American Sugar Refining, Inc.
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July 13, 2016

Christopher Kirkpatrick, Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

VIA ELECTRONIC FILING

Re: Position Limits for Derivatives, RIN No. 3038-AD99

Dear Secretary Kirkpatrick:

By a Supplemental Notice of Proposed Rulemaking ("Supplemental NOPR") published in the Federal Register on June 13, 2016,[1] the Commodity Futures Trading Commission ("CFTC" or the "Commission") issued an expansion of the scope of bona fide hedge exemptions to the Commission's proposed position limits rule ("NOPR").[2] Among the core referenced futures contracts impacted by the NOPR are two sugar contracts, ICE Sugar No. 11 and ICE Sugar No. 16, which are commonly used for hedging by commercial participants in sugar markets.[3]

Given the potential impact that the NOPR will have on the overall sugar market, American Sugar Refining, Inc. and its affiliates ("ASR") respectfully submit this letter to the Commission to relay our appreciation of the Commission's recognition of the need for an expanded scope of bona fide hedge exemptions to address legitimate hedging activities that were not previously contemplated as enumerated bona fide hedges proposed under the NOPR. After review of the Supplemental NOPR, ASR respectfully requests the Commission to take into consideration the comments set forth below.

Overview

As a brief overview of our previously submitted comments,[4] ASR is a global cane sugar producer and refiner with more than 100 years of experience in all aspects of the growing, manufacturing

[1] *Position Limits for Derivatives: Certain Exemptions and Guidance,* 81 Fed. Reg. 38458 (June 13, 2016).

[2] *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013) ("NOPR"). The NOPR proposes regulations to impose position limits on core referenced futures contracts and economically equivalent contracts pursuant to the Commodity Exchange Act ("CEA") (*See* 7 U.S.C. § 6a(a)(2), (5) (2013)), as the same was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") (Public Law No. 111-203, 124 Stat. 1376 (2010)).

[3] NOPR at 75826, proposed § 150.2(d).

[4] *American Sugar Refining, Inc. Comments Re: Position Limits for Derivatives, RIN No. 3038-AD99* (February 10, 2014).

and selling of sugarcane products. ASR's operations include the farming, milling, refining, and merchandising of sugarcane products. The ability to source raw sugar for its operations, and to hedge its raw sugar needs, is critical to the continuation of the business because of the small margins associated with the refining business. As previously commented, ASR has historically obtained hedge exemptions from exchanges to the extent required for its business based on the clear hedging needs of its physical sugar business.

ASR appreciates that the Supplemental NOPR provides an avenue to address legitimate hedges. After review of the Supplemental NOPR and NOPR, including the proposed reporting forms, and the practical impact each will have on the day-to-day business operations, ASR respectfully requests and encourages the Commission to facilitate the following: (1) delegate to the designated contract markets ("Exchanges") the establishment of federal position limits for end-users that rely on futures for hedging; (2) provide for a reasonable "phase-in" period for implementation of position limits in the event the Commission does not delegate federal position limits to Exchanges; (3) provide specific and detailed guidance to enable accurate reporting via Form 204; and (4) provide position recognition on a macro level, and not a micro level.

<u>Delegate to the Exchanges the Establishment of Federal Position Limits for End-Users that Rely on Futures for Hedging</u>

ASR hedges its commercial risk with futures. We utilize hedge exemptions in connection with the quantity of futures needed to offset our risk. Our experience is that the Exchange is familiar with our business and market and, thus, can effectively consider and process requests related to bona fide hedging for our industry. ASR is supportive of a process by which the Commission can leverage the Exchange's expertise in this area.

Since ASR hedges its risk with futures, it will be subject to Exchange position limits. In the event our hedging needs exceed the Exchange limits, ASR will require an Exchange hedge exemption. If the Commission enacts federal position limits, ASR will be subject to both Exchange and federal position limits for the same futures contracts.

