Kathleen Cronin
Senior Managing Director, General Counsel
Legal Department

August 4, 2014

VIA ON-LINE SUBMISSION

Ms. Melissa Jurgens
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Position Limits for Derivatives (RIN No. 3038-AD99); 78 Fed. Reg. 75,680 (Dec. 12, 2013)

Dear Ms. Jurgens:

CME Group Inc. ("CME Group")[1] submits these supplementary comments in response to the Commodity Futures Trading Commission's ("Commission" or "CFTC") "Position Limits for Derivatives," Notice of Proposed Rulemaking ("Proposal"),[2] "Aggregation of Positions," Notice of Proposed Rulemaking ("2013 Aggregation Proposal"),[3] and the June 19, 2014 Staff Public Roundtable to Discuss Position Limits for Physical Commodity Derivatives ("Staff Roundtable"). We separately provided comments on five times limits. This letter comments on the proposed hedging and aggregation standards.

Hedge Restrictions and Unintended Consequences

The revised hedging standards are unduly restrictive, costly and would have a negative impact on the market. Our comment letter dated February 10, 2014, particularized our concerns.[4]
We believe that the Proposal would harm the price discovery process by undermining the forces that promote convergence. Physical delivery contracts depend on the opportunity for delivery to force

[1] CME Group is the holding company for four separate Exchanges, including the Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX"), and the Commodity Exchange, Inc. ("COMEX") (collectively, the "CME Group Exchanges" or "Exchanges"). CME Clearing is one of the largest central counterparty clearing services in the world; it provides clearing and settlement services for exchange-traded contracts and over-the-counter ("OTC") derivatives contracts through CME ClearPort®. The CME ClearPort® service mitigates counterparty credit risks, provides transparency to OTC transactions, and brings to bear the Exchanges' market surveillance monitoring tools.

[2] Position Limits for Derivatives, 78 Fed. Reg. 75680 (December 12, 2013).

[3] Aggregation of Positions, 78 Fed. Reg. 68946 (November 15, 2013).

[4] CME Group Inc. Comment Letter on Position Limits for Derivatives submitted February 10, 2014, available at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436.

convergence with cash market prices. This physical-delivery mechanism supports price convergence between derivatives and their underlying commodities.[5] As articulated in our companion comment letter on the five times limit, also dated August 4, 2014, the Proposal's mutually-reinforcing hedge restrictions and five times limits would discourage commercials from using the physically delivered contract exemption. The Proposal dismisses the impact of this disincentive because, "hedgers and speculators exit the physical-delivery contract in order to, for example, roll their positions to the next contract month or avoid delivery obligations."[6] But, this is not a justification to drive them out of the contract during the delivery period.[7]

Aggregation Standards

The Commission's 2013 Aggregation Proposal aims to validate the unprecedented notion that hedging on an "enterprise-wide" basis across affiliated but independently organized and managed entities is conventional. We discuss the 2013 Aggregation Proposal specifically in a separate comment letter dated February 10, 2014.[8] Under the 2013 Aggregation Proposal, corporate ownership is not only an indicia of trading control or indicative of a potential financial interest in positions held in accounts, but an independent and sufficient basis for requiring aggregation absent Commission exemptive relief. Statements by many market participants at the Staff Roundtable, in our view, strongly supported the key premise of our aggregation comment letter – that equating an ownership interest in a separately organized entity (an "owned entity") with an ownership interest in the owned entity's futures and swaps "accounts"[9] is unauthorized by the Act and has not been a "longstanding" Commission precedent that has been consistently administered by the agency across all markets.[10]

We strongly urge the Commission to consider our prior experience with account aggregation standards in, for example, our financial, metals and energy markets. In these markets, the Exchanges designed their surveillance systems and programs[11] to look toward corporate ownership as the first trigger or indicia for aggregation which then prompted further engagement, additional inquiry, and closer scrutiny. If trading independence was not demonstrated upon engagement, positions were aggregated. Conversely, if trading independence was demonstrated, positions remained dis-aggregated. In other words, consistent with

[5] Price convergence is accomplished because a short futures position can become a sale of the underlying commodity at the futures price and a long futures position can become a purchase of the deliverable commodity. If futures and cash commodity prices diverge, the actual deliverable commodity can be marketed to bring equilibrium to a contract through convergence trades. A well-constructed physical-delivery futures contract therefore facilitates deliveries consistent with cash market practices to the maximum extent practicable.

[6] Position Limits for Derivatives at 75,770.

[7] If convergence falters, traders maintain their positions and participate in the delivery process.

[8] CME Group Inc. Comment Letter on Aggregation of Positions submitted February 10, 2014, available at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436.

[9] *See id.* at 10 to 15.

[10] *Id.*

[11] Exchanges maintain surveillance systems and programs which can identify patterns of trading by related entities further demonstrating the appropriateness of any aggregation or dis-aggregation.

Commission practice, the Exchanges can and have applied workable standards focused on trading control that looked to corporate ownership merely as potential indicia of control.

