Tel: 202-626-8700
Fax: 202-626-8722
50 F Street, NW Suite 900
Washington, DC 20001
www.ncfc.org

February 28, 2017

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

RE: Reproposal, Position Limits for Derivatives. Federal Register/Vol. 81, No. 251/December 30, 2016 (RIN 3038-AD99).

Dear Mr. Kirkpatrick:

On behalf of the more than two million farmers and ranchers who belong to one or more farmer cooperative(s), the National Council of Farmer Cooperatives (NCFC)[1] submits the following comments in response to the Commodity Futures Trading Commission's (CFTC) Reproposal, *Position Limits for Derivatives* (RIN 3038-AD99).

NCFC member organizations appreciate CFTC's efforts to take the agriculture industry's views into account as it makes modifications to its initial December 12, 2013 Proposed Rule, Position Limits for Derivatives. NCFC's earlier submissions to that proposal, dated February 10, 2014, August 4, 2014, and July 13, 2016, are attached below.

I. Introduction

NCFC members represent a broad section of the agriculture industry. Many NCFC members rely on the derivatives markets – both exchange-traded futures and options, and over-the-counter products – to hedge the commercial risk inherent to agriculture production, processing, and marketing. These cooperatives use derivatives to hedge the commercial risk of the commodities they supply, process or handle/merchandise; i.e. they have a physical interest in the underlying asset. As such, derivative transactions that cooperatives enter into have largely been recognized as bona fide hedges for the purpose of being exempt from speculative position limits.

Throughout the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank") rulemaking process, NCFC has advocated for including broad exemptions for agricultural end users hedging their legitimate business risks. We appreciate CFTC taking into account a number of our views outlined in previous comments, as well as publishing the Re-proposal to receive additional input as the Commission revises and finalizes the rule.

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[1] Since 1929, NCFC has been the voice of America's farmer cooperatives. Farmer cooperatives – businesses owned and controlled by farmers, ranchers, and growers – are an important part of the success of American agriculture. NCFC members include regional and national farmer cooperatives, which are in turn composed of over 2,500 local farmer cooperatives across the country. NCFC members also include 21 state and regional councils of cooperatives.

To ensure Dodd-Frank implementation achieves the goals of the law, while at the same time preserving the ability of end users to effectively hedge their risk, we still have concerns regarding a number of issues contained in the Repropsal.

II. Bona Fide Hedging Definition

NCFC supports the CFTC's removal of the twelve-month constraint on anticipatory hedges for agricultural commodities, the removal of the quantitative test for cross-commodity hedges, and granting exchanges the authority to provide exemptions for non-enumerated hedging positions.

However, we continue to be concerned by:

- The limited number of enumerated bona fide hedge exemptions;
- The treatment of unfixed price contracts (cash basis sales) and fixing of unpriced forward contracts;
- Restrictions placed on the last 5 days of trading; and,
- Overly burdensome reporting requirements.

For examples and clarification of those issues, please see previous NCFC comments below dated February 10, 2014, August 4, 2014, and July 13, 2016.

III. Position Limits – Dairy and Wheat Contracts

As purchasers, processors, marketers and merchandisers of commodities, and as suppliers of farm inputs, cooperatives use derivatives to hedge or mitigate commercial risks associated with price movements in various commodities such as grain, dairy products, livestock, cotton, energy, and fertilizer. Given the significant differences in those specific markets, clearly a one-size-fits-all regulatory approach would not be desirable. Thus, we appreciate CFTC taking NCFC's and others previous comments into account in providing more flexibility in this area, and specifically as they pertain to dairy and wheat limits.

As outlined in NCFC's previous comments, the dairy futures markets are not as well established as the grain markets, have fewer participants, lower liquidity, and are cash-settled on USDA generated price series. This creates unique circumstances for the dairy sector that should be taken into account in contemplating setting dairy position limits. Therefore, we support the Commission "deferring action so that it may, at a later date: (1) clarify the application of limits to cash-settled core referenced futures contracts; and (2) consider further the which method to use to determine a level for a spot-month limit for a cash-settled core referenced futures contract." NCFC and our dairy cooperative members would be pleased to provide further input at such time the Commission further considers placing position limits on Class III milk contracts.

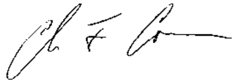
As outlined in NCFC's previous comments, CFTC should maintain parity between the three U.S. wheat markets – CBOT Wheat (W), KC HRW Wheat (KW) , and MGX Hard Red Spring Wheat (MWE). The levels in the re-proposal would end the current and historical limit equality among these three markets, which could greatly impact the potential for risk-mitigating strategies between these contract markets. We support the CFTC's re-proposal to maintain single and all

months limits for MWE and KW to 12,000 contracts. However, we remained concern about the level of increase (to 32,800) for CBOT Wheat contract. If different limits ultimately are set by the exchanges, or significantly increased, price volatility or concentration in one wheat contract may unduly affect the price of the other wheat contracts.

NCFC also supports parity between the contracts in the spot month, therefore we support the current limits contained in the re-proposal for CBOT Wheat and KW contracts (600). However, we question the logic to increase the MWE spot-month limits to 1,000 contracts, while the other two contracts are would be set at 600 contracts. Again, we urge the CFTC on to maintain position limit equivalence across the three wheat contracts.

We appreciate your consideration of these and previous NCFC comments in drafting the final position limits rule.

Sincerely,



Charles F. Conner
President & CEO

Tel: 202-626-8700
Fax: 202-626-8722
50 F Street, NW Suite 900
Washington, DC 20001
www.ncfc.org

July 13, 2016

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

RE: Position Limits for Derivatives: Certain Exemptions and Guidance. Federal Register/Vol. 81, No. 113/June 13, 2016 (RIN 3038-AD99).

Dear Mr. Kirkpatrick:

On behalf of the more than two million farmers and ranchers who belong to one or more farmer cooperative(s), the National Council of Farmer Cooperatives (NCFC)[1] submits the following comments in response to the Commodity Futures Trading Commission's (CFTC) supplemental notice of proposed rulemakings *Position Limits for Derivatives: Certain Exemptions and Guidance* (RIN 3038-AD99).

NCFC member organizations appreciate CFTC's efforts to take the agriculture industry's views into account as it makes modifications to its initial December 12, 2013 Proposed Rule, Position Limits for Derivatives. NCFC's earlier submissions to that proposal, dated February 10, 2014, and August 4, 2014, can be viewed at:
(http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59613&SearchText=); and (http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59942&SearchText=Farmer%20Cooperatives).

