



February 28, 2017

**Via Electronic Submission**

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

RE: Position Limits for Derivatives (RIN 3038-AD99)

Dear Mr. Kirkpatrick,

ICE Futures U.S. (“ICE Futures” or the “Exchange”) appreciates the opportunity to submit comments on the rulemaking issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) setting forth new rules on position limits for derivatives. ICE Futures is a U.S. designated contract market owned by Intercontinental Exchange, Inc. which is the leading global network of regulated exchanges and central counterparty clearing houses for financial and commodity markets. This letter supplements comments submitted by the Exchange on February 10, 2014, August 4, 2014, January 22, 2015, March 30, 2015 and July 13, 2016 and primarily focuses on issues that were not discussed in the earlier letters.<sup>1</sup>

As background, the Exchange lists contracts in a broad array of international, soft agricultural commodities, including sugar, coffee, and cocoa, as well as contracts in legacy commodities, such as cotton. ICE Futures and its predecessor exchanges, which date back to 1870, have a strong history of overseeing position limits, accountability levels and exemption requests for the Coffee “C”<sup>®</sup>, Cocoa, Sugar No. 11<sup>®</sup>, FCOJ-A and Sugar No. 16 futures and options contracts. This extensive, direct experience has guided the Exchange’s evaluation of the implications of the proposed rulemaking to the maintenance and oversight of these markets by ICE Futures.

The rules and procedures developed and used by the Exchange to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of its markets as those needs and practices have developed over time. As discussed in our previous comment letters and presented in meetings with Commission staff and participants in our markets, the rules proposed in

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<sup>1</sup> It also supplements the comment letter dated February 28, 2017 submitted by Intercontinental Exchange Inc.

2013 conflicted with commercial market practices for many of our commodities and could have negatively impacted the ability of commercial participants in Exchange agricultural markets to hedge their risks using Exchange contracts. The Exchange commends the changes that have been made in the newly proposed rules that address these concerns, specifically the rules permitting exchanges to grant non-enumerated bona fide hedge exemptions and spread exemptions from federal position limits, subject to certain requirements and the de novo review of the Commission.

However, we believe that the proposed rules continue to establish an overly rigid definition of bona fide hedging that fails to recognize risk management strategies that have been successfully used for decades by commercial participants in the sugar, coffee and cocoa markets. In the Exchange's experience, these practices have not resulted in disorderly markets despite the fact that many of the hedge exemptions the Exchange grants in these markets are for positions that are not enumerated bona fide hedging positions under the proposed rules. While the proposed rules for non-enumerated bona fide hedge exemptions appear to permit the Exchange to continue to grant such exemptions, subject to Commission review, the Exchange remains concerned about the failure of the proposed rules to recognize such longstanding strategies as enumerated bona fide hedges as well as the continued failure of the Commission to recognize the multiple risks commercial entities face other than price risk that may impact the value of a physical market position.

Summarized below are the key issues in the newly proposed rules that were not discussed in-depth in previous Exchange comment letters and which the Exchange believes threaten the utility of our agricultural futures and options contracts as hedging and risk management vehicles for commercial participants.

***Retroactive exemptions should not be limited to enumerated bona fide hedging positions.*** Proposed Rule 150.5(a)(2)(ii)A is an improvement from previous proposals that did not permit any retroactive exemptions, which would have been a departure from current exchange rules. However, it limits the availability of such exemptions to enumerated bona fide hedging positions. As noted above, many of the exemptions granted by the Exchange in the sugar, cocoa and coffee contracts are for positions that are not included in the list of enumerated bona fide hedges. Current Exchange rules permit retroactive exemptions for sudden unforeseen increases in a firm's bona fide hedging or risk management needs. This rule reflects the fact that commercial hedging needs cannot always be predicted in advance. 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. Limiting the availability of retroactive exemptions to enumerated bona fide hedging positions will mean that retroactive exemptions may not be available for the sugar, cocoa and coffee markets unless the list of enumerated bona fide hedges is significantly expanded. The Exchange respectfully recommends that retroactive exemptions be made available for non-enumerated bona fide hedge positions, at the discretion of exchanges, with the oversight of the Commission.

