July 13, 2016

Via Electronic Submission

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
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:

I. Introduction

Archer Daniels Midland Company ("**ADM**") appreciates the opportunity to provide comments, views and recommendations on this Supplemental Notice ("**Supplemental**") to the Commodity Futures Trading Commission ("**CFTC**" or the "**Commission**").

For more than a century, ADM has transformed crops into products that serve the vital needs of a growing world. Today, we are one of the world's largest agricultural processors and food ingredient providers, with more than 32,300 employees serving customers in more than 160 countries. With a global value chain that includes 428 crop procurement locations, 280 ingredient manufacturing facilities, 39 innovation centers and the world's premier crop transportation network, we connect the harvest to the home, making products for food, animal feed, industrial and energy uses. ADM operates four business segments which include Oilseed Processing, Corn Processing, Agricultural Services, and WILD Flavors and Specialty Ingredients. Headquartered in Chicago, Illinois, ADM connects crops to markets on six continents. Annual revenues for the fiscal year 2015 were $67.7 billion.

ADM must manage myriad market and commercial risks that confront a global business. The scale and scope of the supply chain outlined above makes the currently pending proposed

position limits rule[1] and Supplemental[2] critical to the operation of our business. With this in mind, we offer the CFTC the following comments.

Summary List of Issues

A. Economically Appropriate Test for the Management of Risk
B. CFTC Spread Exemption Proposals
C. Bona fide Hedge Exemption Application, Permitting and Reporting Requirements

II. Economically Appropriate Test for the Management of Risk

Commodity Exchange Act ("**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." (Emphasis added). The Commodity Markets Council ("**CMC**"), of which ADM is a member, previously commented that the CFTC should interpret the term "risk" broadly to mean more than "price risk" and take into consideration additional risks that commercial firms face during the conduct of business. [3]

In Section II.B.3.i of the Supplemental, the CFTC has chosen to reject the CMC proposal and writes that "a broader interpretation appears to be inconsistent with the policy objectives of position limits in CEA section 4a(a)(3)(B) regarding physical commodities, particularly: diminishing excessive speculation that causes sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity; deterring manipulation, squeezes, and corners; and ensuring the price discovery function is not disrupted."

ADM respectfully suggests that the opposite is true: that the CFTC's proposed *narrow* interpretation is inconsistent with the policy objectives of the CEA stated above. We believe that it is "economically appropriate" to manage a given risk because of the effect that it has on the underlying price. Further, the CFTC's narrow interpretation inadvertently creates the environment for the very price disruption the CFTC seeks to prevent.

"Risk" is a term used in many contexts, particularly for firms in commodity businesses that manage the impact that events have on the markets and the commodities in which they are active and upon the stakeholders with whom they conduct business. These events are commonly called "risks." They are managed by hedgers because of the impact these risks have on price. There are risks on the supply side and the demand side. Supply side risks may include but are not limited to: production, weather, disease, insects, transportation availability and government policies such as embargoes. Demand side risk may include import restrictions, customer preferences, plant closures and product/price substitution effects. There may also be operational risks, such as interruptions to power and/or fuel supplies, transportation supply or labor risks such as contract disputes that close ports. These risks are endemic to operating a commercial

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[1] CFTC Notice of Proposed Rulemaking: "Position Limits for Derivatives". Federal Register, December 12, 2013. (Also CFTC Docket: RIN 3038–AD99).
[2] CFTC Supplemental Proposal: "Position Limits for Derivatives: Certain Exemptions and Guidance". 81 Fed. Reg. 38458. June 13, 2016.
[3] Commodity Markets Council ("CMC") Letter to CFTC (March 28, 2015). CFTC Docket RIN 3038-AD99.

company. These risks may ultimately manifest themselves in the price of the commodity through market dynamics. Effectively managing "risks" that have "price risk" results in risk reduction to the firm.

Understanding this is critical, because the evaluation of these risks and their impact on price is how firms determine the best approach to managing risks. A broader view of "risk" should not be perceived as being at odds with the CFTC's view of "price risk" because all of these risks can inform and determine "price". The CFTC should recognize that entering into risk management strategies is to manage price risk by appropriately managing the myriad risks that *impact* prices. There are countless phenomena that occur during the course of commerce that can impact price. Firms evaluate these phenomena and determine a price impact based on a combination of their likelihood of occurrence and the price impact in the event of occurrence. It is "price risk" that is being managed.