I. Introduction

NCFC members represent a broad section of the agriculture industry. Many NCFC members rely on the derivatives markets – both exchange-traded futures and options, and over-the-counter products – to hedge the commercial risk inherent to agriculture production, processing and marketing. These cooperatives use derivatives to hedge the commercial risk of the commodities they supply, process or handle/merchandise; i.e. they have a physical interest in the underlying asset. As such, derivative transactions that cooperatives enter into have largely been recognized as bona fide hedges for the purpose of being exempt from speculative position limits.

[1] Since 1929, NCFC has been the voice of America's farmer cooperatives. Farmer cooperatives – businesses owned and controlled by farmers, ranchers, and growers – are an important part of the success of American agriculture. NCFC members include regional and national farmer cooperatives, which are in turn composed of over 2,500 local farmer cooperatives across the country. NCFC members also include 21 state and regional councils of cooperatives.

Throughout the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank") rulemaking process, NCFC has advocated for including broad exemptions for agricultural end users hedging their legitimate business risks. We have highlighted that while intended to address "excessive speculation" in the markets, certain provisions would inadvertently apply to cooperatives, grain companies, and many other end users whose hedging activities are legitimately being used to manage commercial risk. We appreciate CFTC taking into account a number of our previous comments, as well as publishing the Supplemental Notice to receive additional input as the Commission revises and finalizes the rule.

To ensure Dodd-Frank implementation achieves the goals of the law, while at the same time preserving the ability of end users to effectively hedge their risk, we outline several areas where we encourage the Commission to make adjustments in the final rule.

II. Bona Fide Hedging Definition

NCFC supports CFTC's proposal to align the general definition of a bona fide hedging position with that in the Commodity Exchange Act (CEA) section 4a(c)(2) by eliminating the incidental test and the orderly trading requirement. We also encourage CFTC to consider the following:

A. Economically appropriate test

In the Supplemental Proposal, the Commission noted that "it interprets risk, in the economically appropriate test, to mean price risk." In our previous comments we discuss, and outline in detail, the common practice of using unfixed price contracts, or basis contracts, as not only an economically appropriate risk reducing activity, but one that should fall in the enumerated category. However, we continue to be concerned that such contracts, as well as fixing of unfixed forward contracts, may fall out of being considered a bona fide hedge given CFTC's narrow interpretation of "economically appropriate."

NCFC urges CFTC to broaden its interpretation of "economically appropriate" beyond hedges that address price risk. Playing a key role in physical marketing channels by connecting producers and consumers in different parts of the world, commodity merchants take significant risk by taking title to commodities, and assuming storage, transportation, and other variables. A merchant's inability to adequately hedge those commercial risks may increase the merchant's costs and ultimately raise the price to the consumer.

In addition, if CFTC interpretation further narrows the standard to only fixed-price risk, ultimately parties will be forced into long-term fixed-price contracts, which will impose additional credit risk. Therefore, we believe CFTC needs to provide the necessary flexibility to allow hedgers to determine what is "economically appropriate" in reducing their commercial risks. To do otherwise will result in adding costs due to increased risk premiums.

B. Cross-commodity hedges

NCFC encourages CFTC to eliminate the "quantitative factor" in any assessment as to the appropriate relationship between commodities as being considered a bona fide hedge. There are legitimate cross-hedge strategies that are more complex than those that have a straightforward correlation such as a sorghum/corn type relationship discussed in the 2013 proposal.[2] We remain concerned that some current cross hedges may not qualify under the

[2] See NCFC Comments for example, February 10, 2014.

proposed rule due to the "quantitative factor" test, and also that this test would stifle the future development of needed hedges as non-traditional agricultural product markets develop. We request that these circumstances be assessed on a case-by-case "qualitative" basis at the exchange level. This process will provide more flexibility and better facilitate the ability for bona fide hedgers to reduce their business risk.

C. Last five days restrictions

The broader proposed rule includes enumerated hedging exemptions for general positions, but in the last five days of trading some of the exemptions no longer apply. For example, anticipatory hedging for unsold production, offsetting unfixed purchases and sales, and cross commodity hedges, among others. Additionally, CFTC is contemplating whether or not non-enumerated hedges should be treated similarly.

In cases when the futures market is the least expensive source to originate grain (as in the below unfixed price example), holding a position through the last 5 days would be necessary in order to buy the grain and fulfill the contract. It would be illogical to force market participants to exit a position if they are willing and capable to take delivery given it may be the most economically sound option available.

> **Example:** Unfixed Price Contracts (Cash Basis Sales) – Co-op X may enter into forward "Unpriced Contracts" where the specific final price has yet to be determined; *however,* Co-op X has contractually agreed to the volume of a purchase or sale, as well as committed to price the commodities at a specified premium or discount *to a particular, identified futures contract and month.* The decision whether or not to price a contract at a specific time is generally driven by customer preference (it is even possible that agreement on a final contract price may happen after delivery), or by performance risk concerns, as requiring a contract to be priced increases credit exposure.
>
> In this example, Co-op X sells corn FOB for June delivery and contractually agrees with the customer that the contract will remain unpriced until a Letter of Credit is opened in favor of Co-op X. There also is agreement to price the cash corn at 75 cents over the July corn futures contract, and that Co-op X will accept a futures exchange (Exchange for Physical or EFP) to price the contract.
>
> After the contract is agreed to, the cash corn market for May moves and is priced at a premium to the May corn futures contract. Since there is a binding sales contract for volume that will be delivered in June, entering into a long May futures position is the most economical origination of corn at that time. Thus, to cover the sales commitment at the lowest price, Co-op X will buy May futures as a substitute for purchasing cash corn.
>
> Because the futures price component of the sales contract has not yet been established, taking a long position in the May contract alone would increase Co-op X's overall risk position. While Co-op X is contractually obligated to price the sale of corn with the July futures contract, it knows it will ultimately take a July long futures position from its customer via EFP. Therefore Co-op X will simultaneously sell (go short) the July futures contract. The short July futures position combined with the long May futures position is a risk-reducing transaction that is economically appropriate because it is locking in the spread between the July futures and the May futures.

If the market converges prior to the last trading date, Co-op X would sell the May contract and purchase the cash physical. However, if the cash market is still more costly than taking the May futures position into delivery, Co-op X would either a) purchase the corn from the cash market and execute an EFP to transfer the May long futures position to the seller, or b) take the long futures position through the delivery process as a substitute for buying directly in the cash market.

The above scenario would be executed only at a time when the cash market and the futures market prices are not aligned/converged. If that was not the case, no hedges would be placed on the July sale contract and Co-op X would source the corn in the cash market. Additionally, Co-op X would intend to take the futures long through the delivery process (i.e. past the last 5 days of trading) and as such, the futures month where the long was held would align with the delivery window of the sales contract, including reasonable timelines for logistics for the sales delivery location.

