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September 12, 2016

VIA ONLINE SUBMISSION

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

Re: Recommended Federal Spot-Month Limit Levels

Dear Mr. Kirkpatrick:

CME Group Inc. ("CME Group") is submitting for the Commodity Future Trading Commission's ("CFTC" or "Commission") consideration recommended federal spot-month position limit levels for 17 commodity markets referenced in the CFTC's 2013 position limits proposal¹ where the core referenced futures contract is listed on a CME Group Exchange. Provided the Commission first finds that imposing federal spot-month limits is necessary and appropriate on a commodity-by-commodity basis as required by statute, the Commission should set such federal limits at the levels recommended herein and apply such limits in parity for physically-delivered benchmark futures contracts and linked cash-settled contracts. For the reasons discussed in this letter and in prior submissions by CME Group,² only a system of spot-month limit parity—based on current deliverable supply estimates and without the availability of an expanded, conditional limit for cash-settled contracts—would be consistent with sound policy and Congressional intent.

As identified in the attached chart, the recommended federal spot-month limit levels reflect *updated* deliverable supply estimates that have been discussed with CFTC staff and, as a result of the updated estimates, certain recommended levels are higher than exchange-set limits in effect today.

¹ See Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013).

² See, e.g., Letter from Kathleen Cronin, CME Group, to Christopher Kirkpatrick, CFTC, re Position Limits for Derivatives: Certain Exemptions and Guidance (RIN 3038-AD99) (Sept. 1, 2016); Letter from Kathleen Cronin, CME Group, to Christopher Kirkpatrick, CFTC, re Position Limits for Derivatives: Certain Exemptions and Guidance (RIN 3038-AD99) (July 13, 2016), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60926&SearchText=cme>; Letter from Kathleen Cronin, CME Group, to Melissa Jurgens, CFTC, re Position Limits for Derivatives (RIN 3038-AD99) (Aug. 4, 2014), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59971&SearchText=>; Letter from Kathleen Cronin, CME Group, to Melissa Jurgens, CFTC, re Position Limits for Derivatives (RIN 3038-AD99), at 26-39 (Feb. 10, 2014), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59718&SearchText=>.

Moreover, CME Group has carefully calibrated the recommended federal spot-month limit levels based on its knowledge of the 17 individual contract markets that it administers in order to ensure that the position limit objectives set forth in Commodity Exchange Act ("CEA") Section 4a(a)(3) are served—that is, the levels proposed by CME Group would, to the maximum extent practicable, allow for reasonable (as opposed to excessive) levels of speculation, guard against manipulation, provide for sufficient liquidity for bona fide hedgers, and protect the price discovery function of the underlying physical delivery market (*e.g.*, by promoting more seamless convergence between futures and cash markets). By contrast, applying a "one-size-fits-all" 25 percent spot-month limit formula could yield excessively high limits in certain markets and thus undermine the key statutory purpose of "diminish[ing], eliminat[ing], or prevent[ing] excessive speculation [causing sudden or unreasonable fluctuations or unwarranted changes in price]."³ Overall, sound regulatory policy requires that—to the extent the Commission makes the statutorily required necessity and appropriateness findings prior to imposing federal limits—the Commission adopt limit levels recommended by the exchange listing the physically-delivered core referenced futures contract because the exchange has the most direct expertise and familiarity with its contract markets, including measuring deliverable supply and setting limit levels.

Not only are the federal spot-month limit levels recommended herein tailored to reflect updated deliverable supply estimates and the particular characteristics of the relevant commodity markets, but they are also designed to be utilized only on a one-to-one basis for physically-delivered benchmark futures and linked cash-settled contracts. To be clear, these recommended levels are based on an assumption of parity and *would not be appropriate* if the Commission adopts its proposed conditional limits approach. CME Group has explained at length in previously submitted comment letters that spot-month limit parity among physically-delivered and cash-settled contracts has proven a long-standing, effective system, and no reasoned basis has been provided to deviate from the general rule of parity. Indeed, CME Group would refer the Commission to CME Group's prior letters for an extensive discussion of the adverse policy consequences that could potentially flow from the CFTC's proposal to discard spot-month limit parity in favor of an expanded, conditional limit for cash-settled contracts across the 28 referenced commodity markets.⁴

In proposing the limit levels herein, CME Group also strongly opposes the use of any federal conditional limit as a matter of statutory law. CEA Section 4(b), which was added by Dodd-Frank, contains an explicit Congressional endorsement of "comparable" (*i.e.*, *not* higher) limits for cash-settled contracts vis-a-vis the physically-delivered contracts to which they are linked. In particular, Section 4(b)(1)(B) imposes position limit requirements on foreign boards of trade ("FBOTs") that list cash-settled contracts referred to as "Linked Contracts"—which Section 4(b)(1)(B) defines to be contracts that "settle[] against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity" like a designated contract market ("DCM"). For such "linked contracts," Congress specified that the FBOT must "adopt position limits (including related hedge exemption provisions) that are *comparable to* the position limits (including related hedge exemption provisions) adopted by the DCM for the contract it lists and against which the FBOT's linked contract settles."⁵

³ See CEA Section 4a(a)(1).

