



March 30, 2015

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

RE: Position Limits for Derivatives and Aggregation of Positions  
RIN 3038-AD99; 3038-AD82

Dear Mr. Kirkpatrick,

ICE Futures U.S. (“ICE Futures” or the “Exchange”) appreciates the opportunity to submit additional comments on the proposed rulemakings issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) setting forth new rules on position limits for derivatives and the aggregation of positions. 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 summarizes and supplements comments submitted by the Exchange on February 10, 2014, August 4, 2014 and January 22, 2015.

As background, the Exchange lists contracts in a broad array of international, 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”<sup>®</sup>, Cocoa, Sugar No. 11<sup>®</sup>, 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 rulemakings to the maintenance and oversight of these markets by ICE Futures.

The rules and procedures developed and used by the Exchange to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of its markets as those needs and practices have developed over time. As discussed below, and presented in our previous comment letters and in meetings with Commission staff and participants in our markets, the proposed rules conflict with commercial market practices for many of our commodities and could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts. If the proposed rules are

implemented without taking into account the issues discussed below, current risk management strategies for many commercial market participants will be restricted, which could ultimately result in higher prices for consumers of products that incorporate sugar, coffee and/or cocoa. Summarized below are the key issues which the Exchange believes threaten the utility of our agricultural futures and options contracts as risk management vehicles for commercial participants.

1. ***The Commission should adopt accountability levels rather than position limits for non-spot month positions.*** The position accountability regime has worked well for the Coffee “C”, Cocoa and Sugar No. 11 contracts for over 10 years and should be maintained. The data provided by the Commission in Table 11a demonstrates there are a significant number of unique persons that held positions in Exchange contracts above the proposed position limit levels in 2013 and 2014. If these persons are required to reduce their positions either because the positions are speculative or because they do not qualify as bona fide hedges under the proposed rules, the impact on the liquidity in these markets could be detrimental to the price discovery function that is critical to the market.

Further, the Commission has the statutory authority to adopt position accountability levels outside of the spot month pursuant to CEA Section 4a(a)(1)-(3). The Exchange understands that the Commission has concerns about whether it has the discretion to adopt accountability levels rather than hard limits outside of the spot month. The Exchange respectfully submits that several provisions in CEA Section 4a(a) authorize the CFTC to implement accountability levels. First, as discussed in a comment letter on the proposed position limit rules submitted by the Futures Industry Association dated February 7, 2014 (“FIA PL Letter”), the Commission can and should determine under Section 4a(a)(1) that hard limits outside the spot month are not necessary to prevent excessive speculation<sup>1</sup>. Second, Section 4a(a)(3) of the CEA authorizes the Commission to set limits “as appropriate.” This provision provides the Commission with discretion to determine whether and, if so, what types of limits are appropriate. Accountability levels, which operate as flexible limits because the Commission can order a market participant who exceeds a particular level to reduce its position, are more appropriate than hard limits outside the spot month because of their more limited impact on market liquidity and price discovery. Third, CEA Section 4a(a)(7) provides the Commission with broad discretion to exempt, “conditionally or unconditionally,” any swap or futures contract from any position limits requirement. Thus, in addition to subsections (a)(1) and (a)(3), this Section similarly enables the Commission to adopt accountability levels rather than hard limits outside the spot month.<sup>2</sup>

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<sup>1</sup> See FIA PL Letter at Sections III (page 6) and IV.D (page 12).

<sup>2</sup> ICE Futures supports the testimony of William McCoy, representing FIA, at the EEMAC meeting on February 26, 2015 discussing the Commission’s ability to adopt accountability levels outside of the spot month.