It should be noted that Co-op X would take the same actions in the futures market, regardless of whether the sale of cash corn had been fixed, except that Co-op X would have held a long in July and the sale of July futures would have offset that existing long vs. the long received via EFP at the pricing date offsetting an existing short. The May futures execution would remain the same under both scenarios.

In addition to being "risk reducing" to Co-op X (the market exposure of the relative value between the deferred cash delivery that is unpriced, and the current cash physical price), these transactions serve to promote convergence between the cash and futures market.

III. Process for Non-enumerated Hedge Exemption

As noted in our previous comments, NCFC supports the exchanges being designated as taking the lead in a bona fide hedge review process. This seems especially appropriate given that Designated Contract Markets (DCMs) have a long history of reviewing hedging activities, and it will take time for CFTC staff to build their knowledge and become more familiar with commercial hedging practices.

However, we cannot stress enough the importance of developing an accurate list of enumerated hedges in the broader rule. We continue to be perplexed over Commission's concerns about existing bona fide hedge transactions in the agricultural commodity space. The proposed rule continues to omit transactions that are used by farmers and their agricultural cooperatives and others in agriculture. We are not aware of issues these transactions have had that threaten the resiliency of markets to determine price discovery or support price convergence. On the contrary, the omission of these transactions may result in reduced liquidity and less opportunity to mitigate commercial risk as some entities may reduce their use of these transactions and be limited by their overall speculative position limit for that commodity.

A. Overly burdensome reporting issues

Without change the proposed rule will require some current bona fide hedge transactions to seek non-enumerated bona fide hedge exemption status from an exchange. The additional reporting requirements will be costly and burdensome to participants. Adding to the burden are concerns of unintended reporting errors that could result in fines by the CFTC. We

request that the CFTC simplify and limit all reporting that will be necessary as a result of a bona fide hedge rule change. Again, what will alleviate much of the uncertainty, confusion, and additional paperwork burdens on end users and exchanges of having to go through the process of being granted a non-enumerated hedge, is to ensure common hedging practices are included in the list of enumerated hedges.

B. Orderly time to unwind position should CFTC disagree with DCM

In the case that the CFTC rejects a DCM or SEF bona fide hedge determination of a non-enumerated transaction, a multitude of factors should be considered if the CFTC maintains its proposed rule that such transactions should be "unwound" and there should not be a one-size fits all approach. Using dairy as an example, what may appear to be a small transaction size in the context of the corn market may be a significant transaction size for the dairy market. Requiring the same time period and the same process to unwind the dairy transactions could lead to a market disruption, disorderly trading and regulatory-influenced and unnecessary price volatility. In some cases, the best course of action may be for CFTC to allow the transaction to continue as a bona fide hedge until the existing set of trades run their course, but allow no new transactions to have bona fide hedge status from the point of reporting the change in status to the entity holding the transactions.

C. Sufficient phase-in period for exchanges to review non-enumerated hedges ahead of implementation

It is hard to discern the number of current bona fide hedge transactions that won't be considered bona fide hedges in the proposed rule unless granted a non-enumerated bona fide hedge exemption from an exchange. If there are a large number of these transactions, it could overly burden the exchanges to work through the filing process ahead of rule implementation. We ask that the Commission recognize this potential bottleneck and provide for: 1) adequate information immediately after the announcement of the final rule for market participants to better understand which transactions need to be reviewed by an exchange; 2) an adequate amount of time to provide the exchanges with the necessary information; and, 3) an adequate amount of time to allow the exchanges to review all of the material and respond to all of the applicants. To date, we are not aware of any regulatory issues in the agricultural space with the use of transactions that may, in the post-rule world, fall out of the bona fide hedge space. With that being the case, there should not be a need to rush the final rule implementation of agricultural commodities and instead to assure adequate time for all agricultural participants and the exchanges to prepare appropriately.

D. **Publication of approved non-enumerated hedges**

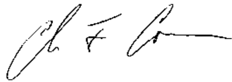
Occasionally a novel idea may arise that results in a never before used transaction to mitigate commercial risk. Such a transaction may be considered an intellectual asset by the entity that devised it and it may choose to protect it as a proprietary competitive advantage. If such were to occur, and an entity sought and was granted a non-enumerated bona fide hedge exemption for the transaction, the question arises as to whether the transaction should be described on a website in any detail, or divulged to market participants in any format. In the case of a novel idea, the transmission of the transaction facts should be at the discretion of the entity that devised it.

IV. Conclusion

We ask that CFTC craft more flexible regulations taking into account the legitimate hedging needs of farmer cooperatives and other commercial end users. Any federal speculative position limits rule should not unduly burden commercial end-users who utilize derivatives markets for economically appropriate risk management activities.

We appreciate your consideration of these comments, as well as our previous comments, in drafting the final position limits rule.

Sincerely,



Charles F. Conner
President & CEO

Tel: 202-626-8700
Fax: 202-626-8722
50 F Street, NW Suite 900
Washington, DC 20001
www.ncfc.org

August 4, 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Notice of Proposed Rulemaking: Position Limits for Derivatives and Aggregation of Positions. Federal Register/Vol. 79, No. 103/May 29, 2014 (RIN 3038-AD99 and RIN 3038-AD82).

Dear Ms. Jurgens:

On behalf of the more than two million farmers and ranchers who belong to one or more farmer cooperative(s), the National Council of Farmer Cooperatives (NCFC)[1] submits the following comments in response to the Commodity Futures Trading Commission's (CFTC) notice of proposed rulemakings: *Position Limits for Derivatives and Aggregation of Positions* (RIN 3038-AD99 and RIN 3038-AD82).

NCFC member organizations appreciated the opportunity to participate in the June 19, 2014, CFTC staff roundtable on position limits for physical commodity derivatives. We also welcome this opportunity to follow up on that roundtable discussion. NCFC's initial submission, dated February 10, 2014, can be viewed at:
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59613&SearchText=

I. Introduction

NCFC members represent a broad section of the agriculture industry. Many NCFC members rely on the derivatives markets – both exchange-traded futures and options, and over-the-counter products – to hedge the commercial risk inherent to agriculture production, processing and marketing. These cooperatives use derivatives to hedge the price risk of the commodities they supply, process or handle/merchandise; i.e. they have a physical interest in the underlying asset. As such, derivative transactions that cooperatives enter into have largely been recognized as bona fide hedges for the purpose of being exempt from speculative position limits.