⁴ See *supra* note 2.

⁵ CEA Section 4(b)(1)(B)(ii)(I) (*emphasis added*). To be sure, Section 4(b)(1)(B) refers to limits and hedge exemptions adopted by registered entities like DCMs, not federal limits as the Commission has proposed. But the absence of any Congressional

The statutory definition of "linked contract" mirrors the definition of "referenced contract" in the Commission's 2013 position limits proposal: both definitions capture cash-settled contracts that are "linked" to the price of a physically-delivered contract traded on a DCM (referred to as a "core referenced futures contract" in the proposal).⁶ Whether a cash-settled contract is called a "linked contract" or a "referenced contract," the underlying Congressional intent is clear: the limit levels and hedge exemptions for that contract and the related physically-delivered contract must be "comparable." Section 4(b) is the *only* place in the CEA where Congress addresses how to treat for position limit purposes a cash-settled contract and its physically-delivered benchmark contract. Congress unmistakably wanted the two trading instruments to be treated "comparably."

Notably, the legislative context for the "comparability" standard confirms that "comparable" means substantively equivalent. As evidenced in statements from then-Senator Carl Levin and Senator Dianne Feinstein, the "comparability" language in Section 4(b) was intended to close the so-called "London Loophole" whereby traders would seek to avoid more stringent position limit regulation on U.S. DCMs by trading linked cash-settled contracts on foreign markets.⁷ Thus, the London Loophole had existed because different regulatory treatment of virtually identical products enabled regulatory arbitrage by U.S. traders, to the potential detriment of the integrity of U.S. benchmark physically-delivered futures contracts. Such regulatory arbitrage would only cease to exist if the term "comparable"—as used in Section 4(b) and codified in the CFTC's regulations as discussed below—signifies substantive equivalence in the position limits imposed on physical delivery benchmark futures and linked cash-settled contracts.

The CFTC codified the statutory "comparability" (i.e., substantive equivalence) standard in Regulation 48.8(c)(1)(ii)(A). In adopting this regulation, the Commission acknowledged that a linked contract and its physically-delivered benchmark contract "create a single market" capable of being affected through trading in either of the linked or physically-delivered markets.⁸ Further, the CFTC observed that the price discovery process would be protected by "ensuring that [] linked contracts have position limits and accountability provisions that are comparable to the corresponding [DCM] contracts [to which they are linked]."⁹ This CFTC-espoused (and Congressionally mandated) notion—i.e., linked

reference in Section 4(b) to federal limits merely belies the Commission's finding—as articulated in its 2013 proposal—that in 2010 Congress mandated the adoption of federal limits for physical commodity derivatives. See 78 Fed. Reg. 75680, 75681-85 (Dec. 12, 2013). It is hard to imagine that Congress mandated federal limits in Section 4a but forgot about that mandate in Section 4(b).

⁶ Compare CEA section 4(b)(1)(B) with proposed section 150.1 (defining "Referenced contract").

⁷ In addressing legislation he had proposed and which mirrors the language eventually codified in CEA Section 4(b), then-Senator Carl Levin said that the legislation would close the London Loophole "by requiring foreign exchanges that want to install trading terminals in the United States to impose comparable limits on speculative trading as the CFTC imposes on domestic exchanges to prevent excessive speculation and price manipulation." See 155 CONG. REC. S2336 (daily ed. Feb. 13, 2009) (statement of Sen. Levin). Similarly, Senator Dianne Feinstein noted that a bill containing the "comparability" language later adopted in CEA Section 4(b) would help close the London Loophole. See 156 CONG. REC. S3531 (daily ed. May 11, 2010) (statement of Sen. Feinstein).

⁸ See 76 Fed. Reg. 80674, 80685 (Dec. 23, 2011).

