May 15, 2020

Via Electronic Submission

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

RE: Position Limits for Derivatives (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. ICE Futures also takes this opportunity to address some of the specific requests for comment raised in the proposal in Exhibit 1 to this comment letter. This letter supplements comments submitted by the Exchange on February 10, 2014, January 22, 2015 and July 13, 2016, which are attached as Exhibit 2.[1]

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"®, Cocoa, Sugar No. 11®, 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 our markets.

The rules and procedures developed and used by the Exchange to perform this important oversight 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 comment letters on previous position limit rule proposals and presented in meetings with Commissioners, Commission staff and participants in our markets, the position limit rules previously proposed conflicted with commercial market

[1] It also supplements the comment letter dated May 15, 2020 submitted by Intercontinental Exchange Inc.

practices for many of our commodities and could have negatively impacted the ability of commercial participants in agricultural markets to hedge their risks using Exchange contracts. The Exchange commends the Commission on the changes that have been made in the newly proposed rules that address these concerns, specifically the rules addressing the following issues:

- Non-spot month limits--accountability levels in lieu of single month and all month position limits for contracts other than the legacy contracts currently subject to federal position limits

- Expanded list of enumerated bona fide hedges, including the addition of anticipated merchandising

- Elimination of the 5-day rule which restricted certain bona fide hedges during the last 5 trading days for an expiring contract

- Elimination of the 12-month restriction on unsold anticipated production and unfilled anticipated requirements

- Recognition of exemptions for spread positions during the period that spot month position limits are in effect

- The delegation to exchanges of the authority to grant non-enumerated hedge exemptions

- For contracts that are not subject to federal limits, providing exchanges with the continued discretion to set position limits or accountability levels for contracts traded on the exchange.

However, as described further below, we believe that the proposed rules continue to establish an overly rigid definition of bona fide hedging that fails to recognize certain hedging strategies that have been successfully used for decades by commercial participants in many markets including sugar, coffee and cocoa. 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 as bona fide hedging positions ("BFH") under the proposed rules. While the proposed rules for non-enumerated BFH ("NEBFH") exemptions appear to permit the Exchange to continue to grant such exemptions, subject to Commission review, the Exchange remains concerned about the failure to recognize such longstanding, common strategies as BFHs in the proposed rules. Further, the timeline proposed for Commission review of NEBFH exemptions could conflict with the procedures that have been successfully utilized for decades by the Exchange to review and grant spot month exemptions. The Exchange believes that the strategies commonly used by commercial market participants should be captured by the BFH definition and that, as a result, NEBFH exemption requests should be rare.

Separately, Appendix B to the proposed rulemaking provides guidance regarding gross hedging positions and other positions held during the spot month period. This Appendix reflects many of the considerations currently taken by Exchange staff when reviewing exemptions and spot month positions, and we believe the guidance is unnecessary and should be removed from the final rulemaking.

Core Reference Contracts and Current Exchange Procedures

ICE Futures procedures provide that spot month exemptions for physical delivery agricultural contracts are granted only for a specific contract month and expire with that contract. This longstanding approach permits Exchange staff to consider both the applicant's physical obligations for a particular delivery period as well as current market conditions when reviewing exemption requests, resulting in reasoned decisions. The information provided by exemption applicants includes inventory, purchases and sales of the commodity for the upcoming delivery period as well as the quantities of EFRPs and pricings expected to be executed prior to the contract's expiry.[2] Through this process, the Exchange exercises the ability to take steps it deems necessary to protect its markets and ensure orderly liquidations.[3] There is no apparent benefit provided by adding a Federal position limit and guidance to this process.

This is particularly true in the case of the Sugar No. 11 contract, which prices the delivery of raw cane sugar, free-on-board ("FOB") the receiver's vessel in the country of origin of the sugar. There are only four contract months listed for trading per year and contracts are listed out 3 calendar years. The contract provides for 29 deliverable growths and more than 30 delivery points around the world. Because the contract has a single delivery notice day which occurs *after* last trading day, the receiver learns the location of the sugar after the contract expires and must then charter vessels to take delivery of the sugar from the port designated by the deliverer. The delivery period extends over 2.5 months due to the FOB contract terms. In 2019, futures contract deliveries totaled over 3.3 million metric tons/66,681 contracts delivered exclusively *outside* of the U.S. at 16 different ports in Brazil, Central and South America and Asia. These terms make the Sugar No. 11 contract and the manner in which it is traded and hedged different from other futures contracts.

The Sugar No. 11 contract is the sole international benchmark for raw sugar trading in the world. Only a *de minimis* amount of the raw cane sugar which the Sugar No. 11 contract represents may be legally imported into the United States in accordance with tariff-rate quotas established by the U.S. sugar support program. These limited sugar imports are

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[2] In the case of Sugar No. 11, exemption applicants typically expect large quantities of pricings for multiple purchase and sales cash contracts during the approximately two-week period that the spot month position limit is in effect, as discussed in the Unfixed-Price section below.

[3] Indeed, the action taken by the Exchange on March 18, 2020 to reduce the spot month position limit in the Cocoa contract, in recognition of the potential impact of disruptions to normal business conditions on the ability of market participants to submit lots of cocoa for Exchange grading, demonstrates that the current system works well. The Exchange made a difficult decision and implemented it immediately while keeping the Commission informed throughout the process.

hedged in the Exchange's domestic Sugar No. 16 contract, not the World sugar contract. Given these facts, the Exchange believes that the Sugar No. 11 contract does not meet the statutory test or the Commission's own standards for inclusion in Federal position limits. That is, it neither has a major significance to U.S. interstate commerce nor a sufficient nexus to create a single market across multiple venues. Further, the necessity finding included in the current proposal for agricultural contracts is solely focused on the American agricultural industry, which does not include the sugar represented in the Sugar No. 11 contract. For these reasons, and as further explained in the July 15, 2013 letter to the Commission from the Exchange and its World Sugar Committee members (which was attached to the Exchange's comment letter dated February 10, 2014 which is provided in Exhibit 2 to this letter), the Commission should not include the Sugar No. 11 contract as a core referenced product or otherwise subject it to Federal position limits. Doing so would allow the spot month position limit and position accountability levels to continue to be established by the Exchange subject to CFTC review, and exemptions would continue to be granted by the Exchange pursuant to the rules and procedures which have worked effectively to date and which reflect the commercial market practices of the international raw sugar market.

Unfixed-Price Commitments as Hedging Transactions

The proposed rules expand the recognition of unfixed-price commitments as bona fide hedging transactions to include offsetting unfixed-price cash commodity sales and purchases basis different commodity derivative contracts in the same commodity regardless of whether the positions are in the same derivative market. This provision is in addition to the existing recognition of offsetting unfixed-price cash commodity sales and purchases basis different delivery months in the same commodity derivative contract. While the Exchange supports this expansion, it fails to address commercial market practices in the World sugar market where the Sugar No. 11 contract is the sole international benchmark for raw sugar trading and *there is no other actively traded commodity derivative contract where offsetting hedges are placed*.