Throughout the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank") rulemaking process, NCFC has advocated for including broad exemptions for agricultural end

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users hedging their legitimate business risks. Consequently, we are concerned by the restrictive regulatory approach in a number of areas of the position limits proposal. We fear that some of the provisions, while intended to address "excessive speculation" in the markets, would inadvertently apply to cooperatives, grain companies, and many other end users whose hedging activities are legitimately being used to manage commercial risk. To ensure Dodd-Frank implementation achieves the goals of the law, while at the same time preserving the ability of end users to effectively hedge their risk, we outline several areas where we encourage the Commission to revisit and revise in the final rule.

II. Bona Fide Hedging Definition

In general, we are concerned that in an attempt to diminish, eliminate or prevent excessive speculation and deter disruptive trading practices, the proposed rules place undue burden on commercial participants. As stated in NCFC's previous comments, the proposal abandons well-established concepts contained in CFTC regulation 1.3(z) definition of "bona fide hedging transaction" in favor of a narrower interpretation that outlines fourteen "enumerated hedging transactions" that would be considered "bona fide" hedges under the rule. We believe that enumerated exemptions are far too limiting and restrictive, and may prohibit hedging practices that have been allowed for many years under the existing rules.

While the CFTC has outlined a process to allow for non-enumerated hedges to be considered, the process as proposed is unclear and provides for further uncertainty. Further, the process of filing for a hedge exemption appears to lead to a lengthy open-ended review by the Commission, whether or not it is commonly used as a risk management practice that previously has been recognized as a bona fide hedging activity.

Additionally, we believe CFTC needs to provide the necessary flexibility to allow hedgers to determine what is "economically appropriate" in reducing their commercial risks. To do otherwise will result in adding costs due to increased risk premiums. Those costs will ultimately be borne by consumers.

II. Merchandising/Anticipatory Hedging

The Commodity Exchange Act (CEA) as amended by Dodd-Frank specifically includes anticipatory merchandising as a bona fide hedging transaction. However, the proposed rule does not view anticipated merchandising as such, with the CFTC noting that in absence of acquisition of inventory or entry into fixed priced contracts, any price risk from merchandising activity is yet to be assumed and any derivative position would not serve to reduce risk.

However, playing a key role in physical marketing channels by connecting producers and consumers in different parts of the world, merchants take significant risk by taking title to commodities, and assuming storage, transportation, and other variables. The inability for a merchant to adequately hedge those risks may adversely impact pricing for the end consumer, as the merchant may have increased costs related to its inability to hedge its commercial exposure. Following are examples in which merchants take on such risks.

Unfixed Price Contracts (Cash Basis Sales) – Co-op X may enter into forward "Unpriced Contracts" where the specific final price has yet to be determined; *however,* Co-op X has contractually agreed to the volume of a purchase or sale, as well as committed to price the commodities at a specified premium or discount *to a particular, identified futures contract and month.* The decision whether or not to price a contract at a specific time is generally driven by

customer preference (it is even possible that agreement on a final contract price may happen after delivery), or by performance risk concerns, as requiring a contract to be priced increases credit exposure.

In this example, Co-op X sells corn FOB for June delivery and contractually agrees with the customer that the contract will remain unpriced until a Letter of Credit is opened in favor of Co-op X. There also is agreement to price the cash corn at 75 cents over the July corn futures contract, and that Co-op X will accept a futures exchange (Exchange for Physical or EFP) to price the contract.

After the contract is agreed to, the cash corn market for May moves and is priced at a premium to the May corn futures contract. Since there is a binding sales contract for volume that will be delivered in June, entering into a long May futures position is the most economical origination of corn at that time. Thus, to cover the sales commitment at the lowest price, Co-op X will buy May futures as a substitute for purchasing cash corn.

Because the futures price component of the sales contract has not yet been established, taking a long position in the May contract alone would increase Co-op X's overall risk position. While Co-op X is contractually obligated to price the sale of corn with the July futures contract, it knows it will ultimately take a July long futures position from its customer via EFP. Therefore Co-op X will simultaneously sell (go short) the July futures contract. The short July futures position combined with the long May futures position is a risk-reducing transaction that is economically appropriate because it is locking in the spread between the July futures and the May futures.

If the market converges prior to the last trading date, Co-op X would sell the May contract and purchase the cash physical. However, if the cash market is still more costly than taking the May futures position into delivery, Co-op X would either a) purchase the corn from the cash market and execute an EFP to transfer the May long futures position to the seller, or b) take the long futures position through the delivery process as a substitute for buying directly in the cash market.

The above scenario would only be executed at a time where the cash market and the futures market prices are not aligned/converged. If that was not the case, no hedges would be placed on the July sale contract and Co-op X would source the corn in the cash market. Additionally, Co-op X would intend to take the futures long through the delivery process (i.e. past the last 5 days of trading) and as such, the futures month where the long was held would align with the delivery window of the sales contract, including reasonable timelines for logistics for the sales delivery location.

It should be noted that Co-op X would take the same actions in the futures market, regardless of whether the sale of cash corn had been fixed, except that Co-op X would have held a long in July and the sale of July futures would have offset that existing long vs. the long received via EFP at the pricing date offsetting an existing short. The May futures execution would remain the same under both scenarios.

This example should be considered a bona fide hedge, not only because it is analogous to an anticipatory merchandising hedge, but also because Co-op X has a legally binding contract that specifies how and when the sale contract will be priced – and in order to fulfill its delivery obligation it must buy cash corn. *In addition to being "risk reducing" to Co-op X (the market exposure of the relative value between the deferred cash delivery that is unpriced, and the*

current cash physical price), these transactions serve to promote convergence between the cash and futures market.

Fixing of Un-Fixed Forward Contracts – The proposed rule indicates that Unpriced Contracts do not give rise to price risk and are not covered by any of the enumerated exemptions. However, unpriced forward contracts may expose a commercial enterprise to counterparty performance risk. Therefore, to ensure the making or taking of delivery in these situations, it is appropriate to take a futures position to offset the risk of the counterparty's risk to perform on an unfixed price forward contract.

For example, Co-op X may not allow a customer to price a contract due to performance concerns. In the event that Co-op X has already purchased grain on a fixed price basis (May delivery, for example), but has sold on an Un-fixed Forward Contract basis for July delivery, Co-op X is exposed to performance risk if the price were to decrease and the customer did not take delivery of the grain.

Synthetic Price Fixing of that sales contract would entail simultaneously buying back the May futures, and selling out the July futures in order to establish and lock in the margin. This also provides a reliable sales channel for Co-op X to sell the grain through the delivery mechanism in the event of a default by its customer.

If the customer fulfills its commitment, Co-op X would either accept a long EFP from the customer or purchase a long position in the market to flatten its July short upon price fixing.

