



July 13, 2016

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: *Supplemental Notice of Proposed Rulemaking – Position Limits for Derivatives: Certain Exemptions and Guidance (RIN 3038–AD99)*

Dear Mr. Kirkpatrick:

ICE Futures U.S., Inc. (the “Exchange”) and ICE Swap Trade, LLC (collectively “ICE”) appreciate the opportunity to provide comments and recommendations to the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) in response to the Commission’s re-opening of the comment period for its proposed supplemental rules establishing position limits for derivatives (the “Supplemental Proposal”).¹ ICE also takes this opportunity to address some of the questions raised in the Supplemental Proposal in Annex 1 to this comment letter.² As background, ICE operates regulated derivatives exchanges and clearing houses in the United States, Europe, Canada and Singapore. As the operator of U.S. and international exchanges, trade repositories and a swap execution facility that list both OTC and futures markets, ICE has a practical perspective of the implications of the proposed position limit regime.

Executive Summary

As ICE has previously commented during this rulemaking process, ICE supports enabling the exchanges – as opposed to the Commission -- to recognize *bona fide* hedge exemptions from federal speculative position limits. Permitting the exchanges to recognize non-enumerated, spread, and anticipatory hedge exemptions for federally-established speculative position limits could resolve a number of issues arising from the unduly narrow hedge exemptions that were proposed in the 2013 Position Limits Proposal in a manner that leverages the expertise of the

¹ See *Position Limits for Derivatives: Certain Exemptions and Guidance*, 81 Fed. Reg. 38458 (June 13, 2016) (“**Supplemental Proposal**”). The proposal supplements the Commission’s December 2013 position limits proposed rule. See *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013) (“**2013 Position Limits Proposal**”).

² The comments herein supplement prior comments regarding position limits submitted by the Exchange and Intercontinental Exchange, Inc. Prior comments are incorporated by reference and the Commission is urged to evaluate prior comments in conjunction with the comments below prior to adopting any final position limits rule.



exchanges, allows commercial risk management practices to evolve over time, and conserves Commission resources.

The Supplemental Proposal, however, goes far beyond permitting the exchanges to recognize these types of hedge exemptions from federally-established speculative position limits. The Supplemental Proposal specifies detailed new standards and requirements that the exchanges must meet in recognizing non-enumerated, spread, and anticipatory hedge exemptions from both federal- and exchange-set position limits, and establishes a new process to provide for Commission review of all such exchange determinations. As such, it is a significant departure from the proposal to authorize the exchanges to recognize non-enumerated hedge exemptions for federally-set limits that were contemplated and discussed in the Energy and Environmental Markets Committee meeting on July 29, 2015 and supported by the exchanges and commercial market participants at that meeting.³ The Supplemental Proposal is a wholesale re-write of the process previously discussed and supported by the exchanges, and was drafted without input from, or consultation with, the exchanges. The Supplemental Proposal thus proposes a cure for a problem that does not exist, and in so doing creates a host of new problems.

The Supplemental Proposal also introduces new complexities and uncertainties into the process for granting hedge exemptions from both federal- and exchange-set limits. The process set out in the Supplemental Proposal is overly detailed and indeterminate, and will impede the ability of commercial market participants to have positions recognized by exchanges as bona fide hedges. The Commission should remove these unwarranted obstacles to the recognition of bona fide hedge exemptions and facilitate the conclusion of this rulemaking process by simply leaving the current process for the granting of hedge exemptions by the exchanges in place.

As set forth in more detail below, ICE believes the new standards and requirements set forth in the Supplemental Proposal -- particularly with respect to exchange-set limits, either below the federally-set limits or where the exchanges set the limits themselves -- are overly prescriptive, unwarranted in light of the exchange's effectiveness in implementing the hedge exemption process under the current position limits regime, and inconsistent with the statutory division of responsibilities between the Commission and the exchanges in implementing and enforcing exchange rules. The Supplemental Proposal offers no rationale or justification for this dramatic departure from the Commission's current practices and policies regarding the granting of hedge exemptions from exchange-set limits.

³ See, e.g., Statement of Mr. Oppenheimer, Tr. at p. 40 ("The process would rely, very much, on existing process, and in that sense that's really a benefit I think to both the market and to the regulators"); Statement of Mr. LaSala, Tr. at p. 59 ("Again, I do see this as somewhat of an extension of what we are already doing."); Statement of Mr. Haas, Tr. at p. 74 ("It's allowing us to continue to do our current process, and the CFTC passing some rule allowing the person who receives an exchange exemption to utilize that for -- an exchange exemption for non-enumerated hedging, to potentially use that for OTC. The CFTC would still have the responsibility to monitor for that and manage that; all they are doing is allowing us to continue our existing exemption approval process . . .").



ICE believes the Supplemental Proposal would fundamentally change the respective roles of the Commission and the exchanges in exchange operations. According to the Commodity Exchange Act (“CEA”), the exchanges have the responsibility for establishing, monitoring, and enforcing compliance with the rules of the exchange; the Commission has the authority and responsibility to approve such rules, monitor and review their enforcement generally, and require such changes in rules and practices as the Commission determines may be appropriate. Under this well-established statutory framework, after it has approved an exchange rule the Commission does not reserve authority to review and overturn each specific decision by the exchange as to how the rule is implemented. The Supplemental Proposal, however, provides that the Commission must receive detailed information about each request under the rule, may review exchange determinations on individual applications to the exchange for exemptions, request additional information from the exchange or applicant for any exemption request, and make its own determination regarding whether each application to the exchange for a *bona fide hedge* exemption should be granted. This exemption-by-exemption review of exchange decisions is a novel and significant departure from the longstanding process for the implementation of the position limits regime, imposes substantial burdens on the Commission and the exchanges, and decreases regulatory certainty for market participants regarding the status of an exemption. The Supplemental Proposal both imposes prescriptive obligations and requirements on the exchanges as to how it should meet its responsibilities to recognize hedge exemptions and at the same time undermines those same responsibilities by superimposing a new layer of Commission review upon those exchange decisions.

Further, the Supplemental Proposal radically revises the requirements on both the exchanges and market participants to grant and receive NEBFH exemptions, spread exemptions, and anticipatory bona fide hedge exemptions for all commodities, not just the twenty-eight Core Referenced Futures Contracts defined in the 2013 Position Limits Proposal. Under both current law and the 2013 Position Limits Proposal, the exchanges have considerable discretion (subject to Commission approval of exchange rules and rule enforcement reviews) as to the procedures to be used to recognize hedge exemptions from exchange-set limits, as well as the authority to make such binding determinations. The Supplemental Proposal provides no explanation or rationale as to why the Commission believes a completely different, highly prescriptive approach is now necessary or appropriate to permit the exchanges to recognize these types of hedge exemptions from exchange-set position limits. The Commission’s failure to set forth any justification for such significant changes is inconsistent with “the basic procedural requirement[] of administrative rulemaking . . . that an agency must give adequate reasons for its decisions.”⁴

As such, ICE urges the Commission to make extensive adjustments to the Supplemental Proposal regarding NEBFHs, spread exemptions, and anticipatory exemptions to reduce administrative burdens on market participants, the exchanges and the Commission. ICE

⁴ *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 1538 (2016). (“In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” [citation omitted])



recommends that the Commission continue its current practice of providing guidance to the exchanges and overseeing the exemption process. Under the current process, the exchanges grant exemptions and the Commission reviews the exchange administration of its rules through a rule enforcement review. Furthermore, the Commission Staff and the exchanges are in regular contact to ensure the exchanges appropriately identify activity eligible for an exemption. This existing process effectively leverages the expertise of the exchanges and conserves Commission resources to oversee the process.⁴

ICE therefore believes the Commission must adopt extensive modifications to the Rulemaking intended to lessen these burdens, recognize longstanding, effective exchange practices, and clarify certain ambiguous provisions of the rulemaking before moving forward. Based on our review of the Proposed Rules, we respectfully request the Commission to reconsider several key aspects of the Proposal in order to avoid substantial harm to both markets and market participants, as follows:

- **Substantially Revise the Supplemental Proposal to Align With the Commission’s Authority Under the CEA**
 - **Clarify That the Supplemental Proposal Does Not Apply to Exemptions Granted By an Exchange Below The Federal Limit or to Commodity Contracts Without a Federal Limit**
- **Reduce the Prescriptive Requirements of the Application and Reporting Process**
- **Revise the Proposal to Avoid Altering Existing Practices**
 - **Allow Bona Fide Hedging or Spread Positions During the Spot Month**
 - **Expand the Bona Fide Hedge Definition and Broadly Interpret the Economically Appropriate Test**
 - **Permit Hedge Exemptions for Unforeseen Hedging Needs**
 - **Permit Cash and Carry Exemptions**
 - **Allow Exchanges to Continue to Consider Anticipatory Merchandising as a Non-Enumerated Hedging Strategy**
- **Address Critical Outstanding Issues When Enacting a Final Position Limit Rule**
 - **Allow for Higher Position Limits for Financially Settled Contracts**

⁴ Supplemental Proposal at 38465-38466.