Given the Commission's confidence in the expertise and experience of the Exchanges in evaluating bona fide hedging,[5] ASR suggests that, <u>for firms that use futures for their hedging needs and also receive a hedge exemption from the Exchange for futures positions</u>, the Commission broaden its proposed delegation to Exchanges to permit the Exchange granted hedge exemption to also act as the federal position limit. Absent such a delegation, ASR would seek (and we hope receive) a hedge exemption from the Exchange for the futures contracts we use for hedging. We would, of course, be constrained to the position permitted by the hedge exemption. Assuming the federal position limit is the same as the Exchange limit, we would, at the same time for the same contract

[5] Supplemental NOPR at 38466.

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be subject to the federal enumerated hedge regime. Under the federal regime, we would likely need to seek a non-enumerated hedge from the Exchange; track all of our transactions by enumerated hedge; revise our systems to conform to enumerated hedge reporting; and file required reports with the CFTC – all for the same futures contract for which we have received an Exchange hedge exemption (and are managing our transactions to stay within such exemption).

If there was a delegation as requested above, the Exchange could review, as it does today, the validity of ASR's request to determine whether it represented bona fide hedging. If the Exchange were to grant a hedge exemption, the result would permit ASR to meet its bona fide hedging needs with the futures contracts it uses for hedging. If that hedge exemption also became ASR's federal position limit, the Commission would similarly, through the delegation, be permitting ASR to hedge its bona fide hedging risk with the futures contract. Since ASR's hedging is done with a futures contract on a single exchange, the delegation would not risk encompassing an incomplete scope of derivatives products. However, it would avoid burdensome and duplicative position limits processes <u>for the same futures contract for the hedging needs of a single company</u>.

ASR recognizes that not all firms use a specific futures contract on a single exchange for their hedging needs. We understand that the federal position limit enumerated hedge approach may be reasonable if hedging is accomplished with a diverse set of swaps and futures on multiple exchanges. However, if a firm uses a specific futures contract on a single exchange and that exchange will be evaluating the bona fide hedging needs of that firm by considering a hedge exemption request, it makes sense if the CFTC is proposing delegating hedging review to the Exchange in the Supplemental NOPR to structure position limit regulation such that there is one hedging review, and one position limit for that firm for that futures contract.

<u>In the Event the Commission Does Not Delegate Federal Limits to Exchanges, it Should Provide for a Reasonable Phase-In Period for Implementation of Position Limits</u>

Given the anticipated work involved for end users, such as ASR, to implement processes and systems, both technological along with manpower, to meet the requirements of the filing of Form 204, along with other reporting requirements, ASR respectfully requests that the Commission provide for a reasonable phase-in period for compliance with the new reporting requirements.[6] ASR believes the phase-in period should be at least eighteen months.

[6] The Commission has previously granted temporary relief from reporting requirements to allow a phase-in period for entities to implement new reporting rules. *See, e.g., Conditional Time-Limited No-Action Relief from Certain Ownership and Control Data Reporting Requirements Under Parts 17, 18, and 20 of the Commission's Regulations*, No-Action Letter 16-32 (April 8, 2016) (granting time-limited no-action relief for certain OCR forms); *Temporary and Conditional Relief from the Requirements of §§ 20.3 and 20.4 of the Commission's Regulations Regarding Large Swaps Trader Reporting for Physical Commodities* (Sept. 16, 2011) (granting temporary relief from large trader reporting of physical commodity swaps under §§ 20.3 and 20.4).

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Provide Specific and Detailed Guidance to Enable Accurate Reporting via Form 204

ASR has evaluated the proposed Form 204 – Statement of Cash Position of Hedgers posted on page 75792 of the Federal Register. This is a new form for companies such as ours, and raises several questions and concerns. Further, it appears that there are no safe harbor protections associated with the preparation of this report. It is unclear how an uncertainty in preparing and reporting via Form 204 would be resolved with the Commission.