Forcing parties into long-term fixed-price contracts makes them incur increased credit risk.

Last 5 Days Restrictions – The proposed rule includes enumerated hedging exemptions for general positions, but in the last 5 days of trading some of the exemptions no longer apply. For example, anticipatory hedging for unsold production, offsetting unfixed purchases and sales, and cross commodity hedges, among others.

If the futures market is the cheapest source to originate grain (as in the above unfixed price example), holding a position through the last 5 days would be necessary in order to buy the grain and fulfill the contract. It would be illogical to force market participants to exit a position if they are willing and capable to take delivery given it may be the most economically sound option available.

III. Process for Non-enumerated Hedge Exemption

The proposed process for seeking a non-enumerated hedge exemption is overly burdensome and lengthy. The process would constrain and potentially prohibit participants from entering into legitimate hedges that they feel are prudent for managing their business risks. The current process provides a time limit for response, whereby the proposed process introduces uncertainty as to whether an exemption will be granted and gives little guidance as to the criteria the CFTC will use to make a determination. In addition, adding a public comment period process would only complicate the matter and create more confusion and delay, further limiting bona fide hedgers' ability to manage commercial risks.

We believe the policy objectives in CEA Section 4a(a)(3) should continue to guide the review process for exemptions. In addition, the existing requirements for Initial Statement under 1.47 (b) should be sufficient for the CFTC to make its determination, with particular emphasis given

to the explanation provided by the applicant as to why the activity is economically appropriate to the reduction of risk to their particular business.

As noted in our previous comments, NCFC supports the exchanges participating in a bona fide hedge application review. This seems especially appropriate given that Designated Contract Markets (DCMs) have a long history of reviewing hedging activities, and it will take time for CFTC staff to build their knowledge and become more familiar with commercial hedging practices. Repeated requests to a DCM for similar exemptions should be reviewed with the CFTC and potentially submitted for public comment in order to expand the list of enumerated exemptions.

IV. Gross Hedging

In the Proposed Rule, CFTC acknowledges that "gross hedging may be appropriate under certain circumstances, when net cash positions do not measure total risk exposure due to differences in the timing of cash commitments, the location of stocks and differences in grades or types of the cash commodity being hedged." However, in other circumstances, CFTC asserts that a commodity derivative contract would not qualify as a *bona fide* hedging position because the hedge resulted in "increased value exposure of the enterprise."

Market participants need flexibility to hedge the risk in their portfolios on a gross or net basis. As long as the derivatives position is intended as a bona fide hedge, and in the reasonable opinion of the hedger the position is economically appropriate to the reduction of risk for that specific transaction or on a portfolio basis, then it should be viewed as a bona fide hedging position regardless of the overall Enterprise risk profile.

For purposes of the hedging definition, an enterprise should not always be viewed as an aggregated entity. Portfolios are dynamic and not all groups within the same enterprise may have the same market view.[2] Having to coordinate global positions is burdensome, requires technology solutions and may result in additional unintentional risks being taken or drive organizational changes that do not make sense commercially. Additionally, with a global business there may be tax and/or local accounting concerns and complications for a foreign entity not maintaining its own hedge position. Individual risk managers should continue to have hedging tools available to manage risks of their independent risk positions. Managing risk on an aggregate basis would be inefficient and ineffective, as risk management strategies are designed for specific risk profiles and an aggregate view may not offset risks as well as individual strategies, and may ultimately serve to increase the overall risk profile of an Enterprise.

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[2] Business Units and even Operating Units within the same Business Unit structure often operate independently of each other and do not consult on position management at an aggregate or Enterprise level. This is critically important in the management of the enterprise and allows independent and timely hedging decisions. Each Business Unit will have its own daily Risk Report, daily Position Report, as well as separate P/L's and Balance Sheets. Operating Units within the same Business Unit will also have individual daily position reports and separate P/L's and balance sheets. Separate futures accounts may also be maintained. These reports are available and can demonstrate the relationship between cash physical activities, inventories and derivatives positions. In addition, it can be demonstrated that the business units' organizational structure drives separate decision-making.

V. Dairy (Class III) Limits

NCFC's dairy cooperative members have expressed concerns over Class III position limits. The proposed rule results in narrowing the position limits as they exist today. This will result in some of our members regularly submitting Form 204 reports requesting a hedge exemption. This would be an administrative burden created by an unnecessary regulatory decrease in all months' position limits.

Additionally, the proposed rule's narrowing of the limits will harm Class III derivatives growth potential, as it may reduce activity by liquidity providers and in some cases it could discourage their participation in the Class III derivatives markets. The Class III derivatives market is a fairly young market that has rapidly grown over the past 10 years and will see its demand by dairy cooperatives, dairy farmers, manufacturers and end users increase substantially over the next 10 years. To help facilitate this growth in demand, existing Class III liquidity providers will need to become more active and new liquidity providers will be needed to enter the market. A narrowing of the Class III position limits will likely discourage this from occurring and create challenges for bona fide hedgers to efficiently mitigate their Class III price risk in the coming years.

Our dairy cooperative members are requesting that the Class III front month position limit be equal to the spot month, and that it be set at 25 percent of deliverable supply, but no less than 3,000 contracts. Additionally, the dairy cooperatives request that the all months limit be four times the spot month limit. NCFC supports these requests and respectfully asks the Commission to include these broader Class III position limits in its final rule.

VI. Wheat Equivalence Determinations

As outlined in NCFC's February comments, the Commission should maintain parity between the three U.S. Wheat markets – CBOT, KCBT and MGEX. The proposed regulations would end the current limit equality among these three markets, which could greatly impact the potential for risk-mitigating strategies between these contract markets. If different limits are set, price volatility or concentration in one wheat contract may unduly affect the price of the other wheat contracts.

VII. Aggregation of Positions

While we share the Commission's mission to increase transparency and promote market integrity within the financial system, we have concerns over how the recent position aggregation proposal could affect commercial hedgers. The primary flaw in the proposed rule is that it focuses on ownership as the basis for determining whether to aggregate positions. In most cases, ownership is an irrelevant factor. It would be inappropriate to require a partial owner, who has no control over specific trading activities of owned entities, to aggregate the positions of that owned entity. Two companies that operate separately in every aspect would be forced to coordinate trading strategies and share information in order to comply. This does not further the goals of the Commission, and it puts an undue burden on commercial hedgers.