- **Adopt Single Month and All-Months Combined Position Accountability Levels Instead Of Single and All Months Position Limits**
- **Update Deliverable Supply Estimates to Reflect Current Market Conditions**
- **Maintain Spot Month Accountability Levels for Henry Hub Penultimate Options and Futures Contracts**
- **Confirm Trade Options are Not Subject to Position Limits**
- **Allow Market Participants to Net Commodity Index Contracts with Referenced Contracts**
- **Remove the Quantitative Test and Spot Month Restriction for Cross-Commodity Hedging**
- **Reduce Unwarranted Burdens and Associated Costs**
 - **The Commission Should Reduce the Prescriptive Burdens for Market Participants and Exchanges**
 - **Streamline the Extensive Reporting Requirements for Market Participants and Exchanges**
 - **Revise Cost Estimates to Fully Reflect All Requirements**
- **Provide Regulatory Certainty for Market Participants Regarding Exchange Decisions**

I. SUBSTANTIALLY REVISE THE SUPPLEMENTAL PROPOSAL TO ALIGN WITH THE COMMISSION'S ACTUAL AUTHORITY UNDER THE COMMODITY EXCHANGE ACT

The Commission Should Clarify that the Proposal Does Not Apply to Exemptions Granted by an Exchange Below the Federal Speculative Position Level and to Exchange-Set Limits

The Commission should revise the Supplemental Proposal to align with the Commission's authority under the CEA to set forth acceptable practices to meet the core principles, approve exchange rules and review exchange operations. The CEA does not contemplate that the Commission will routinely review and make independent determinations



regarding issues of conformance with the exchange rules. The CEA provides the exchanges shall have the responsibility to “establish, monitor, and enforce compliance with the rules of the [exchange].”⁵ The CEA does not assign the Commission overlapping authority to monitor or enforce compliance with exchange rules. Rather, the CEA provides the Commission with specific authorities to establish guidelines for exchange operations and review how the exchange is complying with those standards. In this regard, the CEA provides the Commission with the authority to review and approve applications for designation as a board of trade;⁶ specify acceptable practices for complying with core principles;⁷ review, approve, or disapprove new contracts, rules, or rule amendments;⁸ alter or supplement the rules of an exchange if the exchange does not make such changes as requested by the Commission;⁹ and to make such investigations “as it deems necessary to ascertain the facts regarding the operation of boards of trade and other persons subject to the provisions of this Act.”¹⁰ Notably absent from these specific authorities is the authority to enforce exchange rules.¹¹ The rule should not blur the clear distinction that the CEA did not contemplate the Commission assuming the exchanges’ self-regulatory functions.

The Commission’s proposal to radically depart from this structure in the Supplemental Proposal is all the more striking in light of the Commission’s recognition of how well the current structure has been working. Under the 2013 Position Limits Proposal, the exchanges would have retained their existing flexibility to devise acceptable procedures for enforcing exchange-set position limits. Further, the most recent Rule Enforcement Review of ICE Futures U.S., which was issued in July 2014, did not identify any fundamental issues with the Exchange rules or the process for granting hedge exemptions. The Supplemental Proposal, however, does not provide

⁵ CEA Core Principle 2 for contract markets provides: “The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including . . . the terms and conditions of any contracts to be traded on the contract market.” 7 U.S.C. §7(d)(2) (emphasis added). CEA Core Principle 2 for swap execution facilities provides: “A swap execution facility shall—(A) establish and enforce compliance with any rule of the swap execution facility” 7 U.S.C. §7b-3(f)(2) (emphasis added).

⁶ CEA § 5; 7 U.S.C. §7a-2.

⁷ CEA § 5(d)(1)(B); 7 U.S.C. §7(d)(1)(B).

⁸ CEA § 5c; 7 U.S.C. §7a-2.

⁹ CEA § 8a(7); 7 U.S.C. §12a(7).

¹⁰ CEA § 8a(1); 7 U.S.C. §12a(1).

¹¹ In light of the specific authorities provided to the Commission regarding exchange operations, the general grant of authority to the Commission in Section 8a(5) to “promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act” cannot be interpreted as a grant of additional authority to the Commission with respect to exchange operations. *See Board of Governors of Federal Reserve System v. Dimensional Financial Corp.*, 474 U.S. 361, 374, n. 6 (1986) (“the Board contends that it has the power to regulate these institutions under § 5(b), which provides that the Board may issue regulations ‘necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.’ 12 U.S.C. § 1844(b). But § 5 only permits the Board to police within the boundaries of the Act; it does not permit the Board to expand its jurisdiction beyond the boundaries established by Congress”); *Comcast Corp. v. FCC*, 600 F.3d 642, 653 (D.C. Cir. 2010) (“the Commission’s ancillary authority ‘is really incidental to, and contingent upon, specifically delegated powers under the Act.’” (citation omitted) (emphasis in original)).



any rationale for reversing this longstanding practice. To the contrary, the Commission indicates in the Supplemental Proposal that the current system is working well. The Commission approvingly cites its “long history of overseeing the performance of the DCMs in granting appropriate exemptions under current exchange rules regarding exchange-set position limits.”¹² The Commission’s favorable view of the exchange’s ability to implement the position limits regime was based “on its long experience overseeing DCMs and their compliance with the requirements of CEA section 5 and part 38 of the Commission’s regulations, 17 CFR part 38.”¹³ Given this favorable review of the exchanges’ performance in implementing exchange-set position limits regimes, it is not apparent why the Commission now believes it is necessary to exercise greater control and authority over this exchange function.

Even if the Commission determines that it is appropriate to specify highly prescriptive procedures for exchanges to follow and to provide for the review of individual exchange decisions with respect to applications for NEFBH, spread, and anticipatory hedge exemptions from federal limits, such prescriptive procedures and individualized reviews should not apply to exchange rules and processes for granting such exemptions from speculative position limits that are below the federal limits or from exchange-set limits. The Commission should ensure that the rules are clear and free of any ambiguity as to which procedures apply in which circumstances. Although the Supplemental Proposal states in a number of places that the exchanges must follow certain procedures for the granting of these hedge exemptions applies to both federal- and exchange-set limits, the proposed rules are not entirely clear on this point.

The proposed rules should be changed to make it clear that the prescriptive procedures and Commission authority to review do not apply where the exchanges establish limits that are lower than the federally-set levels, or where the exchanges set limits themselves. Section 150.5 (a)(1) states that a DCM “shall set a speculative position limit that is no higher than the level specified in §150.2” (the federal limit). Paragraph (a)(2)(i) requires an exchange seeking to grant exemptions from the limits it establishes under paragraph (a)(i) to comply with the exemption procedures specified in Section 150.3, even though that section, by its terms, applies only to exemptions from federal limits.¹⁴ The Commission should make clear that all of the detailed exemption procedures referred to in the Supplemental Proposal are applicable if, and to the extent that, the exemption granted by an exchange exceeds the federal limit established under Section 150.2, and not otherwise. Depending on where those federal limits are set, it is possible that an exchange-set speculative position limit will be lower than the federal limit for particular contracts. The Commission should not be micromanaging the exchanges in administering their

¹² 81 Fed. Reg. at 38469.