ADM encourages the CFTC to consider the following comments with regard to the "economically appropriate" test within the context of the policy objectives of the CEA. A narrow interpretation of this rule could limit ADM's ability to receive a hedge exemption from the position limits rule, thus leaving the company exposed to risks that could otherwise be hedged.

A. "diminishing excessive speculation that causes sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity"

1. The CFTC, through reporting requirements and special call authority, has or can obtain a view of the cash and futures positions of commercial market participants to determine whether or not the positions of commercial entities are speculative.

2. Exchanges routinely conduct surveillance to understand the physical cash transactions that support futures market activity.

3. Removing a commercial market participant's capacity for a hedge exemption will not prevent changes in price if a market impacting phenomena warrants a price change, but it would prevent a commercial entity from hedging that price change.

4. Sudden, unreasonable or unwarranted changes in the price of a commodity will be more likely in the absence of commercial market participants who would not be allowed to express informed expectations through market participation.

5. A broader interpretation of the "economically appropriate" test will allow for appropriate, bona fide hedging by commercial entities if the CFTC evaluates the facts and circumstances of the exemption request and reviews the risk-reducing actions being considered by the exemption-seeking firm. A narrow interpretation could run counter to the aims of the CEA if it puts a commercial entity in the unenviable position of having a hedge-able risk yet prevented from hedging by the narrow

interpretation that prohibits an exemption. This effectively makes the entity a speculator in the cash market outside of the derivatives market.

B. "deterring manipulation, squeezes, and corners"

1. The CFTC, Derivative Contract Markets ("DCMs"), and Self-Regulatory Organizations ("SROs") retain the authority to deter manipulation, squeezes, and corners regardless of how narrow or broadly the "economically appropriate" test is interpreted. The market surveillance activity of exchanges will continue.

C. "ensuring the price discovery function is not disrupted"

1. Price discovery is an iterative process that arrives at a price when market participants engage in the market, not when they don't. The CFTC's narrow interpretation would limit market participation by commercial participants who require a hedge exemption to hedge risk, and deprive the market of the participation it needs to fulfill the price discovery function.

2. In a duly noticed June 22, 2016 meeting between CFTC staff and CMC members, CFTC staff highlighted that the approach taken by the Commission in the proposed position limits rule provides additional hedging capacity by raising speculative limits beyond current levels. CFTC staff cited internal data that fewer firms would require exemptions and that issues associated with the economically appropriate test should be minimized. While managing risks within the limits contemplated in the proposed rule is a positive outcome, the concerns raised here are about the process of receiving a hedge exemption when it is required and the impact on the market and the hedger if it is not granted.

3. A market participant could require a hedge exemption during a time when risk management is most required and time at a premium: a time of high stress in the market including high volatility, high uncertainty, high volume and high likelihood of speculative entrance into the market. At such a time, the downside and limitations of a narrow interpretation will present themselves.

4. Commercial participants seek to create in advance a transparent "economically appropriate" policy that provides certainty so that when markets conditions appear they will not be left to wonder if the appropriate risk management strategy they wish to employ will be deemed "economically appropriate" by the CFTC at that time with negative consequences for their business, their customers and the market if the CFTC does not agree. A narrow policy could leave commercial participants unhedged and on the sidelines while new speculative entrants have no similar restriction.

D. CFTC Concerns About the "Economically Appropriate" Definition and its Impact on Increased Speculation

The CFTC's concerns about a broader interpretation of the "economically appropriate" test leading to increased speculation by market participants can be addressed by the CFTC differentiating the activity of hedgers from the activities of speculators. The critical question to ask is "Which party is at risk when they are not participating in the futures/derivatives market?" The key difference is that a speculator is at risk when they have positions in the futures/derivatives market, whereas a commercial market participant may be more at risk when they do not have position in the futures/derivatives market.