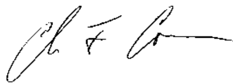
With regard to position aggregation, the focus should be on control rather than ownership. The control test should be conducted at the trading level rather than the owner level, as there is very little day-to-day knowledge of trading activities at the owner level. When there are two companies with completely separate business/trading strategies, in separate locations, with different systems and traders, it is extremely difficult to require them to coordinate for position

aggregation purposes only. The way in which companies trade is separate and distinct, and if they were to be aggregated, it would change their business/operations strategy. When the focus is on control as opposed to ownership, the coordination and information sharing between the two companies already exists. It is the ability to control trading that is fundamental in determining whether positions should be aggregated.

VIII. Conclusion

We ask that CFTC craft clearer and more flexible regulations that take into account the legitimate hedging needs of farmer cooperatives and other commercial end users. Any federal speculative position limits rule should not unduly burden commercial end-users who utilize derivatives markets for economically appropriate risk management activities. We appreciate your consideration of these comments, as well as our February 10, 2014 comments, in drafting the final position limits rule.

Sincerely,



Charles F. Conner
President & CEO

202-626-8700
Fax: 202-626-8722
50 F Street, NW Suite 900
Washington, DC 20001
www.ncfc.org

February 10, 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Notice of Proposed Rulemaking: Position Limits for Derivatives. Federal Register/Vol. 78, No. 239/December 12, 2013 (RIN 3038-AD99).

Dear Ms. Jurgens:

On behalf of the more than two million farmers and ranchers who belong to one or more farmer cooperative(s), the National Council of Farmer Cooperatives (NCFC) submits the following comments in response to the Commodity Futures Trading Commission's (CFTC) notice of proposed rulemaking: *Position Limits for Derivatives* (RIN 3038-AD99).

Since 1929, NCFC has been the voice of America's farmer cooperatives.[1] Farmer cooperatives – businesses owned and controlled by farmers, ranchers, and growers – are an important part of the success of American agriculture. These cooperatives allow individual farmers the ability to own and lead organizations that are essential for continued competitiveness in both the domestic and international markets.

I. Introduction

NCFC members represent a broad section of the agriculture industry. Many NCFC members rely on the derivatives markets – both exchange-traded futures and options, and over-the-counter products – to hedge the commercial risk inherent to agriculture production, processing and marketing. These cooperatives use derivatives to hedge the price risk of the commodities they supply, process or handle/merchandise; i.e. they have a physical interest in the underlying asset. As such, derivative transactions that cooperatives enter into have largely been recognized as bona fide hedges for the purpose of being exempt from speculative position limits.

Throughout the Dodd-Frank rulemaking process, NCFC has advocated for including broad exemptions for agricultural end users hedging their legitimate business risks. Consequently, we are concerned by the restrictive regulatory approach in a number of areas of the position limits proposal. We fear that some of the provisions, while intended to address "excessive speculation" in the markets, would inadvertently apply to cooperatives, grain companies, and many other end users whose hedging activities are legitimately being used to manage commercial risk. To ensure Dodd-Frank implementation achieves the goals of the law while at the same time preserving the ability of end users to effectively hedge their risk, we outline several areas where we encourage the Commission to revisit and revise in the final rule.

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[1] NCFC members include regional and national farmer cooperatives, which are in turn composed of over 2,500 local farmer cooperatives across the country. NCFC members also include 22 state and regional councils of cooperatives.

II. Bona Fide Hedging Definition

Congress and the CFTC have consistently recognized the importance of protecting risk management activities through reasonable, flexible and effective regulations, and derivatives markets have evolved to provide firms and individuals with effective hedging for risk management purposes. In fact, throughout the years, the Commission has recognized the need for flexibility as it did when it first allowed for non-enumerated hedges in the 1970s. Back then the Commission stated, "The purpose of the proposed provision was to provide flexibility in application of the general definition and to avoid an extensive, specialized listing of enumerated bona fide hedging transactions and positions." As logical as it was to provide for flexibility in the past, it is even more important today as the physical and derivatives markets have become more complex, and continue to evolve.

However, it appears the CFTC intends to change course as the proposal abandons well-established concepts contained in the CFTC regulation 1.3(z) definition of "bona fide hedging transaction" in favor of a narrower interpretation. Additionally, it appears the proposed rule ignores the language of the statutory definition of bona fide hedge contained in Dodd-Frank by disallowing anticipatory merchandising hedges, in spite of the provision contained in Section 4a(c)1, as well as Section 4a(c)2, which clearly recognizes the need for anticipatory hedging by using the word "anticipates" in three separate instances.

Section 4a(c)(2) of the Act provides:

> "For the purposes of implementation of [section 4a(a)(2) of the Act] for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—
>
> > (A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;
> > (ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and
> > (iii) arises from the potential change in the value of—
> >
> > > (I) assets that a person owns, produces, manufactures, processes, or merchandises or <u>anticipates</u> owning, producing, manufacturing, processing, or merchandising;
> > > (II) liabilities that a person owns or <u>anticipates</u> incurring; or
> > > (III) services that a person provides, purchases, or <u>anticipates</u> providing or purchasing;

The Proposal also raises issues we understood to be resolved in the previous, vacated, rulemaking in 2011 by not including certain enumerated hedges such as anticipated hedging around unfilled storage.[2]

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[2] 7. Anticipated Merchandising

a. Fact Pattern: Elevator A, a grain merchandiser, owns a 31 million bushel storage facility. The facility currently has 1 million bushels of corn in storage. Based upon its historical purchasing and selling patterns for last three years, Elevator A expects that in September it will enter into fixed-price forward purchase contracts for 30 million bushels of corn that it expects to sell in December. Currently the December corn futures price is substantially higher than the September corn futures price. In order to reduce the risk that its unfilled storage capacity will not be utilized over this period and in turn reduce Elevator A's profitability, Elevator A purchases the quantity equivalent of 30 million bushels of September CBOT Corn Referenced Contracts and sells 30 million bushels of December CBOT Corn Referenced Contracts.

Analysis: This hedging transaction meets the general requirements for bona fide hedging transactions (§§ 151.5(a)(1)(i)–(iii)) and specific provisions associated with anticipated merchandising (§ 151.5(a)(2)(v)). The hedging transaction is a substitute for transactions to be taken at a later time in the physical marketing channel. The hedge is economically appropriate to the reduction of risk associated with the firm's unfilled storage capacity because: (1) The December CBOT Corn futures price is substantially above the September CBOT Corn futures price; and (2) Elevator A reasonably expects to engage in the anticipated merchandising activity based on a review of its historical purchasing and selling patterns at that time of the year. The risk arises from a change in the value of an asset that the firm owns. As provided by §1.5(a)(2)(v), the size of the hedge is equal to the firm's unfilled storage capacity relating to its anticipated merchandising activity. The purchase and sale of offsetting Referenced

Additionally, at that time the industry was given assurances by the CFTC that commercial hedgers would be able to hedge in the derivatives markets (including anticipatory hedging) as they had previously, and be treated as bona fide hedgers.[3]

The proposal outlines fourteen "enumerated hedging transactions" that would be considered "bona fide" hedges under the rule. We believe that there are a number of common commercial practices that should be included on the enumerated list. For example, we believe hedges of "anticipated ownership" and "anticipated merchandising" transactions would be bona fide hedges under the language in the Dodd-Frank Act. However, they would not be treated as such because there is no provision under proposed rule for them as "enumerated hedges."