¹³ *Id.*, at n. 126.

¹⁴ Similarly, although Section 150.3 requires exchanges to follow Section 150.9(a)(4)(iv)(B) for NEFBH exemptions for exchange-set limits, Section 150.9(a) specifies that the procedures in that section apply only to applications for exemptions with respect to a Referenced Contract. Similarly, although Section 150.3 requires exchanges to establish procedures “in accordance with Section 150.11(a)(3),” Section 150.11(a) also applies only with respect to Referenced Contracts.



own speculative position limit programs. Unfortunately, the proposed rulemaking seeks to impose a comprehensive new regulatory regime under the guise of permitting the exchanges to recognize hedge exemptions from federal limits.

Likewise, the Commission should make clear that the detailed procedures for granting exemptions specified in Sections 150.10 and 150.11 with respect to spread and anticipatory hedges are not applicable to exemptions granted by an exchange below the federal level. Further, the Supplemental Proposal inappropriately extends the exemption regime proposed for reference contracts that will be subject to federal limits to contracts in excluded commodities and other products that are not currently subject to federal limits. These prescriptive rules should not be applicable to contracts which have no federal limits. In applying these requirements to contracts not subject to federal limits, the Commission disregards the fact that Exchange exemption programs have been operating successfully without the need for such prescriptive rules regarding the content of exemption applications and the circumstances in which they may be granted. The Commission should remove the requirements of Section 150.5(b) which apply the exemption procedures of Section 150.9 to exemptions granted for contracts in excluded commodities and physical commodities that are not subject to federal position limits.

Sections 150.9, 150.10 and 150.11 also contain onerous new recordkeeping and reporting obligations, none of which have been identified in the context of market surveillance rule enforcement reviews as being necessary elements of an exchange program or important for the Commission to carry out its oversight functions. The over-reaching nature of these requirements is covered separately in Section II of this letter. Whatever form those final requirements take, the Commission should limit their applicability to circumstances where an exemption exceeds a federal limit, and not otherwise.

II. REDUCE PRESCRIPTIVE REQUIREMENTS OF THE APPLICATION AND REPORTING PROCESS

The Supplemental Proposal imposes onerous, unnecessary requirements that may act as barriers to the implementation of non-enumerated hedge exemptions, spread exemptions and anticipatory exemptions. The proposed application requirements should be revised to only require that applicants provide such information as the relevant exchange deems necessary to determine if the requested exemption is consistent with the purposes of hedging. The Commission should eliminate the prescriptive requirements, specifically the requirement that an applicant provides three years of cash market activity. The Commission also should delete from the recordkeeping and reporting requirements the proposed initial and ongoing reporting requirements an applicant must make to an exchange when a position is established as an NEBFH, including the corresponding cash market positions. In lieu of this requirement, exchanges would rely on their existing rules that require participants to produce upon request any relevant information attendant to a position established under an exemption. Moreover, ICE proposes that as an alternative to the proposed reporting requirement, exchanges provide to the



Commission a weekly report regarding newly approved non-enumerated hedge exemptions, spread exemptions and anticipatory exemptions in addition to its other monthly reporting requirements. The Commission would maintain its ability to obtain additional information as needed on call.

III. REVISE PROPOSAL TO AVOID ALTERING EXISTING PRACTICES

The Commission's recent position limits proposals recognize that speculative position limits are not intended to curtail commercial activity and do not apply to or limit positions that are *bona fide* hedges. Given the strong experience of the exchanges in carrying out the position limits regime, and the high level of confidence the Commission has in the ability of exchanges to do so -- as reflected in the Commission's stated rationale for permitting the exchanges to recognize exemption requests for non-enumerated *bona fide* hedges, spreads and anticipatory hedging -- the Commission's rulemaking should not dictate specific exemption procedures at all. Instead, it should focus on determining the proper scope of the information which the Commission reasonably needs from the exchanges and can expect to review in furtherance of carrying out its separate market oversight role. As such, the Commission should appropriately tailor any position limit rulemaking to preserve well-functioning markets and long-standing market practices, as described below.

The Commission Should Not Prohibit Bona Fide Hedging or Spread Positions During the Spot Month

The statutory definition of *bona fide* hedging does not limit hedging positions during the spot month, and as such the Commission's rules should not categorically prohibit exchanges from granting non-enumerated and anticipatory hedge exemptions, as appropriate, during the spot month.¹⁵ If the Commission or the exchange has concerns about a particular *bona fide* hedge exemption during the spot month, they should address those concerns with individual market participants. In addition, orderly trading requirements apply to all positions, including *bona fide* hedge positions. Holding a position in the spot month or last five days under a non-enumerated *bona fide* hedge exemption does not pose additional risk to the markets or the price discovery process versus holding a *bona fide* hedge position. A one-size-fits-all prohibition will unnecessarily restrict commercially reasonable hedging activity during the spot month.

The Commission should also authorize the exchanges to grant spread exemptions during the spot month.¹⁶ As stated above, the orderly trading requirements apply to all positions, including spread positions and as such the Commission should not have concerns about market participants holding spread positions. Holding a position in the spot month or last five days under a spread exemption does not pose additional risk to the markets or the price discovery process versus holding a *bona fide* hedge position. Moreover, as the Commission is aware, price

¹⁵ See Supplemental Proposal RFC 7.

¹⁶ See Supplemental Proposal RFC 20.



discovery often occurs during the spot month, including during the last five days of trading. Price convergence between the physical and futures markets is a fundamental component of price discovery and risk management. A prohibition on the use of spread positions during the spot month hinders convergence and, in turn, the price discovery function of the futures market.

The Commission Should Expand the Bona Fide Hedge Definition and Should Broadly Interpret the Economically Appropriate Test to Cover More Than Just Price Risk

The 2013 Position Limits Proposal defines what constitutes a *bona fide* hedging position and sets forth a specific, narrow list of enumerated positions that will be recognized as *bona fide* hedges. These proposed rules would prohibit long-standing risk management practices which are authorized by the CEA and which have been used by commercial market participants for decades to manage the numerous types of risk encountered in their commercial activities, including, but not limited to price, time, quality, location and counterparty, which can be a considerable concern in all commodity markets. The Commissioners and CFTC staff have heard clear and direct testimony on these associated risks in several roundtable and committee discussions. The restrictive *bona fide* hedge definition and limited exemption list will constrain the ability of firms to use the derivatives markets to hedge and will impede the price discovery process on derivatives exchanges. As such, the Commission should provide greater flexibility in the various *bona fide* hedging tests.

The Commission should read the term “risks” in the economically appropriate test to encompass more than just price risk.¹⁷ CEA Section 4a(c)(2)(A)(ii) requires that a *bona fide* hedge be “economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise.” As other commenters have pointed out, and Commissioners and CFTC staff have heard directly, commercial market participants face numerous risks in the conduct of a commercial enterprise, such as execution and logistics risk, credit risk and default risk to name a few. Each of these risks has potential economic consequences for the commercial enterprise. The purpose of hedging these risks is to minimize these potential economic consequences. Hedging activity that reduces the economic consequences to the enterprise from these risks is therefore “economically appropriate” to the conduct and management of the enterprise.

Contrary to the Commission’s statement in the Supplemental Proposal, its interpretation is inconsistent with “the policy objectives of position limits in CEA section 4a(a)(3)(B)” Permitting commercial market participants to obtain hedge exemptions to reduce these economic risks to their operations should not lead to any “excessive speculation” or market squeezes and corners, impair market liquidity or disrupt the price discovery function. The Commission should continue to allow market participants to rely on the derivatives markets, as they have done for many years, to reduce these types of risks in a commercially appropriate manner.

¹⁷ See Supplemental Proposal RFC 35.



