Aggregation Proposals while avoiding delays and unnecessary costs. For example, as the Commission remains constrained by limited resources and staffing, we specifically suggest that the Commission delegate to registered designated contract markets (“DCMs”) and swap execution facilities (“SEFs”) part of the management, subject to Commission review and oversight, of the hedge exemption process, including the review of filings and approval of applications related to claiming a bona fide hedge exemption.

III. Non-Enumerated Hedges

To the extent that the Commission adopts final position limits rules, we support the inclusion of a process to apply for, and receive exemptions for, bona fide hedging positions beyond those that may be enumerated in any final rule. The Commission should delegate this function to either specific CFTC staff, or to registered DCMs and SEFs, so that requests for exemptions are not unnecessarily delayed. In addition, the Commission should include an appropriately flexible standard of review that will allow for the recognition of actual hedging practices used by commercial market participants.

IV. Conditional Spot-Month Limits

We also support the efforts of the Commission to seek additional comments on the setting of spot-month limits in physical delivery and cash-settled contracts as well as comments on a conditional spot-month limit exemption. As we noted in our February 10, 2014 submission,²⁵ if adopted, a conditional exemption to the spot-month limit should not be confined to traders that only hold cash-settled contracts. Instead, the Commission should explore a higher cash-settled spot-month limit that does not prohibit participation in the physically settled market.

V. Aggregation

With respect to the Aggregation Proposal, we support the Commission’s efforts to clarify and formalize the instances in which aggregation is required. However, we encourage the Commission, in adopting the final aggregation exemptions, to take an approach that is practical and workable. For example, we support the comments of the Private Equity Growth Capital Council regarding the

²² Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59694>.

²³ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59624>.

²⁴ Available on the Commission’s website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59688>.

²⁵ See footnote 12, above, at 31.

proposed aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity—this exemption should not be tied to a non-transparent and burdensome application process.²⁶ In addition, continuing to recognize the resource and staffing constraints faced by the Commission, we believe that the Commission should leverage the knowledge and best practices of DCMs and SEFs at it administers the aggregation program. Therefore, the Commission should look for opportunities to delegate functions as appropriate, and subject to Commission review and oversight, to the exchanges.

VI. Conclusion

We appreciate the opportunity to provide these comments and we stand ready to provide any assistance in this process that might be helpful to the Commission.

Sincerely,



Stephen O'Connor
Chairman
ISDA



Kenneth E. Bentsen, Jr.
President and Chief Executive Officer
SIFMA

cc: Honorable Timothy G. Massad, Chairman
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner

Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel

²⁶ Available on the Commission's website at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59650>.