A speculator may wish to speculate in hopes of profiting on the anticipated move in crop prices based upon the rain forecast in Brazil. If the speculator thinks that lack of rain or too much rain will hurt the crop, the speculator may buy/go long soybean futures expecting higher prices. If the rains are perfect and the crop is looking above average, the speculator may sell/go short futures in hopes the price falls. In this example, because the speculator has no physical or cash position, the speculator is only at risk to the extent the speculator *chooses to be*: by being long or short in the futures market. If the speculator is not in the futures market, the speculator is not at risk.

A commercial market participant is invested in the industry with infrastructure, employees, trucks, barges, rail cars, facilities, plants and factories as well as customers with contracts to buy one product or process and sell another. A commercial market participant does not have the luxury of avoiding risks and waiting for a more certain future by simply "sitting the market out". The commercial operator faces risks simply by being a participant in that industry. When the commercial operator appropriately manages an identified risk with an appropriate offset, it is done to reduce risk in the operation of an enterprise. A commercial market participant has no interest in compounding risk that is already present. They hedge in order to reduce risk inherent in operating the enterprise. A commercial market participant determines how a specifically identified risk affects the business and chooses the appropriate risk management strategy that mitigates and reduces that risk in an "economically appropriate" manner.

The CFTC should recognize this activity as hedging, risk reducing, and risk mitigation—not speculation—when the facts and circumstances are warranted, when the transactions reduce risk in the conduct of the enterprise, and when the underlying transaction is appropriately being hedged.

E. CFTC Should Broaden "Economically Appropriate" Test

For these reasons, the CFTC should allow "risks" beyond "price risk" into the "economically appropriate" test. A narrow definition is the antithesis of economically appropriate because firms decide if it is or is not economically appropriate to manage the risks they have identified based on the impact identified risks have on price. A narrow interpretation disrupts price discovery because it would deprive the market of key commercial participants at critical times. A narrow definition could increase the speculative presence in the market while limiting the presence of commercial interests. A broader definition of the "economically appropriate" test that allows commercial entities to receive hedge exemptions for bona fide hedges should be interpreted by the CFTC as consistent with CEA.

III. CFTC Spread Exemption Proposals

A. CFTC List of Common Spreads

ADM supports the non-exhaustive list approach in §150.10(a)(2) of spread activity that may be used in derivatives markets to facilitate the bona fide hedging activity of market participants. It is equally important for the CFTC to clearly state that this list is non-exclusive. The CFTC can accomplish this by stating in the narrative and regulation of the Final Rule that other spreads are available and the creating of a list is not intended to limit hedgers' ability to use spreads to hedge risk in the marketplace. ADM also supports the comments of the Futures Industry Association ("**FIA**") in this regard.

B. "Legged-In Spreads"

ADM supports the Commission's recognition of spread exemption requests that may include "legged-in spreads" where spreads are entered into in two-steps as opposed to all legs of the spread being executed simultaneously. Prudent risk management may necessitate managing the elements of a spread separately. For example, a risk management strategy may be more effective if the components of the soybean crush—soybeans, meal and oil—are able to be managed and entered into individually and not required to be executed simultaneously.

C. Last 5 Days of Trading in a Contract

ADM is pleased that the CFTC has revised its December 2013 position limits proposal to allow spread exemptions in the spot month. The CFTC notes that it would ensure sufficient market liquidity for bona fide hedgers. Yet, in the Supplemental, the Commission expresses concern that doing so would undermine price discovery as the contract moves to expiration during the last 5 days of trading.

As a result, the CFTC is considering a prohibition on hedge exemptions during the last 5 days of trading. We strenuously disagree. It is incongruous to view the liquidity which clearly improves the ability to hedge during the spot month as simultaneously undermining price discovery during the last 5 days of trading. The *volume* that ensures liquidity for hedgers also ensures *convergence* of the cash and futures price at expiration, a hallmark of price discovery.

With specific regard to CFTC's **Request for Comment 20**, the Commission should not prohibit spread exemptions during the last 5 days of trading. Convergence between cash and futures determines whether or not a hedge is effective and furthers the CEA objective of price discovery. A market participant with the capacity to *make* or *take* delivery during the last 5 days of trading is needed to ensure convergence occurs. To limit the participation of market participants with this capacity undermines price discovery, it does not aid it. Any prohibition on the use of spread positions during the last five days of trading or the spot period will inhibit convergence and, in turn, the price discovery function of the futures market.