The Commission Should Permit Hedge Exemptions to be Granted for Unforeseen Hedging Needs as Currently Provided in Exchange Rules

The Commission should add a provision to the final regulations for recognizing position limits that are exceeded due to unforeseen hedging needs. This provision is currently in Exchange rules and is critical in reflecting commercial hedging needs that cannot always be predicted in advance. Exchange rules provide that an entity that exceeds a position limit due to unforeseen hedging needs must submit an exemption request for the position within one business day (unless the Market Surveillance Department approves a later filing which may not exceed five business days). If the exemption is approved, the entity will not be considered in violation of the exchange rules. If the exemption is not approved, an investigation will be opened to pursue a disciplinary action. In the Exchange's experience, there are limited applications for exemptions for unforeseen hedging needs and the positions established in such situations have not had a negative impact on the market.

The Commission Should Continue to Permit Cash and Carry Exemptions

Previous comment letters submitted by the Exchange and market participants have discussed the benefits that cash and carry exemptions provide for contracts involving certain warehoused commodities--specifically, cocoa, coffee and FCOJ. The bullets below briefly summarize the comments previously submitted and add details about Exchange procedures for reviewing and granting cash and carry exemptions.¹⁸

-Cash and carry exemptions may only be activated when market conditions permit the establishment of spread positions at levels that cover the applicant's cost of carry. The positions must be established as spreads in the period immediately preceding first notice day so that current market conditions are reflected. Further, the applicant's entire long position in the front month is subject to the exemption requirements, including exit points, not just the quantity in excess of the spot-month position limit.

-The terms of the exemption include multiple exit points between the applicant's cost of carry and the point when the price of the nearby contract rises to a premium to the second contract month. All long positions in the nearby contract month must be liquidated before an inverse (backwardation) occurs.

-Such exemptions serve an economic purpose by helping to maintain an appropriate economic relationship between the nearby and next successive delivery month. The exemptions help to maintain a balanced market and ensure an orderly expiration.

¹⁸ See Supplemental Proposal RFC 23-25.



The Commission Should Specify that Exchanges May Continue to Consider Anticipatory Merchandising as a Non-Enumerated Hedging Strategy

As has been stated in previous comment letters submitted by the Exchange and others, the provisions in the 2013 Position Limits Proposal on anticipatory hedging fail to recognize the critical role that merchants play in many of the commercial markets underlying Exchange contracts. These entities provide liquidity and take on counterparty risk for producers, end-users and other commercial market participants. The Commission should specify that exchanges may continue to recognize this critical function as a non-enumerated hedging strategy.

IV. ADDRESS CRITICAL OUTSTANDING ISSUES WHEN ENACTING A FINAL POSITION LIMIT RULE

Conditional Spot Month Limits Should be Maintained for Financially Settled Contracts

Since February 2010, the CFTC has provided for a “Conditional Limit” for financially settled natural gas contracts during the last three days of contract trading. Under the Conditional Limit, a market participant may carry a position in the financially-settled natural gas contracts (ICE H or CME NN) that is up to 5 times that of the physically-settled natural gas contract’s (CME NG) position limit if the participant agrees not to hold a position in the physically-settled NG contract in the last three days. In the Commission’s 2011 and current position limit rule, the Commission codified the Conditional Limit. In the four years since the Conditional Limit provision went into effect, natural gas prices have been lower and less volatile than historical levels. ICE has received no complaints regarding natural gas markets or convergence during that timeframe and is not aware of any complaints received by CME or the CFTC. Liquidity in the physically-settled CME NG contract has also increased during the time the Conditional Limit has been in effect.

The Commission has already recognized the need for and benefits of the higher cash-settled limits through the current Conditional Limit for natural gas. The position limit rule now pending before the Commission reaffirms this policy and recognizes that many market participants have a need to pay or receive the final settlement price of the Referenced Contract to perfect their hedges and that this is most effectively accomplished by holding cash-settled futures or bilateral swaps to expiration. The proposal endorses this policy, which has served the natural gas market well, by applying it to all referenced contracts. Any changes to the current terms of the Conditional Limit would disrupt present market practice for no apparent reason. Furthermore, changing the limits for cash-settled contracts would be a significant departure from current rules, which have wide support from the broader market as evidenced by multiple public comments supporting no or higher cash-settled limits. Finally, ICE supports the many commercial participants who believe the Commission should explore a higher cash-settled limit that also allows participation in the physically-settled market, similar to the Commission’s 2011 position limit rule.



The Commission Should Consider Whether Position Limits in Non-Spot Months Are Appropriate

The Commission should consider whether all-month position limits are necessary or appropriate in energy markets for the long-dated portions of the trading curve. While hard limits in the expiration month and months surrounding the expiration month are appropriate, blanketing such limits across all contract months may have unintended effects on the proper operation of markets, such as draining liquidity from the longer dated portions of the trading curve where it is most needed. Another potential impact of an all-month regime is that large traders could choose to exit the longer dated portion of the market, sapping valuable liquidity from commercial market users and their ability to hedge long-dated risk. Hard position limits in the first 18 months of a contract and position accountability levels in the remainder of the contract would encourage speculative participants to assume risk in out months and give commercial participants the ability to hedge exposure farther in the future. The accountability level approach to monitoring exchange-specific positions provides the necessary flexibility to address the unique circumstances of each large position holder, but avoids the clearly anticompetitive effects of exchange-specific concentration limits. The Commission could proscribe aggregate hard limits in the nearby months, where price discovery principally occurs and allow position accountability levels for contracts months further out the curve. Accountability level regulation, by design, is intended to serve as an early warning system that triggers heightened surveillance by the exchange and puts the trader on notice. Position accountability levels are set low for this very reason.¹⁹

The Commission should also consider whether single month and all-month position limits are necessary or appropriate for the Coffee “C”, Cocoa and Sugar No. 11 contracts. The position accountability regime has worked well for these contracts for almost 15 years and should be maintained. The establishment of such position limits could limit the activity of certain market participants, resulting in a reduction in liquidity that could be detrimental to the price discovery function of the market.

The Commission Should Update Deliverable Supply Estimates to Reflect Current Market Conditions

The Commission proposes to set spot-month limits at 25% of deliverable supply of the underlying commodity. In doing so, the CFTC proposes considering deliverable supply estimates submitted by the exchanges. ICE supports using alternative estimates which update deliverable supply to reflect current market circumstances.²⁰ ICE believes that where deliverable

¹⁹ The current position accountability levels for ICE’s Henry Hub contract are approximately 1% of open interest, far lower than the proposed concentration limits.

²⁰ On March 3, 2016, the Exchange submitted a filing providing its revised estimates for deliverable supply. This submission provided evidence and justifications for higher deliverable supply estimates.



supply is used to determine position limits, the Commission must ensure that it measures deliverable supply broadly enough to avoid unnecessarily and inappropriately limiting trading. As such, ICE urges the Commission to incorporate its updated deliverable supply estimates into its calculation of spot-month position limits.

Spot Month Accountability Levels Should be Maintained for the Henry Hub Penultimate Options and Futures Contracts

Penultimate options serve as price protection for commercial market participants so they can secure the economic equivalent of a futures contract. Penultimate futures serve as a risk mitigation strategy against the penultimate option position; they do not trade independently. Both contracts expire one business day prior the expiration of the Henry Hub LD1 CRFC. Currently, penultimate options and futures have spot-month accountability levels while both the Henry Hub LD1 physical delivery and cash-settled contract have spot-month limits. The Proposed Rules aggregate Henry Hub penultimate options and futures with positions in the CRFC thus subjecting penultimate futures and options to hard spot-month position limits. ICE strongly recommends that the Commission continue to allow exchanges to impose spot-month accountability levels which expire during the period when spot-month limits for the Henry Hub CRFC are in effect. Natural gas is the only commodity where options, and the corresponding future they exercise into, expire during the spot-month period for the underlying futures contract. As such, the Commission must recognize these nuances and accordingly impose accountability levels in the spot month. The Commission has no reason to believe that market participants will arbitrage these contracts in the spot month as the penultimate contracts currently trade side-by-side with the Henry Hub LD1 futures and there has been no evidence of a migration to the penultimate contracts due an accountability limit versus a hard spot-month limit. In addition, prices in the penultimate future have no ability to impact to the settlement of the CRFC.

