



Archer Daniels Midland Company
North American Headquarters
PO Box 1470
Decatur, Illinois 62525
t (217) 424.5200

ADM.COM

February 28, 2017

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

RE: REPROPOSAL, POSITION LIMITS FOR DERIVATIVES (RIN 3038—AD99)

Dear Secretary Kirkpatrick:

Archer Daniels Midland Company (“ADM”) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding RIN 3038—AD99 “Position Limits for Derivatives”, a reproposal of the Commission’s position limits rule, hereinafter “**Reproposal**”. ADM notes and appreciates that Commission personnel have dedicated significant time and resources evaluating this critical issue. Commissioners and CFTC staff have participated in many meetings and discussions on position limits and thoughtfully considered the many comments that have been filed. The thoroughness of the reproposal speaks to the diligence of the Commission.

For more than a century, the people of ADM have transformed crops into products that serve the vital needs of a growing world. Today, we’re one of the world’s largest agricultural processors and food ingredient providers, with approximately 32,000 employees serving customers in more than 160 countries. With a global value chain that includes approximately 500 crop procurement locations, 250 ingredient manufacturing facilities, 38 innovation centers and the world’s premier crop transportation network, we connect the harvest to the home, making products for food, animal feed, industrial and energy uses.

During the notice and comment periods throughout the CFTC’s consideration of a position limits rule, ADM has submitted three (3) comment letters¹ outlining our concerns. Along with ADM’s comments, trade associations have submitted comments addressing broader industry concerns. We support the comments that have previously been submitted by the National Grain and Feed

¹ Reproposal, Federal Register, Dec 30, 2016; Vol. 81, No. 251, p. 96925. Appendix B, Number 14, Archer Daniels Midland Company (“ADM”); (CL-ADM-59640, 2/10/2014); (CL-ADM-60300, 1/22/2015); (CL-ADM-60934, 7/13/2016).

Association², the Commodity Markets Council³ and the Futures Industry Association⁴. As the CFTC continues its work on this reproposal, we ask that you continue to consider not only ADM's comments, but the comments of these associations as well.

ADM's comments on the reproposal are focused on four key areas:

- Definition of "Economically Appropriate" for the Management of Risk
- Five Day Rule on Positions in Spot Month
- Enumerating Additional Bona Fide Hedges
- Exchange Approval of Non-Enumerated Bona Fide Hedges

Economically Appropriate for the Management of Risk

The CFTC has received, reviewed and considered numerous comments⁵ that discuss and make extensive cases for a broader interpretation of the phrase "economically appropriate." In the reproposal, the CFTC chooses not to broaden the interpretation and "reiterates its view that, to satisfy the economically appropriate test and the change in value requirement of CEA section 4a(c)(2)(A)(iii), the purpose of a bona fide hedging position must be to offset *price risks* (Emphasis Added) incidental to a commercial enterprise's cash operations."⁶ In light of the CFTC's decision to not provide for a broader interpretation that would allow for broader bona fide hedge treatment, ADM offers additional points on the matter.

ADM offers that the risk we seek to manage is price risk incidental to our cash enterprise. What we have attempted to explain in previous comment letters is that managing price risk often entails assessing the various factors that influence price. There may be instances when some factors have larger or more outsized influence on price than others. The CFTC should recognize that it is "economically appropriate" to manage the potential price risk of an exogenous event.

A review of industry comments in light of the CFTC's decision to maintain a "narrow" definition suggests that perhaps the CFTC perceives that event risk is being managed rather than price risk. We note that industry comments refer to many types of *risk*—policy, geopolitical, weather, quality, and transportation to name a few. These examples are a non-exclusive collection of exogenous events that create price risk that are often simply called "risks." Managing these *risks* effectively means managing the price risk associated with them.

² Id, at Number 77.

³ Id, at Number 30.

⁴ Id, at Number 49.

⁵ Id, at 96746, Footnote 428.

⁶ Id, p. 96746.

A risk manager must be aware of all the factors that influence price. The CFTC is the source of some of this information. For example, the CFTC's regular Commitment of Traders report informs the market about the participation levels of the various categories of participants. It is one of many exogenous factors risk managers evaluate. Some Dodd-Frank reforms were based on greater transparency for market participants. Thus it is incongruous to restrict the definition of managing risk narrowly to price risk while not recognizing what drives price risk and the management of that price risk. The CFTC is tasked with ensuring greater market transparency. A narrow definition of "economically appropriate" that limits the definition to only "price risk" does not allow firms to evaluate and manage the totality of factors that influence price. The narrow definition thus reduces risk management options.

ADM does appreciate the partial recognition that the CFTC has granted to this issue particularly with the CFTC noting "that an exchange is permitted to recognize non-enumerated *bona fide* hedging positions [under §150.9] subject to assessment of the particular facts and circumstances, where price risk arises from other types of risk."⁷

5 Day Rule on Positions in Spot Month

The narrative of the reproposal discusses in some detail comments that express the view that the CFTC should not impose the five-day rule on spread transactions in the spot contract month.⁸ ADM is pleased that the CFTC considered this collective group of comments and chose to clarify "that the five-day rule does not apply to spreads."⁹ Additionally, the reproposal provides clarity with regard to spread reporting by not imposing an additional CFTC reporting obligation and instead allows for exchange "discretion to determine whether there are additional reporting requirements for a spread exemption."¹⁰

In the reproposal however, the CFTC does not allow anticipatory hedge transactions to be carried into the last five days of a contract. ADM posits that a position entered into for anticipatory purposes should be eligible to be carried into the last five days of trading. To support this view, ADM offers two comments:

1. Similar to a spread transaction, carrying this position into the last five days of trading facilitates price discovery and convergence. To limit participation in the market during this

⁷ Id.