In each of our prior comment letters the Exchange emphasized that the failure to fully recognize unfixed-price transactions as hedging transactions poses significant issues for commercial participants in the World sugar market as well as the cocoa, coffee and cotton markets. In particular, commercial contracts for physical sugar generally provide one of the parties to the contract with the right to fix the price by reference to a specific Sugar No. 11 contract month by a specific date---which can be as late as the last trading day for the expiring futures contract. It is obvious, based on the large quantity of EFPs and EFSs (collectively, EFRPs) executed during the last trading month of any Sugar No. 11 contract, that many commercial participants wait to price their cash contracts until close to the last trading day. This practice is a function of the long delivery period that exists for the Exchange futures contract as well as many commercial sugar contracts. Allowing the price to be fixed through last trading day of the contract month minimizes flat price exposure for both parties to the contract for the 2.5 month delivery period. For example, during September 2019 (the last trading month for the October 2019 contract), EFPs transacted in the contract totaled 221,344 lots and an additional 37,714 lots of EFSs were posted. Collectively, these EFRPs were 13% of

the total volume in the October 2019 contract during the month of September, which was 1,920,827 lots.

The majority of the spot month exemption requests received by the Exchange for the Sugar No. 11 contract are related to book management and reflect the large quantity of EFRPs and commercial contract pricings that will be executed in the futures contract during the period that the spot month position limit is in effect, which is approximately the last two weeks that the contract is available for trading. For example, an applicant holding a 3,000 contract long position in the expiring futures contract may have unfixed-price purchase commitments of 12,000 lots and unfixed-price sales commitments of 10,000 lots against the expiring futures contract. As the timing of these transactions is dictated by the counterparties to the cash contracts, the applicant will seek a 10,000 contract long exemption to cover these unfixed-price commitments to address the possibility that the applicant's position in the expiring futures contract could exceed the 5,000 contract spot month position limit due to the timing of EFRPs and pricings. The applicant does not expect to actually hold a position in excess of 5,000 contracts long or short at expiry of the futures contract. Parenthetically, the Exchange is able to very precisely administer these exemption requests because they are limited to the particular expiring futures contract and to no other contract months--a practice which differs from the approach used for many other contracts that are subject to spot month position limits.

While the execution of an EFRP or commercial contract pricing results in a fixed price cash contract which is considered a BFH and would be self-effectuating for the purpose of the Federal position limit, the applicant must be assured in advance that commercial business can be conducted as usual until such EFRPs and pricings occur. The proposed position limit rules do not appear to accommodate the very common scenario described above, in which the unfixed-price commitments which the applicant seeks to hedge are purchases and sales based on the *same* expiring futures contract. For example, the applicant could have unfixed-price commitments to be priced against the March 2020 futures contract for purchases of sugar from Brazil during March and from Guatemala in April and sales of sugar to Algeria in April and to Saudi Arabia in May.

Discussions with Commission staff have indicated that the hedging requirements in the above scenario could be addressed by relying on the anticipatory merchandising exemption in the proposed rules. Specifically, an unfixed-price purchase or sales contract could be eligible for treatment as a hedge of anticipatory merchandising if the trader meets the qualifications for merchandising set forth in the exemption. If the Commission intends that the availability of this exemption not be limited to anticipated purchases or sales and that *existing unfixed- price contracts* are eligible for the exemption, the Commission should provide certainty to commercial market participants in the final rule. For example, clause (A) of the exemption should be revised to read as follows:

> (11*) Hedges of anticipated merchandising.* Long or short positions in commodity derivative contracts that offset the anticipated change in value of the underlying commodity that a person anticipates purchasing or selling, provided that:

(A) The position in the commodity derivative contract does not exceed in quantity twelve months of current or anticipated purchase or sale requirements (inclusive of unfixed-price contract requirements) of the same cash commodity that is anticipated to be purchased or sold, and…

In the absence of such an express provision, the Exchange believes that an alternative to address the unique circumstances presented by the Sugar No. 11 contract described above, would be to adopt a carve out in the exemption for hedges of offsetting unfixed-price cash commodity sales and purchases, that permits offsetting purchases and sales in the same Sugar No. 11 contract month. Specifically, the Commission should revise the exemption to read as follows:

(2) *Hedges of offsetting unfixed-price cash commodity sales and purchases.* Both short and long positions in commodity derivative contracts that do not exceed in quantity the amount of the contract's underlying cash commodity that has been both bought and sold by the same person at unfixed prices:

(A) Basis different delivery months in the same commodity derivative contract; [~~or~~]
(B) Basis different commodity derivative contracts in the same commodity; or
(C) Basis the same delivery month, in the case of the Sugar No. 11 contract.

The Exchange believes that the most direct approach to recognizing the longstanding commercial market practices of the World sugar market and to provide certainty and transparency to market participants is to add language to the description of enumerated hedges along the lines of either of the foregoing revisions.

A less desirable and more burdensome alternative to the certainty offered by the foregoing revisions might be to utilize the proposed 10 day/2 day process for NEBFH exemptions. Using this structure, market participants would submit an annual exemption request to the Exchange *in addition to* the individual contract month exemption requests currently submitted. The annual request would be submitted for the sole purpose of obtaining Commission recognition of offsetting unfixed-price sales and purchase contracts as NEBFHs. This annual request process could be supported by historical information, such as the information provided by market participants to obtain Sugar No. 11 spot month exemptions for each contract expiration over the previous year. As provided in proposed Rule 150.9(e), the Commission would be notified of the exemption concurrently with the determination provided to the applicant. The annual exemption would be effective after ten business days unless the Commission notified the Exchange otherwise, and would be subject to streamlined annual renewals without going through the ten-day review process. Current Exchange procedures for spot month exemptions would remain in effect, which means the quantity granted in the annual exemption would be subject to modification for each specific spot month expiration during the year based on the applicant's cash book and hedging needs for that specific contract month. The Exchange has concerns, however, that in addition to the documentation required by this approach, this process could result in confusion to exemption holders, as the quantities granted in the annual NEBFH exemption will differ, potentially significantly, from the quantities granted for each

specific expiration. Moreover, the burdens imposed by this process would be focused during a period when the expiring contract is most active. For these reasons, it is the least efficient approach.

10 Day/2 Day Process for NEBFHs

Although ICE Futures strongly supports the approach of allowing an exchange to grant a NEBFH exemption, we question whether it is necessary for the Commission to routinely review such determinations. In general, the Exchange believes that this type of fact-specific inquiry, depending on the particular situations and trading plan of a particular trader, is better suited to an exchange, acting as a self-regulatory organization, than the Commission itself or its staff. Regular review of exchange hedge exemptions may not be an efficient use of the time and resources of the Commission and its staff. It would make more sense for the Commission to review overall exchange policies for granting such exemptions, at a higher level, consistent with the Commission's generally principles-based approach to exchange supervision, rather than review specific determinations. Such an approach would also provide greater certainty to market participants seeking exemptions.