The Commission Should Confirm that Trade Options are Not Subject to Position Limits

ICE agrees with the Commission's recent determination in its trade option rule that "federal speculative position limits should not apply to trade options."²¹ Unlike financially-settled swaps, trade options are a form of physical supply agreement that require physical settlement.²² To the extent these physical supply agreements incur risk in the same manner as a forward contract, the Commission should allow market participants to utilize the derivatives markets to hedge that risk. Therefore, trade options should be eligible to serve as the basis for a *bona fide* hedge.

²¹ See *Trade Options*, 81 Fed. Reg., 14971 (Mar. 21, 2016).

²² See CFTC Rule 32.3(a)(3).



The Commission Should Allow Market Participants to Net Commodity Index Contracts with Referenced Contracts

The position limits rule should not prohibit market participants from netting commodity index contracts with Referenced Contracts.²³ When market participants enter into Referenced Contracts to hedge exposure to the various components of a commodity index Contract, the Referenced Contract hedges should net against the components of the commodity index contract.

When a market participant hedges commodity index exposure by entering positions in the individual components of the index, the participant's position is net flat. Neither the 2013 Position Limits Proposal nor the Supplemental Proposal explain why a flat position should count toward a position limit. Furthermore, the CFTC's netting rules create a distinction between Referenced Contracts and commodity index contracts. As noted above, the Referenced Contracts positions do not net with exposure from commodity index contract. However, if a market participant held the same exposure as a commodity index contract, but rather in the form of several individual swaps, the participant's Referenced Contract hedges would net down to zero.

The Commission Should Remove the Quantitative Test and Spot Month Restriction for Cross-Commodity Hedging

ICE notes that the Supplemental Proposal did not remove the limitation in the 2013 Position Limits Proposal that a cross-commodity hedge only qualifies as a *bona fide* hedge if the correlation between the daily spot price series for the target commodity and the price series for the commodity underlying the derivative contract (or the price series for the derivative contract used to offset risk) is at least 0.80 for at least 36 months. In the energy markets, it is common for companies to hedge multiple commodity risks, such as an electric utility hedging the commercial risks of its input (natural gas as fuel) and output (electric generation / deliverable electric energy). Cross-commodity hedging is also commonplace due to correlations between commodities. The correlation can often be highest out the curve with the correlation decreasing in the spot month. The Commission's proposed quantitative factor inappropriately measures correlation only between the spot prices of the target commodity and the spot prices of the commodity underlying a derivative contract to determine whether a cross-commodity hedge meets the rebuttable presumption of a *bona fide* hedge. This is not the same analysis that the exchanges or market participants use to make commercial judgments about the appropriateness of cross-commodity hedges. In certain commodities, the correlation between the target commodity and the commodity derivative contract is higher farther out the forward price curve. As such, using spot prices to make a correlation determination is problematic. For example, many market participants hedge long-term electricity price exposure with natural gas futures contracts because there is no liquidity in deferred electricity futures contracts.

²³ ICE supports the FIA Letter to the CFTC, Section VI (Feb. 6, 2014).



As such, ICE restates its prior comment that the Commission should remove the quantitative test because it represents an overly narrow standard for cross-commodity hedging and presents substantial administrative burdens for market participants and the Commission.²⁴ ICE also re-iterates its prior comment that the Commission should remove the restriction on cross-commodity hedging during the spot month because it prevents market participants from hedging risk.

V. REDUCE UNWARRANTED BURDENS AND ASSOCIATED COSTS

The Commission Should Reduce the Prescriptive Burdens for Market Participants and Exchanges

The Supplemental Proposal fails to recognize the extensive experience and expertise exchanges have in their contracts and, as a result, imposes onerous, unnecessary requirements that pose a burden for both market participants and the exchange required to collect data that is not needed for it to make a reasoned decision on an exemption request. An example is the requirement to collect detailed information about the applicant's activity in the relevant cash market for the past three years. In many cases, the Exchange will already have this information in its files--and if it doesn't and believes it requires additional information to make a decision about an exemption request, it will request it--just as it does now. The Commission need only require that applicants provide such information as the relevant exchange deems necessary to determine if the requested exemption is consistent with the purposes of hedging.

The Commission Should Streamline the Extensive Reporting Requirements for Market Participants and Exchanges

The requirement for exchanges to submit weekly and monthly reports to the Commission is unnecessary and extremely burdensome. While the Exchange currently submits weekly reports to the Commission regarding new exemptions granted for certain products, the proposed requirements include many additional data points and will require considerable resources to produce without a clear benefit to the Commission's review process. The Exchange believes that the current process, whereby the Commission requests additional information on data submitted in the weekly reports that it determines may warrant additional review, is sufficient and should continue.²⁵

²⁴ See ICE Letter to CFTC, (Feb. 10, 2014).

²⁵ See Supplemental Proposal RFC 2, 8, 9, 11, 13, 21, 22, 27, 29.



The Commission Should Revise Its Cost Estimates to Fully Reflect All Requirements

The considerations of the costs²⁶ of proposed Sections 150.9, 150.10 and 150.11 significantly underestimates the number of exemptions that the Exchange will be required to review. Currently the Exchange reviews over 400 exemption requests annually and this number does not include the additional exemptions that will be required for single month and all month combined positions for contracts that currently operate under position accountability regimes for these categories nor does it include additional exemptions that will arise from swaps being subject to federal limits. Thus, under the proposed rules, the Exchange could be required to review as many as 500 exemption requests annually, compared to the estimate of 285 used in the Supplemental Proposal. In addition, the costs provided in the Supplemental Proposal do not consider that the proposed rules provide for the collection of considerably more documents than are currently required for Exchange exemption requests. The review and consideration of these documents will result in additional time spent on each exemption request. The Exchange estimates that the proposed rules will add two hours to each exemption review, resulting in an average of seven hours per request.

Further, the Exchange estimates that the summaries required to be published on the Exchange's Web site on at least a quarterly basis will also require seven hours per summary to prepare. The time required to prepare, review and submit the weekly reports to the Commission required by the proposed rules is also significantly understated. Based on the amount of time required to prepare the weekly reports currently submitted regarding exemptions and the significant increase in the quantity of information required for the reports by the proposed rules, the Exchange estimates that each report will require six hours to prepare. Finally, the estimate provided for the monthly reports to the Commission is also significantly understated. Based on the requirements of the proposed rules, the Exchange estimates that each monthly report will take six hours to prepare.

Following a review of all the new requirements established by the proposed rules, the Exchange estimates that compliance with the proposed rules will require the hiring of one additional senior level employee who has extensive experience with exemptions and commodities markets and three additional regulatory analysts who have some experience with commodities markets. In addition, the analysis does not consider any cost associated with the development of new, automated processes and procedures for reporting information to the Commission. For non-enumerated hedge exemptions, spread exemptions, and anticipatory exemptions, the costs associated with enhanced reporting do not appear to provide a tangible benefit.²⁷ Under the Supplemental Proposal, a market participant will already provide the exchange (and, in turn, the Commission) with information regarding the nature of the participant's activity and the size of the participant's positions.

²⁶ See Supplemental Proposal RFC 43.

²⁷ See Supplemental Proposal RFC 67.



VI. THE COMMISSION MUST PROVIDE REGULATORY CERTAINTY FOR MARKET PARTICIPANTS REGARDING EXCHANGE DECISIONS

While ICE does not believe the Commission should be reviewing exchange decisions regarding hedge exemptions, as discussed above, any final rule should set a time limit for Commission review.²⁸ The Supplemental Proposal provides the Commission with an indefinite review period. After a reasonable amount of time, exchanges and market participants need regulatory certainty that a position will continue to be recognized as a *bona fide* hedge exemption. In addition, the Commission's rules should provide market participants with an appeal process if an exchange allows a market participant to rely on an exemption, but the Commission or the exchange subsequently determine that the same activity is no longer eligible for an exemption. The Commission should also recognize that a commercially reasonable period to reduce a position that no longer qualifies for an exemption will depend on the liquidity of the contract(s) in which the position exists and that it may take more than one business day to liquidate such positions without disrupting the market.