A simple example that has been used in various hearings and meetings in the past includes: a grain elevator "expects in the near future to enter into a forward contract with area wheat farmers at a fixed price with delivery at a later date. To hedge this risk, the elevator goes short at Kansas City Board of Trade wheat futures. This would seem to make the elevator futures transaction a speculative one and, therefore, not eligible for the commercial hedge exemption from any position limits since at the time the elevator's futures position was taken, there in fact was not an underlining physical contract."[4] To categorically classify such merchandising activity as speculative runs counter to the historical interpretation of a bona fide hedge, and should be addressed in the final rule. Similarly, CFTC should clarify that commercial producers and users should be permitted to manage legitimate business risks surrounding unfilled storage capacity.

While the CFTC has outlined a process to allow for non-enumerated hedges to be considered, the process as proposed is unclear and provides for further uncertainty. And, the process of filing for a hedge exemption appears to lead to a lengthy open-ended review by the Commission, whether or not it is commonly used as a risk management practice that previously has been recognized as a bona fide hedging activity. Without a more flexible, streamlined approach for "non-enumerated hedges, coupled with a limited number of allowable numerated examples," we are concerned that the definition of a bona fide hedge in the proposal most certainly would be narrowed from how it historically has been defined. That raises concerns that a number of common commercial hedging practices would be treated as "speculative." This would adversely affect commercial end-users who use the derivatives markets for legitimate risk management activities. Some of the practical implications of re-characterizing historically considered bona fide hedges as speculative include:

- Increased risk held by farmers because transactions currently held as hedging positions by their cooperative would no longer qualify, thus significantly reducing the cooperatives' use of those strategies as a way to provide attractive cash forward markets to their members;

- Increased hedging costs for all end users resulting from decreased ability to manage price risks inherent in physical commodity markets;

- Reduced liquidity in physical futures markets;

- Increased confusion among market participants and analysts as the rules would make public reports less transparent by requiring hedgers to report hedges as speculative positions, thereby decreasing

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Contracts are in different months, which settle in not more than twelve months. As provided under § 151.5(a)(2)(v), the risk reducing position will not qualify as a bona fide hedge in a physical-delivery Referenced Contract during the last 5 trading days of the September contract.

[3] Statements of Chairman Gensler, Commissioner Dunn, and CFTC staff at the Open Meeting on Two Final Rule Proposals under the Dodd-Frank Act, October 18, 2011.
[4] Senate Agriculture Committee hearing, Senator Roberts, Chairman Gensler, June 15, 2011; CFTC open meeting October 11, 2011, Commissioner Dunn.

"bona fide" hedging open interest and increasing "speculative" open interest in a misleading manner; and,

- Given the interconnectedness of Dodd-Frank regulations, the definition has implications for other rules, such as the end-user exception from clearing and aggregation of positions, which rely on this definition.

Currently acceptable practices NCFC believes should also be added to the enumerated hedging section, or expanded upon, include:

- Anticipatory merchandizing, as noted above;
- "Prehedging"of agricultural commodities as in the wheat example;
- Cash basis sales; and
- Cross-hedging.

Cash basis sales: The grain trade often uses a cash basis trade to price cash grain sales domestically and internationally. This allows for the sale of a physically delivered product to be priced (futures) closer to the actual date of shipment. While these contracts represent an obligation to perform on delivery, the practice helps the grain merchandising company/exporter hedge its price risk through the use of spread trades, which also serves an important purpose of enhancing convergence in the market. Outlined below is an example of such a sale. As this has become a vital hedging arrangement to facilitate U.S. grain exports and domestic sales, we urge CFTC to include this practice under the list of "enumerated hedges" in the final rule.

Step 1

- *Grain Merchandising Company (GMC) sells corn FOB U.S. Center Gulf for January 5-25 Delivery, basis +.75 the March (H) corn futures contract. On the pricing date, GMC will take long (H) futures contracts from the buyer (via an Exchange for Physical, or EFP) to price the cash corn.*

- *Terms include Letter of Credit (LC) payment; no futures pricing until the LC is open to limit flat price exposure with the customer; and the LC is to be opened 15 days prior to delivery period (Dec 20).*

Step 2

- *The cash corn market is a premium versus taking delivery of corn on the December (Z) futures contract.*

- *To cover its sales commitment at the cheapest price, GMC buys December (Z) futures and sells March (H) futures.*

Step 3

- *If purchasing corn in the cash market is still more expensive than taking delivery on its long futures contract position as the market enters into the delivery cycle, GMC takes delivery during the December delivery cycle (actual delivery against the futures contract is determined by the entity that is short futures and makes delivery).*

- *The corn delivered via the Z futures contract position will be loaded out and will arrive by barge in the Gulf between December 25 - January 10. The end user prices futures on the basis contract on January 10th. When the customer prices futures on the basis contract, GMC offsets its short H futures position with the long H futures position it receives via the EFP. GMC is contractually obligated to perform on the basis contract.*

Cross-hedging: As noted in the proposal, the Commission has long recognized cross-hedging as bona fide hedging activity. This practice is particularly important for commercial entities that process or transform commodities into products which may not be traded commodities. For example, the ability to hedge feed inputs such as Distillers Dried Grains (DDGs) with corn contracts is a well-recognized reasonable cross hedge in which many commercial firms engage. While this is a very straightforward example, there are other legitimate cross-hedge strategies that are more complex, and that may not qualify under the proposed rule. For example, in dairy, it is not unusual to combat liquidity issues in cheese and nonfat dry milk futures by using Class III, or Class III and whey to hedge cheese prices, and Class IV, or Class IV and butter to hedge nonfat dry milk prices. Additionally, it is becoming more popular for dairy farmers to forward contract a milk feed margin milk price with their cooperative which results in the cooperative taking hedge positions in both milk and feed derivatives simultaneously.