⁸ Id., p. 96832. (Footnotes 1140—1147)

⁹ Id., p. 96832.

¹⁰ Id., p. 96833.

time denies the market the opportunity for the market signals that ensure price discovery and convergence as the contract expires.

2. ADM would also like to highlight the transitory nature of an anticipatory position. A position may be anticipatory when entered into, but as time moves forward, physical contracts are consummated and physical product acquired such that a hedge that is anticipatory at the outset is functionally the same as an enumerated hedge at expiration when physical product or contracts are established. Provided that a commercial firm remains actively engaged in the process of buying/selling commodity against that contract, anticipatory hedging should be recognized at bona fide. The anticipatory nature of the hedge fundamentally converts to an enumerated hedge as the physical contracts become manifest. An example of how this can be managed may be taken from ICE Future Canada Exchange Rule 12—Speculative Position Limits.¹¹ This rule demonstrates that firms may carry a position into and through the delivery period so long as they can demonstrate the physical and commercial purpose for doing so. The Commission should therefore remove anticipatory hedge transactions from the five-day rule.

Enumerating Additional Bona Fide Hedges

The CFTC is aware that many commenters have suggested the addition of various transactions to the list of enumerated bona fide hedges and provided many examples that detail these transactions.¹² In the reproposal, the CFTC discusses many of these in detail. The CFTC accepts some of these recommendations in whole or in part and some cases rejects the recommendations. ADM would like to comment on the following:

¹¹ ICE Futures Canada, Rule 12—Speculative Position Limits, Policy for Market Surveillance Matters, p. 6-10. (https://www.theice.com/publicdocs/futures_canada/rules/Rule12_Speculative_Position_Limits.pdf). Under ICE Futures Canada Rule 12, “In the event that a market participant is holding a long position that exceeds the speculative limits and is relying on the bona fide hedging transaction exemption the long must be actively bidding to source cash grain in the cash market...” Further the long must “provide the [ICE] Regulatory Division with evidence to support its claim to the exemption.” Similarly, if a short position is held, the short shall provide information regarding its “cash inventories, purchases, and sales.”

¹² See Reproposal. p. 96925. For representative sample of examples, see Commodity Markets Council comment letters. Number 30. Commodity Markets Council (“CMC”); (CL-CMC-59634, 2/10/2014); (CL-CMC-59925, 7/25/2014); (CL-CMC-60318, 1/22/2015); (CL-CMC-60391, 3/30/2015);(CL-CMC-60950, 7/13/2016)

Irrevocable Bids/Offers

In the reproposal, the CFTC “withdraws the view that a binding, irrevocable bid or offer fails to meet the economically appropriate test.”¹³ This is a positive outcome because these types of transactions are commonplace in our industry. Further, we appreciate the CFTC permitting “exchanges, under § 150.9, to make a facts-and-circumstances determination” as to whether to recognize such and other anticipatory hedges as non-enumerated bona fide hedges, consistent with the Commission’s recognition “that there can be a gradation of probabilities that an anticipated transaction will occur.”¹⁴

ADM respectfully requests that the CFTC reconsider its position and further grant enumerated status to irrevocable bids/offers. Because they are commonplace in the commercial cash business within the position limit threshold, providing enumerated status would provide a degree of certainty when market conditions warrant their usage over the position limit.

Anticipatory Merchandising Hedges

Anticipatory merchandising received significant comment throughout the open comment periods, with ADM also sharing our view that the CFTC should recognize anticipatory merchandising as bona fide hedging.¹⁵ ADM is pleased that the CFTC took the step in the reproposal to permit exchanges “to recognize anticipated merchandising or anticipated purchase and storage, as potential non-enumerated bona fide hedging positions, subject to assessment of the particular facts and circumstances, including such information as the market participant’s activities (taken or to be taken) in the physical marketing channel and arrangements for storage facilities.”¹⁶ It is also positive that the CFTC has “withdrawn” its discussion of doubt about storage hedges and would at a minimum “review exchange-granted non-enumerated bona fide hedge exemptions for storage with an open mind.”¹⁷ While this is progress from previous proposals, ADM requests that the CFTC reconsider the critical commercial importance of anticipatory merchandising transactions as reflected in previous comments and categorize them as enumerated hedges.

¹³ Id., p. 96748.

¹⁴ Id.

¹⁵ Id., p 96749. Footnote 458 and 459.

¹⁶ Id., p. 96749.

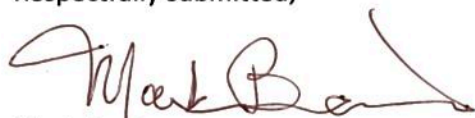
¹⁷ Id.

Exchange Approval of Non-Enumerated Bona Fide Hedges

With regard to the exchange approval process under §150.9, ADM requests that the CFTC pay special attention to industry and exchange comments regarding this process to ensure commercial reasonableness, long-term legal certainty, and a timely exchange and regulatory approval/review process. This process must work with certainty at the speed of commerce. It should be noted that many of the transactions routinely used in the commercial cash business—below the position limit—are being denied enumerated bona fide hedge treatment under this reproposal. This could have a detrimental impact upon risk management, price discovery, and convergence for buyers and sellers. For this reason, ADM requests that routine commercial transactions be afforded enumerated status. If this is not possible, then the approval process for non-enumerated bona fide hedge requests must be commercially viable.

ADM appreciates Commissioners and CFTC staff for reviewing and considering our comments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Mark Bemis", with a stylized flourish at the end.

Mark Bemis
Senior Vice-President
President, North America