Conclusion

ICE appreciates the opportunity to comment on the Supplemental Proposal. As discussed previously, the intent of the Commodity Exchange Act ("CEA") and Dodd-Frank Rulemakings is not to fundamentally modify business models and curtail commercial activity and risk management practices. Instead, Congress specifically included in the CEA a long-standing, express prohibition against limits on *bona fide* hedging transactions or positions of commercial parties. Congress also recognized that restrictive speculative position limits would impede market liquidity and price discovery. To that end, ICE encourages the Commission to be cognizant when it exercises its regulatory oversight authority of the effect of the proposed federal limits on the ability of derivatives markets to perform their fundamental price discovery, risk transfer, and risk management functions, which depend on the existence of liquid, fair, and competitive markets. Any proposal that could compromise these functions must be carefully scrutinized.

Again, ICE thanks the Commission for the opportunity to comment on the proposed rules.

²⁸ See Supplemental Proposal RFC 18.



Sincerely,

A handwritten signature in black ink, appearing to read "Kara Dutta", written in a cursive style.

Kara Dutta
Intercontinental Exchange, Inc.

cc: Honorable Timothy G. Massad, Chairman
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Vincent A. McGonagle, Director
Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel
Lee Ann Duffy, Assistant General Counsel
Steven Benton, Economist



Annex 1

ICE's Responses to Specific Questions Contained in the Supplemental Notice of Proposed Rulemaking – Position Limits for Derivatives

1) The Commission requests comment on all aspects of the proposed delay in implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring by exchanges of position limits for swaps. Does any DCM or SEF currently have access to sufficient data regarding individual market participants' open swaps positions to so set and monitor swaps position limits other than by special call? If yes, please describe in detail how such access could be obtained. If no, how easy or difficult would it be for an exchange to obtain access to sufficient swap position information by means of contract or other arrangements?

The Exchange is not aware of any SEFs that currently have access to sufficient data to set and monitor swap position limits. From the perspective of ICE Swap Trade, LLC, the data required to set and monitor position limits for swap contracts is not available. Further, the Commission has not determined that position limits or position accountability levels are necessary and appropriate for any swap contracts currently listed for trading on a SEF or DCM.

2) Are there any facts and circumstances specific to DCMs that, for purposes of exchange limits, currently recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1), that the Commission should accommodate in any final regulations regarding the processing of NEBFH applications?

The Exchange has extensive experience in granting exemptions for both enumerated positions and non-enumerated positions and has always employed general criteria that must be satisfied when reviewing exemption requests. 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 commercial market practices that have developed in the countries where these commodities are grown, merchandised, processed and consumed. The final regulations should reflect the extensive experience and expertise exchanges have in their contracts and not impose extensive, unnecessary requirements that pose a burden for both market participants and the exchange required to collect data that is not needed for it to make a reasoned decision on an exemption request. An example would be the requirement to collect detailed information about the applicant's activity in the relevant cash market for the past three years. In many cases, the Exchange will already have this information in its files--and if it doesn't and believes it requires additional information to make a decision about the exemption request, it will request it--just as it does now.



The Commission should add a provision to the final regulations for recognizing position limits that are exceeded due to unforeseen hedging needs. This provision is currently in Exchange rules and is critical in reflecting commercial hedging needs that cannot always be predicted in advance. Exchange rules provide that an entity that exceeded a position limit due to unforeseen hedging needs must submit an exemption request for the position within one business day (unless the Market Surveillance Department approves a later filing which may not exceed five business days). If the exemption is approved, the entity will not be considered in violation of the Rules. If the exemption is not approved, an investigation will be opened to pursue a disciplinary action. In the Exchange's experience, there are limited applications for exemptions for unforeseen hedging needs and the positions established in such situations have not had a negative impact on the market.

The Supplemental Proposal includes certain requirements that are inconsistent with the Exchange's current procedures for reviewing and granting spot month exemptions for physical delivery agricultural contracts. Many of these exemptions recognize non-enumerated hedging positions that the Exchange has determined to be consistent with the purposes of hedging. Specifically, spot month exemptions are only granted by the Exchange for a single delivery month such as July 2016 based on an applicant's near-term hedging needs and physical obligations for the contract's delivery period. This approach permits the Exchange's Market Surveillance staff to consider current market conditions when reviewing exemption requests and to make reasoned decisions that are limited to a particular delivery month. The Supplemental Proposal includes requirements that are not consistent with these procedures as the cash market obligations supporting any exemption that is granted by the Exchange are specifically related to the expiring futures contract so there would not be any updates to provide once the contract expires. Further, the requirement to provide the maximum gross futures and options positions that could be acquired over the next year is not relevant when considering an exemption for a specific spot month period. The proposed rules should be modified to permit exchanges to require only the information relevant to the specific exemption request. The Exchange acknowledges that maximum gross positions are relevant to exemption requests for single month and all month combined limits as well as spot month exemptions that do not expire for a year.

7) Are there concerns regarding the applicability of NEBFH positions in the spot month? Should the Commission, parallel to the requirements of current regulation 1.3(z)(2) (i.e., the "five-day rule"), provide that such positions not be recognized as NEBFH positions during the lesser of the last five days of trading or the time period for the spot month?

There are no specific concerns about the applicability of NEBFH positions in the spot month. As the Exchange has stated in its prior comment letters, the "five-day rule" does not reflect the needs of certain commercial markets. The exchange reviewing the exemption request will place limitations, as necessary, on any exemption it grants, just as it does now. Further, orderly trading rules apply to all positions, including enumerated bona fide hedge positions which currently are



not subject to the “five-day rule.” NEBFH positions held during the last five days of an expiring contract do not pose any added risk to markets or to the price discovery function.

8) If the Commission permits NEBFH positions to be held into the spot month, should recognition of NEBFH positions be conditioned upon additional filings to the exchange—similar to the proposed Form 504 filings required for the proposed conditional spot month limit exemption? As proposed, Form 504 would require additional information on the market participant’s cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to the exchanges in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.9(c)(2).

It is not necessary to condition the recognition of NEBFH positions in the spot month on additional filings to the exchange or to the Commission. If the Exchange requires additional information from the exemption holder, it will request it, just as it does now. For example, the Exchange’s current procedures provide that market participants granted spot month exemptions for a specific expiring futures contract in the Sugar No. 11 contract may be required to provide information about cash market holdings several times during the spot month period. Requiring the reporting of daily positions for all NEBFH positions is overly burdensome and offers no added market protection.

9) Alternatively, if the Commission permits NEBFH positions to be held into the spot month, should the Commission require market participants to file the Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate, although the Commission could share such a filing with the exchanges. The Commission would adjust the title of the Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c). Consistent with the restrictions regarding the offset of risks arising from a swap position in CEA section 4a(c)(2)(B), proposed § 150.9(a)(1) would not permit an exchange to recognize an NEBFH involving a commodity index contract and one or more referenced contracts. That is, an exchange may not recognize an NEBFH where a bona fide hedge position could not be recognized for a pass through swap offset of a commodity index contract.

Please see the Exchange’s response to RFC 8 above.

11) Is the proposed core set of information required of market participants adequate for an exchange to review applications for NEBFHs?



Please see the Exchange's response to RFC 2 above. The proposed core set of information required of market participants is overly burdensome and unnecessary for the Exchange's review.

12) The Commission invites comment regarding the discretion proposed for exchanges to process NEBFH applications in a timely manner.

Exchanges currently process exemption requests in a timely manner and will extend current procedures to the processing of NEBFH applications.

13) Should the Commission provide further guidance regarding the types of information that exchanges should seek to elicit from reporting rules with respect to NEBFH positions?

Further guidance regarding the types of information that exchanges should seek with respect to NEBFH positions is unnecessary and is overly burdensome, as proposed. Exchanges will use their experience and expertise to determine the information needed to make reasoned decisions regarding NEBFH exemption requests.

14) Should the Commission prescribe that exchanges publish any specific information regarding recognized NEBFHs based on novel facts and circumstances?

The Commission should provide exchanges with specific guidance regarding the information that should be published on exchange websites regarding recognized NEBFHs. The information that is published should not include any data that could identify specific market participants granted exemptions or the quantities that have been granted.

15) Should the Commission require exchanges to publish summary statistics, such as the number of recognized NEBFHs based on non-novel facts and circumstances?