***Positions Managing the Risk of Commodity Index Contracts should be eligible for exemptions.*** The proposed rules do not permit the granting of risk management exemptions for physical commodities. This approach means that risk management exemptions granted by the Commission pursuant to Rule 1.47 more than a decade ago in some instances, and still in effect, will be rescinded without consideration of how this action could impact the markets in which these exemptions are still in effect and utilized - or the potential impact on the underlying commodity index swap market. Pursuant to the proposed rules, positions established to manage the risk associated with a commodity index swap will be considered speculative. If swap dealers will no longer offer commodity index swaps due to the inability to obtain exemptions for positions managing the risk of such swaps, does that mean that commodity index swaps will no longer be available? And, if so, how does that impact the futures, options and swap markets? Will liquidity be impacted and does a reduction in liquidity threaten the utility of the Exchange's agricultural futures and options markets for commercial participants? The Exchange recommends that risk management exemptions should continue to be available for physical commodities and that any change to this practice should only be made after a thorough review of the impact of such change on the futures, options and swap markets. Further, the Exchange recommends that exchanges should be authorized to grant risk management exemptions from federal position limits following a similar process to the ones provided in proposed Rules 150.9 and 150.10.

***There should be a time limit for Commission review of exemptions granted by exchanges.*** The proposed rules provide that exemptions from federal position limits granted by exchanges are subject to de novo review by the Commission. The proposed rules require exchanges to determine in a timely manner and notify an applicant in a timely manner whether an application for an exemption from federal position limits for a non-enumerated hedging position or a spread position has been approved or rejected. The proposed rules are more specific for exchange recognition of anticipatory needs where exchanges are required to inform applicants within 10 days of receipt whether the application has been approved or rejected. However, the proposed rules do not provide any time limit on the Commission's review of exchange decisions regarding exemption applications from federal position limits despite the fact that the Commission will be aware of the exemption shortly after it is granted due to the significant (and burdensome) reporting requirements for exchanges included in the proposed rules. The lack of a time limit for the Commission's review will result in uncertainty for market participants and exchanges and could potentially create disruption in the marketplace if the Commission determines long after exemptions have been granted for a certain type of position that such exemptions are not appropriate and must be revoked. The Exchange recommends that any final rules include a finite time period for Commission review of exchange approval of exemptions to federal position limits. An alternative approach would be to continue to rely on exchange expertise to grant non-enumerated bona fide hedge and spread exemptions and the Commission's rule enforcement review process to evaluate exchange procedures.

***There should be a long transition period between the date final rules are adopted and the compliance date.*** Should the Commission determine to move forward with aspects of

the proposed rules, it should do so with a transition period of a minimum of twelve months following adoption of final rules and in a manner that does not compromise hedge exemptions which have previously been granted or positions which market participants have established in good faith reliance on the current rules and procedures. A lengthy period is necessary to permit exchanges to make rule amendments to conform exchange rules to federal rules and to develop any reports and reporting systems mandated by the final rules.

**Conclusion**

ICE Futures appreciates the opportunity to further comment on the proposed regulations and encourages the Commission to carefully consider the additional comments it receives before moving forward with any final rulemaking. Please do not hesitate to contact me at 212.748.4030 if you have any questions or would like to discuss our comments in any respect.

Sincerely,



Susan Gallant  
Managing Director, Market Surveillance  
ICE Futures U.S. Ags/Financials

cc: Honorable J. Christopher Giancarlo, Acting Chairman  
Honorable Sharon Bowen, Commissioner  
Stephen Sherrod, Senior Economist  
Riva Spear Adriance, Senior Special Counsel  
Hannah Ropp, Surveillance Analyst  
Steven Benton, Industry Economist  
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