



Kathleen Cronin
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September 1, 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: Position Limits for Derivatives: Certain Exemptions and Guidance, RIN 3038-AD99

Dear Mr. Kirkpatrick:

Under the pretense of preserving the "status quo," ICE's August 24, 2016, letter advocates for the Commodity Futures Trading Commission's ("CFTC" or "Commission") 2013 Conditional Limits Proposal¹ favoring cash-settled contracts in 28 referenced commodity markets. Throughout ICE's letter, issued in response to CME Group Inc.'s ("CME Group") comment letter dated July 13, 2016, ICE demonstrates a fundamental misunderstanding of CME's position regarding the potential adverse policy implications of, and lack of legal justification for, the 2013 Conditional Limits Proposal. For these reasons and one additional statutory basis discussed below, CME continues to oppose Conditional Limits and, in response to the arguments repeated by ICE in its July 13, 2016² and August 24, 2016, letters, would refer the Commission to the several comment letters we have already filed on the subject since the Commission first proposed a new position limits regime under Dodd Frank.³

To be clear, CME Group has never denied that the New York Mercantile Exchange currently recognizes Conditional Limits for natural gas. That Conditional Limits approach, however, was adopted as a commercial response to ICE for a *single* market and operates within a vastly different position limits regulatory construct than would the 2013 Conditional Limits Proposal's approach—a far cry from the "status quo." The "status quo" **does not** place restrictions on

¹ Proposed section 150.3(c).

² See Letter from Kara Dutta, Intercontinental Exchange, Inc., to Christopher Kirkpatrick, CFTC, re Supplemental Notice of Proposed Rulemaking -- Position Limits for Derivatives: Certain Exemptions and Guidance (RIN 3038-AD99) (July 13, 2016), available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60929&SearchText=>.

³ See, e.g., 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=>. For the avoidance of doubt, this letter is meant to supplement all previous CME Group comment letters submitted in response to the Commission's 2013 proposal on position limits. CME Group respectfully requests that this letter be included in the official comment file.

hedging in the last five days of trading in a physically delivered contract. As a result, any comparison or reference of historical data ICE presents in its letter to refute CME Group's arguments, as flawed as the analysis is itself, is equivalent to comparing apples and oranges. Moreover, CME Group has never touted the existing Conditional Limits framework as a "model of efficiency," as ICE refers to it in its letter. Rather, as CME Group has consistently advocated throughout the Commission's position limits rulemaking process, any new federal regime should not allow for Conditional Limits, even though such an approach could work to the detriment of CME Group's commercial interests in certain of its cash-settled markets.

In addition to the policy reasons and the legal deficiencies that we have outlined before, **CME Group also opposes any Conditional Limits framework as a matter of statutory law.** We believe that the favorable treatment of cash-settled contracts embodied in the 2013 Conditional Limits Proposal (as well as the proposed 5-day rule for bona fide hedges) contravenes Congressional intent as expressed in Section 4(b) of the Commodity Exchange Act ("CEA"), wherein Congress explicitly endorses the use of "comparable" (i.e., *not* higher) limits for cash-settled contracts vis-a-vis the physically-delivered contracts to which they are linked. Neither the Commission nor ICE have addressed this comparability standard.

In enacting Dodd-Frank in 2010, Congress amended Section 4a on position limits and added Section 4(b) to the CEA, the foreign board of trade ("FBOT") registration provision. Section 4(b)(1)(B) imposes special regulatory requirements on 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"). Position limits are among those special regulatory requirements. For linked contracts, Congress specified that the FBOT must "adopt position limits (including related hedge exemption provisions) that are *comparable to* the position limits (included related hedge exemption provisions) adopted by the DCM for the contract it lists and against which the FBOT's linked-contract settles."⁴

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).⁵ 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."

⁴ 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 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).

⁵ Compare CEA section 4(b)(1)(B) with proposed section 150.1 (defining "Referenced contract").

The CFTC codified the statutory "comparability" 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.⁶ 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]."⁷ This CFTC-espoused (and Congressionally mandated) notion—i.e., linked 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 2013 proposal contravenes Congress's intent behind the statutory "comparability" requirement (and the CFTC's own rationale in implementing that requirement) in at least three ways. First, no Conditional Limit, let alone a Five Times Limit, can be said to be "comparable" to the physical limit. Second, even absent a Conditional Limit, cash-settled spot-month limits would not necessarily be "comparable" to physically-delivered contract limits because the 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. Third, 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." These policies must be amended by the Commission in any final rule to meet the congressionally-set "comparability" standard.

In the context of the proposal on position limits (and specifically, Conditional Limits), neither the Commission nor ICE to date has addressed these aspects of Section 4(b). If the Commission determines on its own—not as a matter of mandate—that it is necessary and appropriate to adopt final position limit rules, it would not be acting in accordance with the statute if these final rules did not reflect the Congressional "comparability" standard for linked cash-settled contracts. We believe this standard necessitates one-to-one limit treatment and similar exemptions for both physically-delivered core referenced futures contracts and **all** applicable linked, cash-settled referenced contracts.

We appreciate the Commission's willingness to continue to consider comments on this important topic. 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.

⁶ See 76 Fed. Reg. 80674, 80685 (Dec. 23, 2011).

⁷ See *id.* at 80698.

Sincerely,

A handwritten signature in black ink that reads "Kathleen M. Cronin". The signature is written in a cursive style with a small dot above the 'i' in Cronin.

Kathleen Cronin
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
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