As we anticipate other end users also desire, ASR would appreciate additional guidance and examples well beyond those provided in the Federal Register to better understand the practical considerations and processes in preparing and filing Form 204. Further, as is the case in other regulatory filings (such as OCR Data Reporting and Large Swaps Trader Reporting), ASR believes the Commission should develop a comprehensive user's manual for the position limits related forms. In addition, ASR requests that the Commission implement, in connection with filing of required Form 204, a reasonable time period to work through and resolve any reporting issues for reports prepared in good faith, including a "hot line" for questions.

As the Commission considers providing further guidance and examples in connection with preparation and processing of Form 204, ASR requests that the Commission further consider the following by way of examples to open questions and concerns in the reporting requirements of Form 204:

1. Form 204 appears to mix units of measure between the reporting of physical units and futures positions. For our purposes, ASR reports both physical and financial positions in tons. To avoid confusion in reporting under Form 204, ASR requests the Commission to permit utilizing consistent units of measure (i.e., reporting the information in either equivalent futures lots or physical quantities, as it is a simple conversion).
2. Form 204 appears to only address aggregate (all month) position limits. How does the Commission propose to distinguish reporting related to a spot month limit versus an all month limit?

3. Form 204, Section C, focuses specifically on cotton stocks. Is it the intention of the Commission to require reporting of stocks for all commodities or is this section only relevant for cotton market participants? As presented, ASR would report N/A in this section as ASR does not currently participate in the cotton markets.

The above examples are merely representative of the types of questions that remain unanswered and for which clarifications are sought.

Provide Position Recognition on a Macro Level, not a Micro Level

The forms proposed by the Commission are based upon the concept of "real-time" tracking of positions as they are triggered by a trader exceeding federal position limits.[7] That is, the aggregated derivatives and physical data will be required to be tracked on a real-time basis so that the trader can identify when the limit is exceeded and capture all required information as of that point for presentation to the Commission.

As previously expressed to the Commission, the requirement to keep track of ASR's entire portfolio of affected contracts (including physical contracts) across all of its global operations (as well as those with which ASR is to be aggregated) on a real-time basis in futures equivalents will not only be complex, but will impose a significant compliance burden and are not needed for commercial purposes. ASR, like many other hedgers, does not run real-time valuation and reporting systems.

ASR requests that the Commission take into consideration a suitable tracking system on a less than "real-time basis" to meet the goals of the NOPR, including providing for a reporting system that is commercially reasonable. ASR, like other typical hedgers, manages and values positions on a daily basis. To that end, the matching of physical transactions to enumerated bona fide hedges and approved non-enumerated bona fide hedges should be allowed to be performed on a macro basis. Many private companies such as ASR do not utilize hedge accounting for financial reporting purposes because performing specific linkage of individual physical transactions to individual hedge transactions is burdensome and does not provide any managerial or economic benefit. However, proving linkage on a macro basis (futures positions vs. physical positions) is commercially reasonable.

Conclusion

The foregoing will significantly impact the sugar market as it will certainly incur material compliance costs as well as compliance risk in attempting to timely satisfy the complex rules proposed in the Supplemental NOPR. Given that ASR believes that its hedging program is working effectively and it is not at risk of harms from excessive speculation, ASR requests, as the Commission enacts its final rule based on the NOPR and Supplemental NOPR, that it not materially impose costly and complex rules and reporting requirements on hedgers unless they are manifestly necessary to prevent a meaningful threat to market integrity.

In accordance with the foregoing, if the Commission issues a final position limits rule, we respectfully request that the Commission take steps to reduce the complexity and burden of

[7] *See* NOPR at 75742, 75777.

commercial companies using futures markets to hedge commercial risk. Further, any position limits rule enacted by the Commission should not disrupt legitimate hedging activities conducted today.

Respectfully Submitted,

/s/ David Johnson

David Johnson, Vice President & Chief Risk Officer

cc: Chairman Timothy Massad
Commissioner Sharon Bowen
Commissioner J. Christopher Giancarlo

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