If the Commission retains the 10-day review period, ICE Futures requests that the Commission amend the proposed rules to clarify that the 10-day review period only applies when a market participant first applies to the exchange for a NEBFH exemption. If the Commission deems the NEBFH exemption granted after the 10-day review period, the participant should be able to treat similar hedges as BFHs provided the participant re-applies to the exchange for an exemption on an annual basis (without an additional 10-day Commission review in the ordinary course). The Commission should also clarify whether a market participant may put on additional positions during the 10-day review period, and confirm that exchanges may grant NEBFH exemptions, subject to the 10-day review period, prior to the compliance date in order to promote a smooth implementation of the federal position limits. Allowing market participants to apply for an exemption before the compliance date will reduce the possibility of a situation where the exchanges receive a large number of market participants simultaneously applying for an exemption.

Lastly, ICE Futures requests the Commission establish a process for moving NEBFH exemptions to the category of enumerated BFH exemptions. The Exchange's understanding is that establishing this process would likely require a CFTC notice and comment period rulemaking. Therefore, we would ask that the final rule include a requirement for Commission staff to provide an annual report to the Commissioners recommending the NEBFH exemptions that should be added to the category of BFH exemptions.

Spread Exemptions

The proposed rules expand existing regulations to recognize spread exemptions, including calendar spreads, during the period that spot month position limits are in effect. The Exchange supports this expansion as it has a long history of granting cash and carry exemptions for

certain warehoused contracts--specifically, coffee, cocoa and FCOJ. A cash and carry exemption is an exemption for a calendar spread where a long position is established in the spot month and a short position is established in the second nearby contract month. As such, it falls squarely within the scope of the proposed spread exemption and would be self-effectuating under the proposed rules. As previously stated in comment letters from the Exchange and market participants, when there are plentiful supplies, the availability of these exemptions serve an economic purpose in the days leading up to first notice day and throughout the notice period, because they help maintain an appropriate economic relationship between the nearby and next successive contract month.

ICE Futures has strict procedures that set the terms by which cash and carry exemptions may be granted, including the spread differential at which the trader will be obligated to liquidate positions. An example is shown below. The procedures and the general terms under which an exemption may be granted have been in place for these contracts for many years. They are well understood by participants in these markets, and actual experience with cash and carry exemptions has created an expectation among market participants that - if the appropriate supply and price relationships exist in a given expiry - market participants can apply for and be granted cash and carry exemptions, and that proper application of the terms as expiry approaches will assist in an orderly expiration. Among other market benefits, the holder of the exemption provides liquidity so that traders that carry short positions into the notice period without the capability to deliver may exit their positions in an orderly manner.

Example of Cash and Carry Exemption

- The Coffee "C" contract has a notice period position limit of 500 contracts. Two weeks before first notice day for the March 2020 contract, the March 2020 contract is trading at 106.55 cents per pound and the May 2020 contract is trading at 109.10 cents per pound (or 2.55 c/lb. over the March)

- A coffee merchant's cost of carry for Exchange certified coffee (which includes storage, insurance and other costs) is 1.25 cents per pound per month, so the spread between the March 2020 and May 2020 contracts is greater than the merchant's cost of carry. The coffee merchant applies to the Exchange for a cash and carry exemption for 2,000 contracts at a minimum March 2020/May 2020 spread of -2.50 cents per pound (March contract 2.50 cents below May contract).

- Following a review of the merchant's cost of carry calculation, an exemption is granted for 2,000 contracts long with the following stipulations:

  The merchant's long position in the March 2020 contract must be obtained through straddle transactions where the May 2020 contract trades at least 2.50 cents per pound over the March 2020 contract.

  The Exchange will specify a maximum quantity to which the merchant agrees to reduce its long position by the time the March2020/May2020 spread narrows to certain levels.

The merchant's entire March 2020 long position must be liquidated before the March 2020 contract price rises to a premium to the May 2020 contract.

The important economic function played by this spread exemption in the case of coffee and cocoa is explained by the lack of uniformity of the physical product, which depends not only on the age of the certificate for coffee but more importantly on its origin, grade, port of storage, harvest season, and the demand for the various combinations of attributes. These differing characteristics mean that there is no certainty that the Exchange certified product which a commercial hedger will receive in an Exchange delivery will meet the very specific provisions found in its coffee and cocoa commercial contracts. As a result, commercial hedgers rarely meet Exchange requirements for long spot month hedge exemptions. Consequently, when there are plentiful certified stocks, this can create an imbalance in the expiring contract month because holders of certified stocks are eligible for short hedge exemptions while few traders qualify for long hedge exemptions. This may result in the nearby spread trading at a differential that is wider than the full cost of carry, which could result in the expiring month failing to converge with cash prices.

Thus, the cash and carry spread exemption provides commercial market participants with the opportunity to compete for the ownership of certified inventories beyond the limitations of the spot month position limit. It has also helped the Exchange to maintain a balanced market and ensure an orderly liquidation of the spot month. ICE Futures therefore urges the Commission not to exclude cash and carry exemptions from eligibility for spread exemptions under Federal position limits.

Conclusion

ICE Futures appreciates the opportunity to 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 Chairman Heath P. Tarbert
Honorable Commissioner Brian D. Quintenz
Honorable Commissioner Dawn DeBerry Stump
Honorable Commissioner Rostin Behnam
Honorable Commissioner Dan M. Berkovitz

Exhibit 1
Responses to Specific Questions Contained in Proposed Position Limits for Derivatives

(2) Should the Commission list any additional common commercial hedging practices as enumerated hedges?

As discussed in every comment letter submitted by the Exchange and multiple other entities over the past years, unfixed-price commitments should be fully recognized as enumerated hedges even if an offsetting commitment in another delivery month or commodity does not exist. This topic is discussed in-depth again in this comment letter beginning on page 4.

(3) The Commission proposes to eliminate the five day rule on federal position limits, instead allowing exchanges discretion on whether to apply or waive any five day rule or equivalent on their exchange position limits. The Commission believes that the five day rule can be an important way to help ensure that futures and cash market prices converge. As such, should the Commission require that exchanges apply the five day rule to some or all bona fide hedging positions and/or spread exemptions? If so, to which bona fide hedging positions? Should the exchanges retain the ability to waive such five day rule?

The Exchange fully supports the elimination of the five day rule on federal position limits as it posed significant issues for the Sugar No. 11 contract where trading is active through last trading day. The exchange reviewing an exemption request should retain the ability to place limitations, as necessary, on any exemption it grants, just as it does now.