⁹ See *id.* at 80698

cash-settled contracts and their physically delivered benchmark contracts form a "single market" which must be protected through "comparable" position limits—holds true regardless of whether the cash-settled contract is listed on an FBOT, DCM or swap execution facility ("SEF"), or traded over-the-counter.

The Commission's proposal to arbitrarily favor cash-settled contracts through an expanded, conditional limit (as well as through the proposed 5-day rule for bona fide hedges) contravenes the "comparability" standard set forth in the CEA and codified in the CFTC's regulations. Simply put, no such conditional limit (whether set at two times, five times, or any multiple of the spot-month limit for the physically-delivered benchmark contract) can be said to be "comparable" to the physical limit.¹⁰ Also, allowing certain hedge exemptions in the last five spot-month trading days for cash-settled contracts but not for physically-delivered contracts is not "comparable." Any final position limit rules adopted by the Commission must reflect the Congressional "comparability" standard in order to be in accordance with law and consistent with sound regulatory policy. As indicated above, CME Group believes that this standard necessitates one-to-one treatment and similar exemptions for both physically-delivered core referenced futures contracts and *all* applicable linked, cash-settled referenced contracts.

We hope that the Commission takes into account our recommended federal spot-month limit levels and comments as the Commission develops spot-month position limit guidance and regulations for both physical-delivery and cash-settled contract markets. Please contact me with any questions or comments by telephone at (312) 930-3488 or by e-mail at Kathleen.Cronin@cmegroup.com, as well as Thomas LaSala, Managing Director, Chief Regulatory Officer, by telephone at (212) 299-2897 or by e-mail at Thomas.LaSala@cmegroup.com.

Sincerely,



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Senior Managing Director, General Counsel
Legal Department

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 Adriaance, Senior Special Counsel
Lee Ann Duffy, Assistant General Counsel
Steven Benton, Economist

¹⁰ Even absent a conditional limit, cash-settled spot-month limits would not necessarily be "comparable" to physically-delivered contract limits because the CFTC's proposal allows for cash-settled spot-month limits to be set at 25 percent of deliverable supply even where a DCM sets limits, as appropriate, below 25 percent for the related physically-delivered benchmark.

CME Group – Recommended Federal Spot-Month Limit Levels

Product	Asset Class	Current Exchange Spot-Month Limit	Updated Deliverable Supply Estimate (Contract Equivalents)	Recommended Federal Spot-Month Limit
CBOT Wheat	Agricultural	600 / 500 / 400 / 300 / 220*	9,422	600
CBOT Corn	Agricultural	600	3,324	600
KC HRW Wheat	Agricultural	600	11,648	600
CBOT Oats	Agricultural	600	3,464	600
CBOT Rough Rice	Agricultural	600 / 200 / 250**	8,948	600
CBOT Soybean	Agricultural	600	4,548	600
CBOT Soybean Meal	Agricultural	720	7,842	720
CBOT Soybean Oil	Agricultural	540	13,387	540
COMEX Gold	Metal	3,000	44,487	6,000
COMEX Silver	Metal	1,500	22,390	3,000
COMEX Copper	Metal	1,000	4,239	1,000
NYMEX Platinum	Metal	500	3,545	500
NYMEX Palladium	Metal	100	3,287	100
NYMEX Crude Oil	Energy	3,000	41,600	6,000 / 5,000 / 4,000***
NYMEX NYH ULSD	Energy	1,000	13,600	2,000
NYMEX NYH RBOB Gasoline	Energy	1,000	26,900	2,000
NYMEX Natural Gas	Energy	1,000	7,896	2,000

* In the last five trading days of the expiring futures month in May, the speculative position limit will be: 600 contracts if deliverable supplies are at or above 2,400 contracts; 500 contracts if deliverable supplies are between 2,000 and 2,399 contracts; 400 contracts if deliverable supplies are between 1,600 and 1,999 contracts; 300 contracts if deliverable supplies are between 1,200 and 1,599 contracts; and 220 contracts if deliverable supplies are below 1,200 contracts. Deliverable supplies will be determined from the CBOT's Stocks of Grain report on the Friday preceding the first notice day for the May contract month.

** In the last five trading days of the expiring futures month, the speculative position limit for the July futures month will be 200 contracts and the speculative position limit for the September futures month will be 250 contracts.

*** The speculative position limit will be: 6,000 contracts as of the close of trading three (3) business days prior to the last trading day of the contract; 5,000 contracts as of the close of trading two (2) business days prior to the last trading day of the contract; and 4,000 contracts as of the close of trading one (1) business day prior to the last trading day of the contract.