We request that the Commission reject the 2013 Aggregation Proposal's statutorily unauthorized owned entity standard. We also urge the Commission to adopt aggregation standards consistent with the following principles:

(1) Corporate ownership can reasonably function only as indicia of trading control;
(2) The corporate owner of a separately-organized operating company must not be treated more strictly than a passive investor in a pooled account that is a commodity pool;
(3) Any new exemptions issued by the Commission should be identified as safe harbors, as are the "exemptions" in current part 150 of the Commission's regulations, demonstrating compliance with CEA section 4a(a)(1) ; and
(4) Any such safe harbor or "exemptions" should be self-executing, streamlined, and include readily verifiable conditions focused on trading control comparable to existing dis-aggregation provisions for eligible entities where applicable.

Administering Un-Enumerated Hedging Exemptions

Furthermore, under Commission rule 1.47, in the case of a non-enumerated bona fide hedging position in a legacy agricultural contract, the Commission had 30 days to approve or deny an "initial statement" for a non-enumerated bona fide hedging exemption and 10 days to approve or deny a "supplemental report." The standards by which the Commission would deny such claims for an exemption were transparent: These claims had to comport with the general definition of bona fide hedging under Commission rule 1.3(z)(1). CME Group believes that eliminating the availability of exemptions for a "non-enumerated" bona fide hedging position is a damaging departure from currently effective (non-vacated) Commission rules. It is perhaps the most obstructive element of the Proposal's hedge exemption restrictions. We understand the Commission may have limited resources to review all non-enumerated hedge requests. However, insufficient resources is not an appropriate reason for limiting access to bona fide hedge exemptions, but rather a strong indication that the Proposal's scope has extended far beyond where it rightly should stop. As with other predicaments in which the Proposal places the Commission and its staff, this resource-based predicament is yet another Proposal-manufactured problem.

We further note that DCMs have a long history of reviewing hedging approaches and applying those approaches to facts and circumstances. This history and experience should not be ignored and should be leveraged to support this critical provision. The Proposal recognizes this in the context of excluded commodity hedges, as it provides that a position may qualify as a bona fide hedging position if it "[i]s enumerated in paragraph (3), (4) or (5) of this definition" or if "[s]uch position is recognized as a bona fide hedging position by the designated contract market or swap execution facility that is a trading facility, pursuant to such market's rules submitted to the Commission, which rules may include risk management exemptions consistent with Appendix A of this part."[12] The Commission would best serve the policy goals of protecting bona fide hedging position applicants by adopting the same standards as it has for excluded commodity hedges. Any enabling Commission rules for physical commodities, however, must explicitly protect the exchanges from subsequent retroactive penalties if their

[12] Position Limits for Derivatives at 75,823 (Proposed section 150.1 (definition of "bona fide hedging position")).

responsibilities are discharged diligently, in good-faith, and in conformance with Commission-reviewed exchange rules.

CME Group underscores that eliminating the non-enumerated exemptions does nothing to further the statutory goals of allowing commercial parties to "hedge their legitimate anticipated business needs."[13] To the contrary, the Proposal's approach would force businesses to forego hedging activities that become too difficult or costly to adopt if such activities risk approaching, let alone violating, position limits. The Proposal in part justifies eliminating the exemption for non-enumerated bona fide hedge positions because "almost all [non-enumerated bona fide hedging exemptions] were for risk management of swap positions related to the agricultural commodities subject to federal position limits."[14] This argument, however, is not relevant to energy or metals or non-legacy agricultural markets.

Commercial market participants utilize risk reduction practices in order to manage uncertainty and mitigate unwanted risk. Under currently effective (non-vacated) Commission regulations and exchange rules, commercial market participants are able to hedge their risks without concerns for regulatory risk so long as their hedge positions conformed to the general definition of bona fide hedging in Commission rule 1.3(z)(1) and the appropriate procedures were followed. This Commission process is workable, and no reasoned explanation is given by the Proposal for its elimination.

Accordingly, we urge the Commission to not adopt the Proposal's approach, and alternatively to endorse procedures similar to existing rule 1.47 and to permit and fully authorize exchanges to review and grant exemptions for non-enumerated hedging positions within a time-specific period. Any such enabling rules, however, must explicitly protect exchanges from subsequent retroactive penalties if their responsibilities are discharged diligently, in good-faith and in conformance with Commission-reviewed exchange rules.

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CME Group thanks the Commission for the opportunity to comment on the Proposal. Should you have any comments or questions regarding this submission, please contact me by telephone at (312) 930-3488 or by e-mail at Kathleen.Cronin@cmegroupcom; Thomas LaSala, Managing Director, Chief Regulatory Office by telephone at (212) 299-2897 or via email at Thomas.LaSala@cmegroup.com or Bruce Fekrat, Executive Director and Associate General Counsel by telephone at (212) 299-2208 or by e-mail at Bruce.Fekrat@cmegroup.com.

Sincerely,

Kathleen Cronin
Senior Managing Director,
General Counsel and Corporate Secretary

[13] CEA Section 4a(c)(1); 7 U.S.C. § 6a(c)(1).

[14] *See* Position Limits for Derivatives at 75,710.