Specific information such as the number of recognized NEBFHs should not be disclosed as such statistics could disclose confidential information.

16) Does the proposed flexibility for exchanges to request Commission review provide market participants with a sufficient process for review of a potential NEBFH?

Yes, if the Commission is able to respond in a timely manner i.e. within a few days of receiving a request.

17) The Commission requests comment on all aspects of the proposed reporting requirements.

The requirement for exchanges to submit additional weekly and monthly reports to the Commission is unnecessary and extremely burdensome. The exchange proposes to continue its



weekly reports to the Commission regarding new spot month exemptions granted for certain products. The proposed new reporting requirements include many additional data points which will require considerable resources to produce without a clear benefit to the Commission's review process. The Exchange believes that the current process, whereby the Commission requests additional information on data submitted in the weekly reports that it determines may warrant additional review, is sufficient and should continue.

18) The Commission requests comments on all aspects of the proposed review process.

The Commission should set a time limit for it to review an exemption that has been granted by an exchange in order to provide regulatory certainty to exchanges and market participants. The Commission should also recognize that a commercially reasonable period to reduce a position that no longer qualifies for an exemption will depend on the liquidity of the contract(s) in which the position exists and that it may take more than one business day to liquidate such positions without disrupting the market.

19) Would permitting exchanges to process applications for spread exemptions from federal limits, subject to Commission review, provide for an efficient implementation of the Commission's statutory authority to exempt such spread positions?

Yes, permitting exchanges to process spread exemptions from federal limits, subject to Commission review, would provide an efficient implementation of the Commission's statutory authority to exempt such spread positions.

20) Are there concerns regarding the applicability of spread exemptions in the spot month that the Commission should consider? Should the Commission, parallel to the requirements of current § 1.3(z)(2), provide that such spread positions not be exempted during the lesser of the last five days of trading or the time period for the spot month?

Exchanges must be allowed to use their experience to determine whether it is appropriate to grant spread exemptions in the spot month, and the restrictions that should be imposed on such exemptions. It is not necessary for the Commission to provide that spread exemptions should not be granted for the last five days of trading or the time period for the spot month. There are no exceptions to the orderly trading requirement, including bona fide hedge positions. Allowing spread positions, if the exchange considers it appropriate, does not add any additional risks to the price discovery process or the expiration of the contract.

21) If the Commission permits exchanges to grant spread positions applicable in the spot month, should recognition of NEBFH positions be conditioned upon additional filings similar to the proposed Form 504 that is required for the proposed conditional spot month limit exemption? Proposed Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this



alternative, market participants would submit daily cash position information to an exchange in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.10(c)(2).

It is not necessary to condition the recognition of spread positions in the spot month on additional filings to the exchange or to the Commission. If the exchange requires additional information from the exemption holder, it will request it, just as it does now. Requiring the reporting of daily positions for all spread positions is overly burdensome and offers no added market protection.

22) Alternatively, if the Commission permits exchanges to grant spread exemptions applicable in the spot month, should the Commission require market participants to file proposed Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate. The Commission would adjust the title of proposed Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c).

Please see the Exchange's response to RFC 21 above.

23) Do cash-and-carry spread exemptions further the policy objectives of the Act, as outlined in proposed § 150.10(a)(3)? Why or why not? Do cash and carry spread exemptions facilitate an orderly liquidation? Do these exemptions impede convergence or distort the price of the expiring futures contract?

All spread exemptions, including cash and carry exemptions, granted by DCMs further the policy objectives of the Act by facilitating orderly liquidation and ensuring market liquidity for all market participants that choose to carry positions into the notice period. As noted in comments previously submitted by market participants, these exemptions are beneficial for convergence and help to stabilize price relationships between futures contract months.

24) If cash-and-carry spread exemptions are allowed, what conditions should be placed on the exemptions? For example, on what basis should a trader be required to exit futures positions above position limit levels? Should such exemptions be conditioned, for example, to require a market participant to reduce the positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction? Are there other types of spread exemptions that may not further the policy objectives of CEA section 4a and, thus, should be prohibited or conditioned?

DCMs must maintain the flexibility to determine the appropriate restrictions on spread exemptions, including cash and carry exemptions. In regards to cash and carry exemptions, the procedures currently used by the Exchange to establish exit points have been modified over the



years to address concerns raised by the Commission. The Exchange believes that current procedures are effective in ensuring liquidity and an orderly expiration.

25) With cash-and-carry spread exemptions still under review by the Commission, should the proposed rules allow such exemptions to be granted under proposed § 150.10? Why or why not?

Cash and carry exemptions have been under review by the Commission for decades. During those years, the Exchange has continued to grant the exemptions and, as has been noted in previous comment letters, the Exchange and market participants believe that such exemptions are beneficial for the market. The Exchange should be permitted to continue to grant cash and carry exemptions.

26) If the proposed rules do not prohibit such exemptions, an exchange could determine that cash-and-carry spread exemptions—or another type of spread exemption—further the policy objectives in proposed § 150.10(a)(3) and so begin to grant such exemptions from federal position limits. If, after finishing its review, the Commission disagrees with the exchange’s determination, is the proposed process in § 150.10(d) for reviewing exemptions sufficient to address any concerns raised?

The proposed process in §150.10(d) should be modified to require a time certain for the Commission to determine whether the exemption is appropriate. The proposed open-ended process results in regulatory uncertainty for exchanges and market participants.

27) Does the application process solicit sufficient information for an exchange to consider whether a spread exemption would, to the maximum extent practicable, further the policy objectives of CEA section 4a(a)(3)(B)? For example, how would an exchange determine whether an applicant for a spread exemption may provide liquidity, such that the goal of ensuring sufficient market liquidity for bona-fide hedgers would be furthered by the spread exemption?

When reviewing spread exemption requests, the Exchange will use its years of experience in granting such exemptions to determine whether the exemption furthers the policy objectives of CEA Section 4a(a)(3)(B). While the application process should provide enough information for the Exchange to make this determination, if additional information is required, the Exchange will request it--just as it currently does.

28) How would exchanges oversee or monitor exemptions that have been granted, and, if the exchange determines it necessary, revoke the exemption?

The Exchange currently has procedures in place to oversee and monitor exemptions that have been granted. Every exemption that is currently granted is subject to review, modification or



cancellation if market conditions change, or for any other reason deemed necessary. These procedures will continue to be effective under the proposed rules.

29) Is it appropriate to have the same processes under § 150.10(b) through (f) for spread exemptions as proposed for NEBFHs outlined under § 150.09 (b) through (f)? If no, explain why and how those processes should differ.

The processes under § 150.10(b) through (f) and § 150.09 (b) through (f) are unnecessary and overly burdensome. The processes should be streamlined.

30) The Commission requests comments on all aspects of proposed §150.11, including whether the Commission should consider any other factors in addition to those listed in proposed § 150.11(a)(1)(i), (ii), (iii), (iv) and (v).

The Exchange questions the purpose of proposed §150.11 as it only permits exchanges to grant enumerated anticipatory requirements and involves extensive data collection, recordkeeping and reporting obligations. The Exchange will grant exemptions to exchange position limits for enumerated anticipatory requirements, as required and appropriate, but is unlikely to take on the Commission's responsibilities for this type of exemption request given the burden the proposed rules provide. The Exchange currently grants exemptions to exchange limits for enumerated bona fide hedging positions for cotton without the burdens imposed by these rules. The Commission has never indicated that there is any issue with our current procedures with respect to such exemptions--and it is not clear why the proposed rules provide such a radical increase in the data collection, recordkeeping and reporting requirements for enumerated positions.

32) The Commission invites comment on all aspects of its proposed expanded definitions of "intermarket spread position" and "intramarket spread position."

The Exchange believes that "intermarket spread positions" and "intramarket spread positions" should fall under the same exemption process for any other spread position. It is not necessary for the purpose of evaluating an exemption request that these types of positions receive disparate treatment.

33) The Commission requests comment on its consideration of the benefits and costs associated with the proposed amendments to guidance. Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data, or other information of support for such assessments. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.