(4) The Commission requests comment on the nature of anticipated merchandising exemptions that have been granted by DCMs in connection with the 16 non-legacy commodities or in connection with exemptions from exchange limits in 9 legacy commodities.

Following is an example of an anticipated merchandising exemption that has been granted by the Exchange:

In September 2019, a merchant with a long history of making and taking delivery of raw sugar in the world market applies for a 12,000 contract long exemption for the October 2019 ("V19") Sugar No. 11 contract primarily to fulfill anticipated merchandising needs. To justify the exemption request, the merchant advises the Exchange that for the V19 contract delivery period (October 1-December 15), it currently has raw sugar sales of 1.5 million metric tons (30,000 IFUS lot equivalents) and purchases of 1.4 million metric tons (28,000 IFUS lot equivalents), most of which are unfixed-price commitments which likely will be priced before the V19 contract expires on September 30, 2019. The merchant is currently negotiating

additional sales for the V19 contract delivery period. In the fourth quarter of each of the past two calendar years, the merchant has bought and sold approximately 3 million metric tons of raw sugar (60,000 IFUS equivalent lots). The merchant states that due to favorable market conditions whereby the V19 contract is trading at a large discount to the March 2020 ("H20") contract (the next listed contract), it is requesting a long exemption to source sugar which it anticipates selling through the end of 2019.

When reviewing this exemption request, the Exchange would consider the merchant's current book, history and market conditions. All exemptions granted by the Exchange are subject to review, modification or cancellation if market conditions change. Exemptions granted for anticipated merchandising may be subject to specific conditions specified by the Exchange based on futures market price levels. For example, if the V19/H20 spread is trading at -90 points at the time the exemption is granted, the Exchange might reduce the exemption if the spread traded in to -60 points.

From discussions with Commission staff, we understand that this type of exemption could continue to be granted by the Exchange and would be self-effectuating for Federal position limits.

(5) To what extent do the enumerated hedges proposed in this release encompass the types of positions discussed in the BFH Petition? Should additional types of positions identified in the BFH Petition, including examples nos. 3 (unpriced physical purchase and sale commitments) and 7 (scenario 2) (use of physical delivery referenced contracts to hedge physical transactions using calendar month averaging pricing), be enumerated as bona fide hedges, after notice and comment?

Please see the Exchange's response to RFC 2 above.

(6) The Commission requests comment as to whether price risk is attributable to a variety of factors, including political and weather risk, and could therefore allow hedging political, weather, or other risks, or whether price risk is something narrower in the application of bona fide hedging.

As has been discussed in many comment letters previously submitted by the Exchange and other entities, commercial market participants face numerous risks in the conduct of a commercial enterprise, such as execution and logistics risk, political risk, weather risk, pandemic risk, credit risk and default risk, to name just a few. Each of these risks has potential economic consequences for the commercial enterprise. The purpose of hedging these risks is to minimize potential economic consequences. Hedging activity that reduces the economic consequences to the enterprise from these risks is therefore economically appropriate to the conduct and management of the enterprise.

(23) The Commission understands that it may be possible for a market participant trading options to start a trading day below the delta-adjusted

federal speculative position limit for that option, but end up above such limit as the option becomes in-the-money during the spot month. Should the Commission allow for a one-day grace period with respect to federal position limits for market participants who have exercised options that were out-of-the money on the previous trading day but that become in-the-money during the trading day in the spot month?

While the scenario described in RFC 23 does not apply to Exchange agricultural contracts as all options contracts expire before the period when spot month position limits are in effect for such contracts, ICE Futures supports a one-day grace period which is consistent with current Exchange rules regarding the treatment of position limit overages resulting from a change in deltas. This rule has been in place for many years and has never caused any issues.

(28) Out of concern that large demand for delivery against long nearby futures positions may outpace demand on spot cash values, the Commission has previously discussed allowing cash and carry exemptions as spreads on the condition that the exchange ensures that exit points in cash and carry spread exemptions would facilitate an orderly liquidation. Should the Commission allow the granting of cash and carry exemptions under such conditions? If so, please explain why, including how such exemptions would be consistent with the Act and the Commission's regulations. If not, please explain why not, and if other circumstances would be better, including better for preserving convergence, which is essential to properly functioning markets and price discovery. If cash and carry exemptions were allowed, how could an exchange ensure that exit points in cash and carry exemptions facilitate convergence of cash and futures?

As discussed in every comment letter submitted by the Exchange and multiple other entities over the past years, when there are plentiful supplies, the availability of these exemptions serve an economic purpose in the days leading up to first notice day and throughout the notice period because cash and carry exemptions help maintain an appropriate economic relationship between the nearby and next successive delivery month. This topic is discussed in-depth again in this comment letter, beginning on page 7.

(34) The Commission has proposed that exchanges submit monthly reports under § 150.5(a)(4). Do exchanges prefer that the Commission specify a particular day each month as a deadline for submitting such monthly reports or do exchanges prefer to have discretion in determining which day to submit such reports?

ICE Futures prefers to have discretion in determining the day to submit the monthly reports proposed under § 150.5(a)(4). Discretion will allow the Exchange to submit the monthly reports when complete data is available.

(39) Currently, certain exchanges allow for the submission of exemption requests up to five business days after the trader established the position that exceeded the exchange-set limit. Under proposed § 150.9, should exchanges continue to be permitted to recognize bona fide hedges and grant spread exemptions retroactively – up to five days after a trader has established a position that exceeds federal position limits?

ICE Futures Rule 6.13(c) provides that if a Person exceeds its position limit due to sudden unforeseen increases in its needs, the Person will not be considered in violation of the rules, provided the Person requests an exemption to carry the increased position within one business day (unless the Market Surveillance Department approves a later filing of up to five business days) following the day the position limit was exceeded and the exemption is approved by the Exchange. This Rule has existed for a number of years and has not negatively impacted Exchange markets. The proposed position limit rules should not result in any changes to this rule.

(41) The Commission has proposed, in § 150.9(e)(3), a ten business day period for the Commission to review an exchange's determination to recognize a bona fide hedge for purposes of the Commission approving such determination for federal position limits. Please comment on whether the review period is adequate, and if not, please comment on what would be an appropriate amount of time to allow the Commission to review exchange determinations while also providing a timely determination for the applicant.

The proposed ten business day period for the Commission to review an exchange's determination to recognize a bona fide hedge poses potential conflicts with the Exchange's spot month exemption review procedures as described in the timeline provided below. The two business day period proposed for retroactive applications still could pose issues, but is preferable.