Limited confidence that convergence will occur negatively impacts the expected return of a transaction. This reduces market participants' willingness to enter into the transactions that ensure that grain moves smoothly, orderly and timely from where it is produced to where it is demanded. The CFTC proposal—by harming the link between price discovery, supply, demand and convergence—would delay marketing and thus slow the flow of grain, causing price distortions and reverberations throughout the industry.

The National Grain and Feed Association, of which ADM is a member, has included in their comment letter to this Supplemental, examples of transactions that outline the importance of this issue to commercial hedgers. We encourage the CFTC to study these examples and to understand their importance not only to ADM but to our farmer suppliers, our end-use customers, and the market in general.

To the extent the CFTC is concerned about trading disruptions or congestion during the last 5 days, the CFTC has other tools available to it to ensure the market and market participants are engaging in appropriate market behavior. The CFTC can also rely upon its special call authority. Additionally, exchanges and DCM's routinely engage in market surveillance activity to understand the cash and futures positions of market participants. This enables them to understand the intentions of market participants while guarding against congestion and manipulation and ensuring that convergence occurs. It should also be noted that there is no statutory provision that would limit bona fide hedge exemptions during the last 5 days of trading.

IV. Bona Fide Hedge Exemption Application, Permitting and Reporting Requirements

Through this Supplemental, the CFTC is attempting to provide end-users with a pathway for the approval of hedge exemptions for Non-Enumerated Bona Fide Hedges, Spread Exemptions, and Anticipatory Exemption. Unfortunately, in the process of doing so, the Commission is creating a series of indirect and direct burdens on commercial market participants. The indirect burdens result from a confusing and potentially lengthy permitting and approval process that will be implemented by exchanges with CFTC oversight. The direct burdens for market participants are a result of the Commission layering on top of existing reporting requirements another reporting burden for the hedge exemptions subject to the Supplemental.

The CFTC should carefully consider industry, trade association, and derivative contract market comments about the exemption approval process it has delegated to exchanges for non-enumerated, spread, and anticipatory hedge transactions. ADM is concerned about a regulatory process that could prove cumbersome or dilatory, leaving the company exposed to price and market volatility.

The CFTC should establish a timeline by which it would issue a decision to overturn an exchange approval of a hedge exemption. If the Commission finds that a market participant's position does not qualify for bona fide hedge treatment, the Commission should clarify in the final rule the "commercially reasonable" time period for reducing its position below the limit. This time period should take into consideration critical market factors so as not to disadvantage the market participant who must now liquidate positions to get below the prescribed position limits. The CFTC should recognize a "safe harbor" for market participants who relied upon the judgement of exchanges to grant a hedge exemption that is later reversed by the Commission.

Per **Request For Comment 21**, the reporting regime proposed in the Supplemental would create a new form 504, impose a series of reporting requirements to track and distinguish between types of hedge exemptions and require the reporting of all cash market holdings for each day of the spot month. ADM submits that once a hedge exemption is granted under the supplemental, the reporting requirements should be similar to the reporting requirements for existing enumerated hedge exemptions. Reporting requirements under the Supplemental that require ADM to distinguish between hedge exemptions for enumerated hedges, non-enumerated hedges, spreads, and anticipatory transactions, and the cash transactions tied to each will be difficult given the portfolio nature of our business and the fungibility of futures contracts and the underlying cash commodity. The FIA letter outlines this issue as well and ADM supports these comments.

V. Conclusion

In addition to these comments, please consider ADM's previous submissions to this docket as well as comments being submitted pursuant to this "Supplemental" by the National Grain and Feed Association, the Commodity Markets Council and the Futures Industry Association. Collectively, these comments cover many issues associated with the proposed position limits rule that are important to managing risk at ADM.

ADM appreciates the opportunity to provide our views and comments to the Commodity Futures Trading Commission and looks forward to further discussion about these issues as the Commission considers the Position Limits Rule.

Respectfully Submitted,

Mark Bemis
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Archer Daniels Midland Company