The Exchange believes that the Commission has used assumptions that result in understated costs for many elements of the proposed rules, as explained in the response to RFC 43 below.

35) Futures contracts function to hedge price risk because they lock-in prices and quantities at designated points in time. Futures contracts, thereby, create price certainty for market participants. Thus, the Commission believes that bona fide hedging positions need to ultimately result in hedging against some form of price risk as discussed in Section IIB3(i), above. Is the Commission reasonable in concluding that by eliminating the incidental test market participants will benefit from regulatory certainty and reduced compliance costs because they need only focus on price risk or other risks that can be transformed into price risk?

The Exchange is concerned that the Commission's belief that bona fide hedging positions need to ultimately result in hedging against some form of price risk is too narrow and does not account for various other forms of risk that commercial market participants must hedge against. Limiting what constitutes a bona fide hedge position to this narrow definition will prohibit long standing risk management practices, impede commercial market participants' ability to hedge bona fide commercial risks, and in turn threaten the integrity of the price discovery process on derivatives exchanges. Derivatives contracts are critical to commercial market participants' ability to manage many other risks besides price, including, but not limited to, currency, time, liquidity, location, quality and counterparty. As discussed previously, the Exchange recommends that the Commission instead read the term "risks" in the economically appropriate test to encompass more than just price risk.

36) It is challenging to interpret the orderly-trading requirement in the context of the over-the-counter swaps market and permitted off-exchange transactions as discussed in Section IIB3(ii), above. Given this challenge, is it reasonable for the Commission to conclude that by eliminating the orderly-trading requirement, market participants benefit from avoiding the compliances costs of an unclear requirement?

As noted previously, the Commission has not determined that position limits are necessary and appropriate for over-the-counter swaps currently listed for trading on a SEF or DCM. The same challenges that the Commission and industry recognize in setting position limits for swap contracts would also apply to adopting an order-trading requirement for swaps.

42) The Commission requests comment on its considerations of the benefits of proposed § 150.9. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.



As has been stated in previous comment letters, the Exchange believes 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 continue to be able to hedge their risks in a timely manner.

43) The Commission requests comment on its considerations of the costs of proposed § 150.9. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

The considerations of the costs of proposed § 150.9, § 150.10 and § 150.11 uses grossly understated estimates of the number of exemptions that the Exchange will be required to review. Currently the Exchange reviews over 400 exemption requests annually and this number does not include the additional exemptions that will be required for single month and all month combined positions for contracts that currently operate under position accountability regimes for these categories nor does it include additional exemptions that will arise from swaps being subject to federal limits. Thus, under the proposed rules, the Exchange could be required to review as many as 500 exemption requests annually, compared to the estimate of 285 used in the Supplemental Proposal.

In addition, the costs provided in the Supplemental Proposal do not consider that the proposed rules provide for the collection of considerably more documents than are currently required for Exchange exemption requests. The review and consideration of these documents will result in additional time spent on each exemption request. The Exchange estimates that the proposed rules will add two hours to each exemption review, resulting in an average of 7 hours per request.

Further, the Exchange estimates that the summaries required to be published on the Exchange's Web site on at least a quarterly basis will also require 7 hours per summary to prepare. The time required to prepare, review and submit the weekly reports to the Commission required by the proposed rules is also significantly understated. Based on the amount of time required to prepare the weekly reports currently submitted regarding exemptions and the significant increase in the quantity of information required for the reports by the proposed rules, the Exchange estimates that each report will require 6 hours to prepare.

Finally, the estimate provided for the monthly reports to the Commission is also significantly understated. Based on the requirements of the proposed rules, the Exchange estimates that each monthly report will take six hours to prepare.



Following a review of all the new requirements established by the proposed rules, the Exchange estimates that compliance with the proposed rules will require the hiring of one additional senior level employee who has extensive experience with exemptions and commodities markets and three additional regulatory analysts who have some experience with commodities markets.

44) The Commission requests comment on whether a Commission administered process promotes more consistent and efficient decision-making. Commenters are encouraged to include both quantitative and qualitative assessments, as well as data or other information to support such assessments.

Please see the Exchange's response to RFC 42 above.

45) The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) not permitting exchanges to administer any process to recognize NEBFHs; or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

Please see the Exchange's response to RFC 42 above.

46) The Commission requests comment on whether the options for recognizing NEBFHs outlined in the December 2013 position limits proposal are superior from a cost-benefit perspective to proposed § 150.9. If yes, please explain why.

Please see the Exchange's response to RFC 42 above.

47) The Commission requests comment on its considerations of the benefits of proposed § 150.10. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data or other information of support such assessments.

Please see the Exchange's response to RFC 19 above.

48) The Commission requests comment on its considerations of the costs of proposed § 150.10. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of costs as well as data or other information of support such assessments.

Please see the Exchange's response to RFC 43 above.



49) The Commission recognizes that there exist alternatives to proposed § 150.10. These alternatives include: (i) maintaining the status quo, or (ii) pursuing the changes in the December 2013 position limits proposal. The Commission requests comment on whether retaining the framework for spread exemptions as proposed in the December 2013 position limits proposal is superior from a cost-benefit perspective to proposed § 150.10. If yes, please explain why. The Commission requests comment on whether any alternatives to proposed § 150.10 would result in a superior cost-benefit profile, with support for any such alternative provided.

The Exchange recommends maintaining the status quo, whereby exchanges review and grant spread exemptions, as appropriate, and notify the Commission of spread exemptions that have been granted. As an alternative, the extensive data collection, recordkeeping and reporting requirements provided in proposed § 150.10 should be streamlined to reduce the unnecessary burden on market participants and exchanges.

50) The Commission requests comment on its considerations of the benefits of proposed § 150.11. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

Please see the Exchange's response to RFC 30 above.

52) The Commission recognizes that there may exist alternatives to proposed § 150.11, such as maintaining the status quo, or adopting only § 150.7 as proposed in the December 2013 position limits proposal. The Commission requests comment on whether alternatives to proposed § 150.11 would result in a superior cost-benefit profile, with support for any such alternative provided. The Commission requests comment on whether the framework for recognizing enumerated anticipatory bona fide hedging positions as proposed in the December 2013 position limits proposal would be superior from a cost-benefit perspective to proposed § 150.11. If yes, please explain why.

Please see the Exchange's response to RFC 43 above.

53) Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges further the goals of CEA section 4a(a)(3)(B) and properly protect market participants and the public? Please explain.

Please see the Exchange's response to RFC 19, 30 and 42 above.



57) Should the Commission provide more guidance to exchanges on how to assess recognitions under this supplemental proposal, for example, guidance on cash-and- carry spreads, or any other spreads involving the spot-month contract?

Exchanges do not require additional guidance from the Commission on how to assess recognitions under this Supplemental Proposal. Additional guidance, if required, should be provided through the Rule Enforcement Review process.

58) What costs and benefits would accrue to exchanges and market participants should the Commission provide additional guidance to exchanges on how to assess recognitions under this supplemental proposal? Please explain.

Please see the Exchange's response to RFC 57 above.

60) How might the rules proposed in this supplemental proposal affect price discovery? Please explain.

Price discovery and liquidity would be negatively impacted if the exemptions outlined in this supplemental proposal are not permitted because commercial entities would be restricted in their ability to manage their hedging needs, resulting in reduced trading and liquidity.

61) How might the rules proposed in this supplement proposal affect liquidity?

Please see the Exchange's response to RFC 60 above.

62) Will price discovery be improved on exchanges because of the exemptions outlined in this supplemental proposal?

Please see the Exchange's response to RFC 60 above.

63) How might spread exemptions that go into the spot month affect price discovery?

Please see the Exchange's response to RFC 23 above.

64) What price-discovery costs and benefits would accrue for spread exemptions that go into the spot month? Please explain.

Please see the Exchange's response to RFC 23 above.

65) How might the rules proposed in this supplemental proposal affect sound risk management practices?

Please see the Exchange's response to RFC 35 above.



68) The Commission requests comment on whether there will be any lost benefits related to position limits because of the recognitions and exemptions in the proposed rules in this supplemental proposal.

Please see the Exchange's responses to RFC 19, 30 and 42 above.