Sugar 11 Exemption Timeline

For IFUS agricultural contracts, spot month exemptions are granted only for a specific contract month and expire with the contract. This longstanding procedure allows staff to consider the applicant's physical obligations for the specific contract month's delivery period when reviewing exemption requests. This differs from the practice followed for most other contracts where exemptions are granted for an entire year. The information provided by traders applying for an exemption include purchases and sales of the commodity for the contract's delivery period as

well as EFRPs and pricings expected to be executed prior to the contract's expiry. The exemption granted will be for a quantity that reflects the obligations that could impact a trader's position as expiry approaches.

March 2019 contract
5,000 position limit took effect with positions as of the close of business on 2/19/19
Last Trading Day (LTD)--2/28/19
Notice Day (ND)--3/1/19
Delivery period was March 1-May 15, 2019

On 2/13/19, Trader A is granted an exemption for 20,000 short which expires on 2/25/19 (prior to expiration of the contract). The trader must provide updated information about his physical obligations at that time if the trader wants an exemption through expiry. Based on the updated information provided on 2/25, Trader A is granted an exemption of 8,000 short through expiry on the LTD. The exemption quantity includes activity such as EFRPs and pricings that are expected to be executed prior to the expiry of the contract. Trader A issues 4,000 notices on ND.

Trader B is granted an exemption of 15,000 long on 2/14/19 that expires on 2/25/19. The trader must provide updated information about his physical obligations at that time if the trader wants an exemption through expiry on the LTD. Based on the updated information provided on 2/25, Trader B is granted an exemption of 10,000 long through expiry. The exemption quantity includes activity such as EFRPs and pricings that are expected to be executed prior to the expiry of the contract. Trader B stops 7,000 notices on ND.

The exemption process would be rendered null by a 10-day CFTC review process that could revoke an exemption granted by the Exchange. In the example above, the long might have already chartered vessels to pick up the sugar based on its assessment of the origins likely to be delivered.

(42) The Commission has proposed a two business day review period for retroactive applications submitted to exchanges after a person has already exceeded federal position limits. Please comment on whether this time period properly balances the need for the Commission to oversee the administration of federal position limits with the need of hedging parties to have certainty regarding their positions that are already in excess of the federal position limits.

As discussed in response to RFC 41, the two business day review period for retroactive applications submitted to exchanges after a person has already exceeded federal position limits is preferable to the ten business day period for non-retroactive exemptions. However, two days could still pose a problem when a federal position limit is exceeded close to the last trading day of a contract because the contract could expire before the review period is over.

(43) With respect to the Commission's review authority in § 150.9(e)(5), if the Commission stays an application during the ten (or two) business-day review period, the Commission's review, as would be the case for an exchange, would not be bound by any time limitation. Please comment on what, if any, timing requirements the Commission should prescribe for its review of applications pursuant to proposed § 150.9(e)(5).

As discussed in the responses to RFCs 41 and 42, ICE Futures' longstanding spot month exemption procedures potentially conflict with the 10 day/2 day review periods--a stay almost certainly would conflict with such procedures because the spot month exemptions that are granted may be in effect for less than 10 business days.

(44) Please comment on whether the Commission should permit a person to exceed federal position limits during the ten business day period for the Commission's review of an exchange-granted exemption.

The only way the ten business day review period could possibly work for Exchange contracts would be to permit a person to exceed federal position limits during the review period.

(52) Are there particular attributes of any of the 25 proposed core referenced futures contracts that the Commission should consider when determining whether federal position limits are or are not necessary for that particular product?

When determining whether federal position limits are or are not necessary for a particular product, the Commission should consider whether the product has a major significance to U.S. interstate commerce and is a sufficient nexus to create a single market across multiple venues. As discussed in our comment letter beginning on page 3 and in the July 15, 2013 letter to the Commission from the Exchange and its World Sugar Committee members (which was attached to the Exchange's comment letter dated February 10, 2014 and is provided in Exhibit 2 to this letter), the Sugar No. 11 contract fails both those tests. Further, the necessity finding provided in the proposed rulemaking provides no evidence that the Sugar No. 11 contract is used for price discovery for sugar produced and consumed in the United States. The Exchange's domestic Sugar No. 16 contract is used for this purpose and is appropriately considered a core referenced futures contract.

(55) The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) not permitting exchanges to administer any process to recognize bona fide hedging transactions or positions or grant exempt spread positions for purposes of federal limits;

or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position.

The Exchange fully supports maintaining the status quo, a system that has worked well for decades, both from the perspective of commercial market participants and Exchange regulators, and that the current regulatory regime for these products--which is overseen by the Commission and incorporates rules subject to Commission review--should remain in effect. It should also be noted that the Commission is currently informed on a weekly basis of any new spot month exemptions granted for Exchange agricultural contracts, including those without federal position limits, so much of the information required by the proposed rules is already provided to the Commission.