The proposal contemplates requiring a two part test: "Under the proposed enumerated exemption, cross-commodity hedging would be conditioned on: (i) the fluctuations in value of the position in the commodity derivative contract (or the commodity underlying the commodity derivative contract) are substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through swap (the "substantially related" test);" The proposal further outline those requirements:

> *Qualitative factor: As a first factor in assessing whether a cross-commodity hedge is bona fide, the target commodity should have a reasonable commercial relationship to the commodity underlying the commodity derivative contract. For example, there is a reasonable commercial relationship between grain sorghum (commonly called milo), used as a food grain for humans or as animal feedstock, with corn underlying a commodity derivative contract. In contrast, there does not appear to be a reasonable commercial relationship between a physical commodity and a stock price index; while long-term price series of such commodities may be statistically related by either inflation or measures of economic activity, such disparate commodities do not appear to have the requisite commercial relationship. Such correlation appears for this purpose to be spurious.*
>
> *Quantitative factor: The target commodity should also be offset by a position in a commodity derivative contract that provides a reasonable quantitative correlation and in light of available liquid commodity derivative contracts. The Commission will presume an appropriate quantitative relationship exists when the correlation (R), between first differences or returns in daily spot price series for the target commodity and the price series for the commodity underlying the derivative contract (or the price series for the derivative contract used to offset risk), is at least 0.80 for a time period of at least 36 months. When less granular price series than daily are used, R typically will be higher. Thus, price series data of at least daily frequency should be used, if available.*

The rationale for CFTC to be proposing this approach is unclear, as is what concern is being addressed, particularly as it relates to the "quantitative factor" test. Again, this takes a very narrow, prescriptive approach to a provision that necessitates some degree of flexibility. We believe that this approach likely will create more issues (limiting hedging options), rather than correcting an unknown problem. Therefore, we request that these circumstances be assessed on a case-by-case basis at the exchange level (DCM), where there is already familiarity with various commercial practices, instead of the "one-size fits all" approach presented in the proposed rule. This process will provide more flexibility and better facilitate the ability for bona fide hedgers to reduce their business risk. Additionally, it is paramount that the resolution of the "interpretive process" is completed within 24 hours, permitting bona fide hedgers to manage the commercial business risks they face.

III. Position Limits – Flexibility Needed In Setting Limits Across Commodities

As purchasers, processors, marketers and merchandisers of commodities, and as suppliers of farm inputs, cooperatives use derivatives to hedge or mitigate commercial risks associated with price movements in various commodities such as grain, dairy products, livestock, cotton, energy, and fertilizer. Given the significant differences in those specific markets, we believe it would be very difficult to overlay one particular

formula in creating or setting speculative position limits across the board. Clearly, this is another example of where a one-size-fits-all regulatory approach would not be desirable, and the need for a more flexible approach is needed.

For example, the dairy futures markets are not as well established as the grain markets, having fewer participants and lower liquidity. There are also differences in that milk is continuously produced and isn't readily storable for any length of time, as opposed to grain that is harvested seasonally and readily storable – necessitating differing hedging needs over differing time periods. This creates unique circumstances for the dairy sector that should be taken into account in setting dairy position limits. Perhaps unintentionally, the Class III position limits were significantly reduced while it was not acknowledged that those contracts are cash settled futures and swaps[5]. The dairy industry needs expanded position limits to help increase liquidity and to support growing demand for derivatives from farmers and their cooperatives. Specifics about dairy issues can be found in separate filings by Dairy Farmers of America, the National Milk Producers Federation and the U.S. Dairy Industry Innovation Center.

Another example of nuances of specific markets in setting limits can be found with wheat contracts. Currently, all three domestic wheat contracts are treated equally as to position limits. Under the proposed formula approach, the current HRSW spot-month speculative limit of 600 contracts could drop as a result of lower stocks at delivery locations in prior years. The current non-spot month MGEX HRSW speculative limit of 12,000 contracts would decrease to just 3,300 contracts, while the KC HRW limit would decrease to 6,500 contracts, and the CBOT SRW limits would actually increase to 16,200 contracts. This results in different position limits for all three wheat contracts.

Market Participants have long appreciated the position limit parity among the three wheat contract markets, particularly as it relates to non-spot months. Having the same limits makes cross-hedging and spread trading easy to monitor and is a legitimate risk management tool. In the event position limits are set at different levels for each of the three wheat contracts as proposed, price volatility or concentration in one contract may unduly affect the price of the others. Therefore, NCFC urges the Commission when setting the new limits to maintain equality between three U.S. Wheat markets, CBOT, KCBT and MGEX.

IV. Trade Options Should Not Be Subject to Position Limits

NCFC members seldom utilize trade options as defined in the products definition rule. Largely, the contracts that contain any degree of volumetric optionality qualify as excluded forward contracts, and thus are not subject to position limits. However, to the degree any of those contracts would qualify as trade options, including them in determining position limits would be problematic in markets such as dairy. Based on the proposed (and reduced) Class III position limits, and without the ability for a DCM to provide additional hedge exemptions, the regulation of one such sales contract could inadvertently result in an entity exceeding position limits.

IV. Reporting Requirements

The proposed rule imposes unnecessary and onerous reporting requirements on bona fide hedgers. New special reporting requirements for all types of anticipatory hedges are burdensome and impractical, especially the requirement that even bona fide hedgers must file a report ten days prior to anticipated hedging needs. Among other things, allowing expanded hedging exemptions for bona fide hedgers that result in annual rather than monthly position limit reporting, will reduce the regulatory burden on NCFC members and other businesses legitimately hedging their commercial risk.

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[5] The proposed rule provides referenced agricultural commodities a position limit for swaps (i.e., cash-settled derivatives) equal to the position limits for physically delivered futures/options. Class III is a cash-settled futures/options contract. In the case of Class III, the proposed position limits should be, at a minimum, two times the level of the existing position limits to be on par with the other referenced agricultural commodities.

V. Conclusion

We ask that CFTC craft clearer and more flexible regulations that take into account the legitimate hedging needs of farmer cooperatives and other commercial end users. Agricultural end users, as the backbone of the commodity markets, should be encouraged to manage their risks and not forced into a one-size-fits-all regulatory approach. Therefore, any federal speculative position limits rule should not unduly burden commercial end-users who utilize derivatives markets for economically appropriate risk management activities. Accordingly, it is crucial the Commission avoid undue limitation on the ability of end-users to hedge commercial risk in the derivatives markets when adopting federal position limits. Further, to minimize the impact to commercial market participants, we urge the Commission to retain many of the elements of CFTC's historical interpretation of the bona fide hedge exemption, while aligning it with the statutory definition by including merchandising hedges in the definition of "bona fide hedging transaction." In short, we hope the Commission will undertake an effort to improve the final rule defining a *bona fide* hedge by providing a broader, more functional definition.

We appreciate your consideration of the above points in drafting the final position limits rule.

Sincerely,

Charles F. Conner
President & CEO