2. ***The proposed rules conflict with long-standing commercial market practices involving international agricultural commodities, such as the use of unfixed price commitments.*** The proposed rules only recognize unfixed price commitments as bona fide hedging transactions in limited circumstances<sup>3</sup> that often conflict with the typical provisions of physical contracts, particularly in the world sugar market. The failure to fully recognize these commitments as hedging transactions will prohibit commercial market participants from continuing to use risk management strategies that have worked well for years and have not been detrimental to the market.
3. ***Anticipatory hedging should be permitted for more than 12 months of unfilled anticipated requirements and unsold anticipated production to conform to current practice and contract month listing cycles. Further, anticipated merchandising needs should be recognized as hedging transactions.*** The failure to recognize anticipatory hedging beyond 12 months conflicts with the hedging programs of many commercial entities that typically hedge larger quantities than provided for in the proposed rules. The proposed rules also fail to recognize the critical role that merchants play in Exchange agricultural markets.
4. ***Exchange sugar contracts should not be subject to the proposed restrictions on the definition of bona fide hedging during the last three trading days of an expiring contract month because these contracts differ fundamentally from other physical-delivery agricultural contracts.*** Unlike other Exchange agricultural products, the Sugar No. 11 and Sugar No. 16 contracts do not have a notice period preceding last trading day. As a result, these contracts are actively traded through last trading day and should not be subject to the proposed restrictions, which would fundamentally change the expiration of the contract.
5. ***The proposed rules for spread exemptions require clarification and eliminate an existing exemption that should continue to be permitted.*** Clarification is needed with respect to exemptions for intermarket spread positions to permit the Exchange to grant exemptions for spread positions held in the Exchange's Cocoa contract and the ICE Futures Europe Cocoa contract. Further, the Exchange should be permitted to grant spot month cash and carry exemptions for Exchange contracts requiring warehouse deliveries (Cocoa, Coffee "C" and FCOJ-A) because these exemptions clearly assist in ensuring an orderly expiration.
6. ***The proposed rules would broadly transform the role of the Commission in the daily administration of position limits and the granting of hedge exemptions, from an oversight role to direct regulation of markets over which the***

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<sup>3</sup> The proposed rules recognize offsetting unfixed-price cash commodity sales and purchases as hedging transactions provided that the positions are not held during the last three or five days of trading of a delivery month. Many commercial sugar contracts permit the price to be fixed as late as the last trading day of a delivery month and without an offsetting unfixed-price contract in another month. Further, industry practice routinely permits prices to be fixed months after the expiration of a delivery month, with the pricing and associated hedge rolled to later futures contracts.

***Exchange and other exchanges, respectively, currently exercise such authority.*** Given the significant time and resources that such an undertaking would require and the time sensitive nature of exemption requests, we believe that the current structure—whereby the Commission oversees certain domestic agricultural commodities while the listing exchanges oversee their other products—reflects an efficient allocation of responsibility and resources that ensures commercial market participants will be able to continue to hedge their risks in a timely manner. We believe that our contracts currently work well, both from the perspective of commercial market participants and Exchange regulators, and that the current regulatory regime for these products-- which is overseen by the CFTC and incorporates rules subject to CFTC review--, should remain in effect. Accordingly, the exchanges should continue to exercise the authority to grant non-enumerated hedge exemption requests pursuant to their rules and procedures.

Further, the Commission should expressly confirm that neither the exchange, nor a market participant that relies in good faith on an exemption granted by an exchange, would be subject to enforcement action in the event the Commission later disagreed with the exchange determination.<sup>4</sup> In other words, the Commission's views would be relevant to future determinations by the exchange but would not be retroactively applicable to positions already established pursuant to the exemption. By providing this certainty to the market, the Commission would be acting consistent with Regulation 38.6 which provides that:

“An agreement, contract or transaction entered into on or pursuant to the rules of a designated contract market shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of

(a) violation by the designated contract market of the provisions of section 5 of the Act or this part 38; or

(b) Any Commission proceeding ..... the effect of which is to alter, supplement, or require a designated contract market to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.”

7. ***Aggregation should be based on ownership and control, not solely on ownership.*** The Exchange supports 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.

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<sup>4</sup> Fraud or other misconduct in connection with obtaining an exemption would not be subject to protection from prosecution as the market participant would be unable to demonstrate good faith reliance on the exchange determination.

**Conclusion**

Should the Commission determine to move forward with aspects of the proposed rules, it should do so with a long transition period following adoption of final rules and in a manner that does not compromise hedge exemptions which have previously been granted or positions which market participants have established in good faith reliance on the current rules and procedures.

ICE Futures appreciates the opportunity to further comment on the proposed regulations and encourages the Commission to carefully consider the additional comments it receives 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  
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