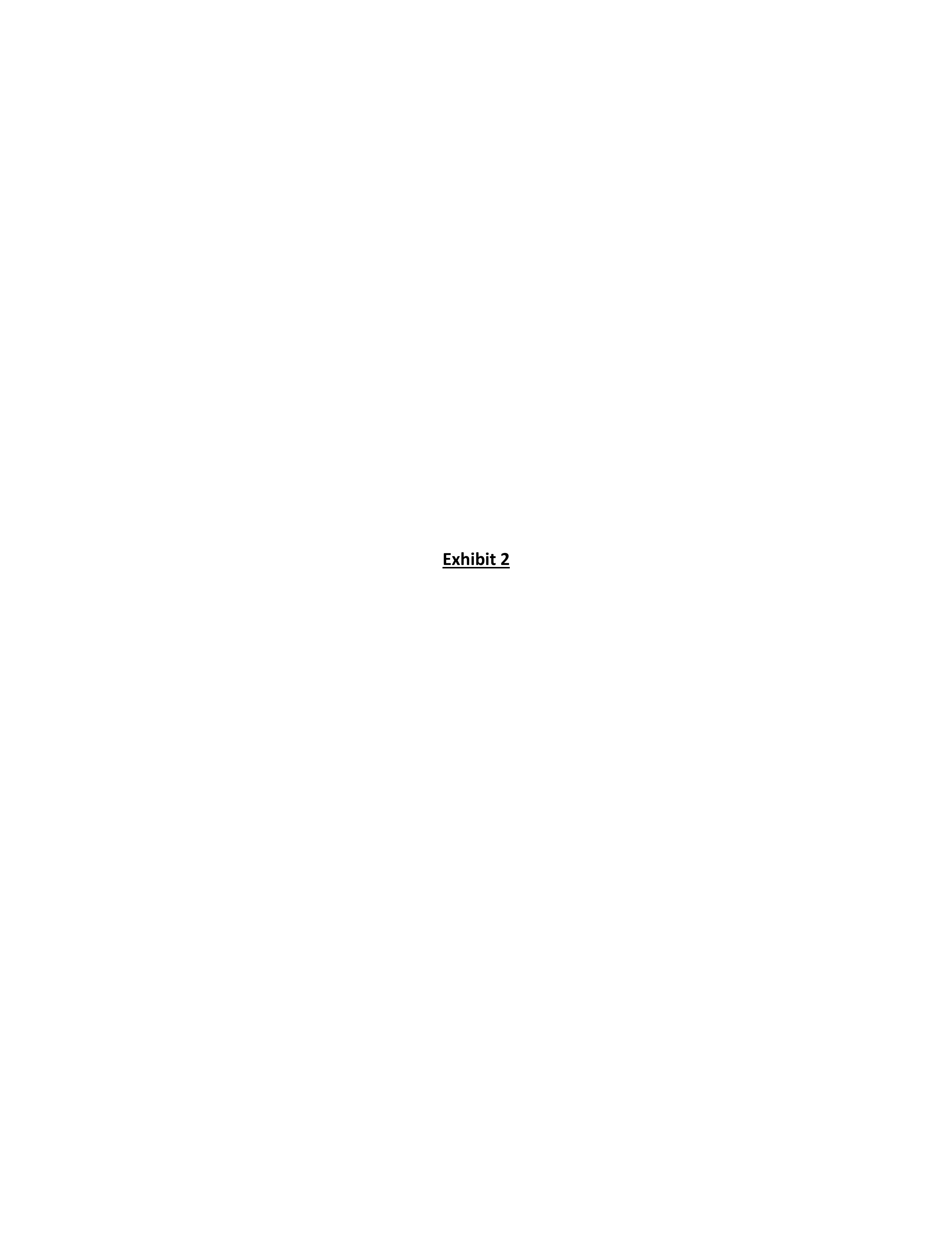

Exhibit 2

Atlanta Calgary Chicago Houston London New York Singapore Winnipeg

February 10, 2014

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

RE: Position Limits for Derivatives
RIN 3038-AD99

Dear Ms. Jurgens:

ICE Futures U.S. ("ICE Futures" or "Exchange") appreciates the opportunity to comment on the proposed 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. ("ICE").ICE operates regulated derivatives exchanges and clearing houses in the United States, Europe, Canada and Singapore. This letter specifically addresses implications of the rulemaking for the physical-delivery agricultural markets of ICE Futures; a separate comment letter has been submitted contemporaneously regarding the Commission's proposed rules on position aggregation.

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"®, Cocoa, Sugar No. 11®, 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 continued 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 below, the proposed rules conflict with commercial market practices for some of our commodities and could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts. In addition, the proposed rules would broadly transform the role of

the Commission in the daily administration of position limits and the granting of hedge exemptions, from an oversight role to direct regulation of markets over which the Exchange and other exchanges, respectively, currently exercise such authority. Given the significant time and resources that such an undertaking would require and the time sensitive nature of exemption requests, we believe that the current structure—whereby the Commission oversees certain domestic agricultural commodities while the listing exchanges oversee their other products—reflects an efficient allocation of responsibility and resources that ensures commercial market participants will be able to continue to hedge their risks in a timely manner.[1]

Should the Commission determine to move forward with aspects of the proposed rules, it should do so with a long transition period 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.

Summary

- The Commission should adopt accountability levels rather than position limits for non-spot month positions; if the Commission nonetheless determines to adopt such limits, it should not do so until reliable Part 20 data is available.

- Sugar No. 11 should not be subject to any Federal position limits because it has no connection to U.S. interstate commerce.

- The proposed rules are modeled on practices in domestic agricultural markets that have no relevance to the international agricultural markets operated by ICE Futures and conflict with commercial market practices. As a consequence, the proposed rules could negatively impact the ability of commercial participants in the coffee, cocoa and sugar markets to hedge their risks using Exchange contracts.

- Exchange Sugar contracts differ fundamentally from other physical-delivery agricultural products and should not be subject to the proposed restrictions on the definition of bona fide hedging during the last three trading days of the expiring contract month.

- Anticipatory hedging should be permitted for more than 12 months of unfilled anticipated requirements and unsold anticipated production to conform to current practice and contract month listing cycles. Further,

[1] Parenthetically, the Commission would not be adding any layer of information that was not otherwise available to the Exchange in relation to monitoring positions and considering exemptions, because instruments equivalent to the Exchange's agricultural contracts do not trade more than de minimis volume on other CFTC regulated markets. Consequently, the Exchange already has a complete picture of the relevant positions held by participants in its markets, and does not require the Commission to combine information across markets.

merchants should be able to hedge anticipated merchandising needs on the same basis as other hedgers may do so.

- The Commission should confirm that the Exchange may grant intermarket spread exemptions for Exchange and NYSE Liffe Cocoa positions held outside of the spot month.

- The proposed requirements for cross-commodity hedges are difficult to meet and should be revised so that the risk management practices of commercial entities requiring these hedges are not compromised.

Current Exchange Procedures

Currently, the Exchange has position accountability rules for single month and all months combined positions in the Coffee "C", Cocoa and Sugar No. 11 contracts. Spot month position limits also exist for each of these contracts. Sugar No. 16 is subject to single month and all month combined position limits. Lastly, Cotton No. 2® and Frozen Concentrated Orange Juice ("FCOJ") have position limits for all three categories: spot month, single month and all months combined. The different procedures for these products reflect the differences in the related commercial markets.

ICE Futures procedures permit the granting of spot month exemptions only for a specific delivery month based on an applicant's near-term hedging needs. This approach permits our Market Surveillance staff to consider current market conditions when reviewing exemption requests and to make reasoned decisions that are limited to a particular delivery month. We understand that this approach differs from the methods used by the Commission in administering exemptions for enumerated commodities, as the Commission does not currently differentiate between the spot month, single month and all months combined position that a hedger may hold and does not otherwise limit exemption requests to a specific delivery month.

ICE Futures also grants exemptions for the Cotton contract, even though cotton is an enumerated commodity. Our procedures provide that, in the case of a traditional hedger, an exemption is not granted unless it is supported by the filing of a Form 304 by the trader with the Commission. For non-traditional hedgers, the Exchange will not grant an exemption until one has been granted by the Commission.

The Commission Should Adopt Accountability Levels Rather than Position Limits for Non-Spot Month Positions.

The CEA grants the Commission discretion to adopt accountability levels rather than hard limits with respect to non-spot months. The exchanges have successfully used position accountability levels for over a decade to deter excessive speculation and manipulation while allowing the markets to continue to serve their price discovery and

hedging purposes. The Commission has not suggested that accountability levels are ineffective at deterring excessive speculation or manipulation. Moreover, it is widely acknowledged, including by the Commission, that the threat of manipulation outside of the spot month is greatly diminished. Accordingly, the long successful track record of the exchanges supports the continued use of flexible accountability levels, rather than their replacement with hard position limits. A position accountability framework would allow the Commission to make determinations on the basis of the relevant facts presented in a particular case, and thereby curtail needless restrictions on the marketplace as a whole. As an alternative, the Commission could defer administration of accountability levels to the exchanges, in the first instance, given their resources and experience.

