Atlanta Calgary Chicago Houston London New York Singapore

August 4, 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 the "Exchange") appreciates the opportunity to submit an additional 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. which is the leading global network of regulated exchanges and central counterparty clearing houses for financial and commodity markets. This letter supplements comments submitted on this proposal by the Exchange on February 10, 2014.[1]

As background, the Exchange lists contracts in a broad array of physically-delivered, 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 maintenance and oversight of these markets by ICE Futures.

<u>Process for Obtaining a Non-Enumerated Hedge Exemption</u>

The Commission has requested comments on specific aspects of the proposed rules including hedges of a physical commodity by a commercial enterprise and the process for

[1] The letter included discussion and an attachment that questioned the inclusion of the Sugar No. 11 contract as a product subject to Federal position limits as it has no connection with interstate commerce. Sugar delivered against the contract is not produced in the United States, and under the current U.S. sugar program provisions only a *de minimis* volume of sugar traded against the contract is imported into the U.S.

obtaining a non-enumerated hedge exemption. The Exchange's comment letter dated February 10, 2014 included discussion of how the proposed rules conflict with commercial market practices for some of our commodities. It was also noted that 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 positions coupled with the absence of a clearly defined administrative process to grant non-enumerated hedge exemptions is likely to have an adverse effect on commercial market participants and generate much uncertainty in the markets.

For example, ICE Futures rules require the Exchange to respond to exemption requests within five business days of submission of the required information and statements. This rule provides commercial market participants with the certainty needed to manage their risks effectively. At a minimum, a time-limited process for the consideration of non-enumerated hedge exemption requests, such as the one currently provided in Commission Regulation 1.47, should be included in the new rules to the extent that the Commission, rather than the contract markets, will be the authority reviewing such requests.

At the June 19, 2014 Position Limits Roundtable, the possible retention of Regulation 1.47 was discussed along with alternatives to the procedure contained in that Regulation, such as exchange review and approval. As stated in the Exchange's February 10, 2014 letter, we believe that the current structure—whereby the Commission oversees certain enumerated agricultural commodities while the listing exchanges oversee their other products—reflects an efficient allocation of responsibility that ensures commercial market participants will continue to receive responses to exemption requests in a timely manner. As mentioned at the Roundtable, multiple requests for similar, non-enumerated hedge exemptions could be discussed among the relevant exchanges and with the Commission to ensure that a consistent approach is applied in the review and decision-making of such requests.

The Exchange has always employed general criteria that must be satisfied when reviewing and granting exemptions for hedging transactions or positions that are not specifically enumerated in Commission Regulation 1.3(z). The overarching standard in each case is that the transactions and/or positions must be consistent with risk management strategies for the relevant commercial market. Applying this principle allows the Exchange to recognize the fundamental differences among the commercial markets for the physical commodities underlying its contracts and the differing commercial market practices that have developed in the countries where these commodities are grown, merchandised, processed and consumed. Commercial market participants should be able to continue to use these risk management strategies that have worked successfully for decades without harming Exchange markets.

Other criteria used by the Exchange when reviewing exemption requests for non-enumerated hedging transactions include the requirement that the positions and/or transactions must reflect current obligations. Anticipated obligations are considered, as appropriate, and the factors used for evaluating requests based on anticipated obligations

include, but are not limited to, the requestor's historical activity in the relevant commercial market and current futures and cash market conditions. In general, the Exchange uses a facts and circumstances approach when reviewing such exemption requests and does not believe a bright-line test to be appropriate for this purpose.

Hedges of a Physical Commodity

Most of the Roundtable participants echoed comments in the Exchange's February 10, 2014 letter, that the proposed rules and definition of bona fide hedging positions conflict with commercial market practices in many markets, including the sugar, cocoa, coffee and cotton markets, and could negatively impact the ability of commercial market participants to continue to hedge their risks using Exchange contracts. The failure to fully recognize unfixed price commitments[2] as bona fide hedging transactions will interfere with existing commercial market practices in many Exchange markets. Most of the Roundtable participants agreed that unfixed price contracts are binding legal obligations that represent risks which many commercial entities chose to manage through futures and options contracts listed on an exchange. It was noted at the Roundtable that commercial market participants face many risks in addition to price risk and have developed strategies to manage all such risks in the manner that they deem most economically appropriate.

The importance of recognizing anticipatory merchandising as hedging was also stressed in the Exchange's February 10, 2014 letter and by many of the Roundtable participants. As previously explained, merchants play a critical role in the commercial markets underlying Exchange contracts. These entities provide liquidity and take on varying risks such as counterparty, quality, quantity, transportation and storage for producers, end-users and other commercial market participants. They effectively bridge the gap between other commercial market participants and their activities are critical to ensuring convergence and orderly contract expirations. The Commission needs to recognize this important commercial activity.

Aggregation Based on Ownership

The Exchange also submitted a comment letter on February 10, 2014 regarding the Commission's proposed aggregation rules. As noted in that letter and by many of the Roundtable participants, the Exchange supports the continuation of Exchange procedures which base aggregation on ownership and control and do not set a fixed percentage of ownership that triggers aggregation without consideration of the specific circumstances of a particular entity. Rather, we support a facts and circumstances approach that permits disaggregation of commonly owned affiliates that is conditioned on independence of control over the trading decisions of the affiliated companies.

As noted in our comment letter, the proposed aggregation rules also raise issues related to EFRPs among affiliated members of an aggregate group. Most exchanges permit commonly owned entities that are under separate decision-making and trading control to

[2] Unfixed price contracts are known as on-call contracts in the commercial cotton market.

transact EFRPs and block trades with each other. If these entities are required to monitor aggregated positions to ensure compliance with position limit rules, the Commission should indicate whether it would consider EFRPs and block trades executed between such firms to be prohibited trades under the Commodity Exchange Act.

ICE Futures appreciates the opportunity to further comment on the proposed regulations and encourages the Commission to carefully consider the additional comments it received from exchanges and market participants at the Roundtable before moving forward with any final rulemaking. Please do not hesitate to 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: Stephen Sherrod
Riva Adriance