If the Commission nonetheless determines to impose non-spot month position limits, it should use the most recent and complete open interest data available from all sources and not rely on stale or incomplete data. Proposed Appendix D to Part 150 sets forth initial position limit levels for referenced contracts using the formula in the proposed regulations for Single Month and All Months levels, but does not include Part 20 data because the Commission did not consider the data to be reliable. In light of the inclusion of Part 20 data in proposed Regulation §150.2(e)(4)(ii), non-spot month limits should not be imposed until the CFTC has reliable Part 20 data to include in determining position limits.

Sugar No. 11 Should Not Be Subject to Federal Position Limits

The Exchange strongly believes that Sugar No. 11 should not be a core referenced futures product subject to Federal position limits and that the current regulatory regime for this contract should remain in effect. This means that position limits and position accountability levels would continue to be established by the Exchange subject to CFTC review and approval, and exemptions would continue to be granted by the Exchange pursuant to the rules and procedures which have worked effectively to date and which reflect the commercial market practices of the international raw sugar market.[2] Sugar No. 11 is the international benchmark for raw sugar trading and prices the delivery of raw cane sugar, free-on-board the receiver's vessel in the country of origin of the sugar.

A very small amount of the raw cane sugar it represents may be legally imported into the United States in accordance with tariff-rate quotas established by the U.S. sugar support program. These limited sugar imports are hedged in the Exchange's domestic Sugar No. 16 contract. Given these facts, the Sugar No. 11 contract does not meet the statutory test or the Commission's own standards for inclusion in Federal position limits—specifically, it neither has a major significance to U.S. interstate commerce nor a sufficient nexus to create a single market across multiple venues. For these reasons, and as further explained in the July 15, 2013 letter to the Commission from the Exchange and its World Sugar Committee members (attached as Exhibit 1), the Commission should not include the

[2] The current position accountability levels for Sugar No. 11 are well *below* the position limits that would be set by the CFTC's 10/2.5 percent formula.

Sugar No. 11 contract as a referenced product or otherwise subject it to Federal position limits.

<u>The Proposed Rules Conflict with Long-standing Commercial Market Practices Involving International Agricultural Commodities</u>

The Commission has limited the definition of bona fide hedging position in the proposed rules and set forth a specific, narrow list of enumerated hedging positions that will be recognized. In doing so, the Commission will prohibit long-standing risk management practices which are authorized by the Commodity Exchange Act ("CEA") and which have been used by commercial market participants for decades. At the same time, the proposed regulations do not provide a process with firm time limits for the Commission or its staff to act upon requests from market participants for non-enumerated hedging exemptions. The limitation on the definition of bona fide hedging position coupled with the absence of an effective administrative process to grant non-enumerated hedge exemptions is likely to have an adverse effect on commercial market participants.

The proposed rules are rooted in, and generally extend, the program that currently exists for the enumerated agricultural commodities, such as corn and wheat, to numerous other commodities including World sugar, coffee and cocoa. Some aspects of the current and proposed rules are based on a definition of bona fide hedging that was largely developed decades ago, driven by practices in domestic agricultural markets. That approach cannot reasonably be expected to properly account for commercial market practices that have evolved over time. Additionally, the proposed rules do not recognize that commercial market practices in the non-enumerated commodities differ and that extending the current Commission program to these commodities will create a flawed system. For example, there are fundamental differences between the grains and the coffee and cocoa markets. Grains are characterized by extremely uniform quality; while there are several deliverable qualities for each futures contract, each of these stands in a transparent price relationship with each other and there is liquidity for each of the deliverable qualities. Therefore, should a long holder with a bona fide hedge exemption receive a quality which is not immediately satisfactory to an existing sale, he can immediately sell out of the delivery received and buy the quality needed in the cash markets at a spread as per the prevailing market conditions. Thus the fundamental hedging function of the futures contract is preserved.

In contrast, the coffee and cocoa markets are characterized by many different quality standards including origin, age and location. Commercial contracts for coffee typically require the delivery of specific origin and quality standards that are needed to achieve the unique flavor profile of the coffee that a roaster will produce. Such contracts also require delivery to a specific location. By contrast, the Coffee "C" futures contract permits the delivery of 20 different origins at warehouses located in four ports in the United States and three ports in Europe. Thus, it is not practical for commercial market participants to source coffee from the Exchange. Similarly, the contract terms for raw sugar, which reflect commercial market practices, are fundamentally different from those of the enumerated commodities. Sugar No. 11 is not a warehouse contract and there currently

are 30 deliverable growths. On the business day after last trading day, the receiver learns of the location of the sugar. The receiver must then charter boats to pick up the sugar within the 2.5 month delivery period provided for in the contract rules. It is unreasonable to use standards that were developed for contracts that provide for delivery through warehouse receipts at exchange licensed warehouses to an FOB delivery contract with a 2.5 month delivery period.

Given these fundamental market differences, we urge the Commission not to subject the Exchange's soft commodities to the same definitions and rules which govern the grain markets. Unless the proposed rules are modified to account for the differing commercial practices in sugar, coffee and cocoa, they could prohibit market participants from using futures and options to fully manage their commercial risk in these products, which could have serious consequences and undermine the proper functioning of the market.

The proposed rules ignore commercial market practices in our commodities in other important respects. For example, the proposed rules recognize offsetting unfixed-price cash commodity sales and purchases as hedging transactions provided that the positions are not held in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or during the time period for the spot month in such contract—which in the case of the Sugar No. 11 and Sugar No. 16 contracts is the last three days of trading. This requirement conflicts with provisions in many commercial sugar contracts that permit the price to be fixed as late as the last trading day of the delivery month and without an offsetting unfixed-price contract in another month. This practice reflects the long delivery period that exists for Exchange and many commercial sugar contracts. Allowing the price to be fixed through last trading day minimizes flat price risk exposure for both parties to the contract for the 2.5 month delivery period.

Physical contracts for coffee and cocoa may also permit prices to be fixed into the notice or delivery period. In reviewing and granting exemption requests today, the Exchange takes the practices of the underlying commercial market into account and thus has granted exemptions for unfixed-price commitments during the last three trading days. The Commission's surveillance staff is fully aware of the Exchange's practices in this regard and has never identified this as an area of regulatory concern.

The failure to fully recognize unfixed-price commitments as hedging transactions poses significant issues for commercial participants in the World sugar market as well as the cocoa and coffee markets. This could have the effect of prohibiting these participants from continuing to use risk management strategies that have worked well for years.[3] As previously noted, commercial sugar contracts generally provide one of the parties to the contract with the right to fix the price against a specific Sugar No. 11 delivery month by a specific date, which can be as late as the last trading day for the futures contract. It is obvious from the large quantity of EFPs/AAs (Exchange for Physicals or Against Actuals) posted during the last trading month of any Sugar No. 11 contract-- up to and including last trading day-- that many commercial contracts are priced in this manner

[3] We refer your attention to the discussion of this important point in the Exchange's July 15, 2013 letter attached as Exhibit 1.

during this period. For example, during September 2013, the last trading month for the October 2013 contract, EFPs transacted in that contract totaled 164,939 lots. In addition, 53,004 lots of EFSs were posted. Total volume in the October 2013 contract (including EFPs/EFSs) was 1,553,037**.** Eliminating the ability to fix the contract price in a manner consistent with current cash market practice will not only change commercial market practice in the long term, but applying any change in the short term will negatively affect parties to existing commercial contracts.

The Sugar No. 11 and Sugar No. 16 contracts also differ from many other physical delivery contracts because they have a single notice day, which occurs *after* the last trading day, whereas other contracts have multiple notice days which occur prior to the last trading day. The proposed rules recognize this difference to some extent by providing that restrictions to the definition of bona fide hedging which apply during the lesser of the last five days of trading or the spot month will apply, in the case of Sugar contracts, only to the last three trading days. However, a review of volume data for these periods for the Exchange's physical-delivery agricultural contracts shows there is a fundamental difference among these contracts because the Sugar contracts are still actively traded during this period while volume in the cocoa, coffee, cotton and FCOJ contracts is minimal. This data is shown below.

AVERAGE TRADING VOLUME FOR LAST 5 TRADING DAYS FOR COCOA, COTTON, COFFEE AND FCOJ AND LAST 3 TRADING DAYS FOR SUGAR NO. 11 AND SUGAR NO. 16

	2011	**2012**	**2013**
Cocoa	11	12	12
Coffee	19	10	8
Cotton	129	13	17
FCOJ	49	53	30
Sugar No. 11	24,504	20,952	27,665
Sugar No. 16	211	257	278

Based on the fundamental differences demonstrated by this data, the Exchange believes that there should be no restrictions on the definition of bona fide hedging during the last three trading days of Sugar No. 11 and Sugar No. 16 contracts. If a situation arises where the Exchange believes that a restricted definition is appropriate, it can be addressed through the terms of the exemptions granted by the Exchange for that particular delivery month.

Anticipatory Hedges

The proposed definition of bona fide hedging enumerates two transactions that are currently used by commercial entities utilizing Exchange contracts to hedge their commercial risks. These positions are hedges of unfilled anticipated requirements and hedges of unsold anticipated production. However, the proposed rules impose a restriction of twelve (12) months of anticipated requirements and anticipated production--

which conflicts with the hedging programs of many entities that typically hedge larger quantities than provided for in the definition.

Coffee and cocoa are perennial crops, with life cycles, depending on the agronomical practices followed, of between ten years and multiple decades. As a result, it is of critical importance for producers to be able to access the futures markets for hedging purposes when the opportunity arises. Given the high volatility in prices, it is common, at least for well-capitalized, large scale, producers, to execute such hedges, contributing to market efficiency and price discovery. Similarly, industrial end users have a legitimate demand to hedge their supply risk beyond twelve months in order to reduce the volatility in their business, which in turn reduces volatility of prices at the retail level. Exchange contracts have a listing cycle of 24 months or more to accommodate the hedging needs of its commercial participants.

Positions held by commercial participants, including producers, processors, merchants and other users, in contract months more than twelve months out generally are anticipatory hedges. The failure to recognize these positions as hedges would severely limit risk management programs currently in place for many commercial entities utilizing Exchange markets. The justification for the proposed restriction seems to be based on historical precedent in other products, which is not particularly instructive given the evolution of markets and hedging practices in the decades following the initial adoption of the bona fide hedging definition. The Exchange therefore proposes that hedging of more than twelve months of anticipated requirements or anticipated production be permitted, provided that the positions are established in a contract month that corresponds with the timing of the anticipated requirements or production.

The proposed rules on anticipatory hedging also fail to recognize the critical role merchants play in the international softs markets. These entities provide liquidity and take on counterparty risk for producers, end-users and other commercial market participants. The proposed definition of "bona fide hedging position" includes in the section on hedges of a physical commodity "assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising." While this language clearly includes anticipated merchandising, comparable language is not included in the section defining "enumerated hedging positions". As a consequence, a merchant cannot obtain an exemption for positions representing anticipated merchandising needs. The Exchange urges the Commission to expand the definition of enumerated hedging positions to recognize this activity which is significant to Exchange markets in these agricultural products. Such an expansion of the definition would create parity in the treatment of anticipated production/ownership and anticipated merchandising needs.

<u>Spread Exemptions</u>

The proposed regulations provide exchanges with the authority to grant exemptions for intermarket and intramarket spread positions provided that such exemptions relate to contracts held outside of the spot month for physical-delivery contracts. This

requirement eliminates the spot month cash and carry exemption that is currently recognized by the Exchange for contracts involving certain warehoused commodities---specifically, coffee, cocoa and FCOJ. ICE Futures has strict procedures that set the terms by which these exemptions may be granted and the spread differential at which the trader will be obligated to liquidate positions. These procedures and the general terms under which they are granted have been in place for these contracts for many years. They are well understood by participants in these markets, and actual experience with cash and carry exemptions has created an expectation among market participants that - if the appropriate supply and price relationships exist in a given expiry – market participants will apply for and be granted cash and carry exemptions, and that proper application of the terms as the expiry approaches will assist in an orderly expiration. Based on past experience in administering cash and carry exemptions and input from market participants (including participants who have not themselves applied for such exemptions), our Control Committee members and Market Surveillance staff strongly believe that when there are plentiful supplies, the availability of such exemptions serves an economic purpose in the days leading up to first notice day, because the exemptions help maintain an appropriate economic relationship between the nearby and next successive delivery month.

The important economic function played by this spread exemption in the case of coffee and cocoa is explained by the lack of uniformity of the physical product, which depends not only on the age of the certificate for coffee but more importantly on its origin, grade, port of storage, harvest season, and the demand for the various combinations of attributes. These differing characteristics mean that commercial hedgers rarely meet Exchange requirements for long spot month hedge exemptions because there is no certainty that the Exchange certified product they receive will meet the very specific provisions found in their coffee and cocoa commercial contracts. Thus, when there are plentiful certified stocks, this can create an imbalance in the expiring contract month because holders of certified stocks are eligible for short hedge exemptions while few traders qualify for long hedge exemptions. This may result in the nearby spread trading at a differential that is wider than the full cost of carry, which could result in the expiring month failing to converge with cash prices. Thus, by providing commercial market participants with the opportunity to compete for the ownership of certified inventories beyond the limitations of the spot month position limit, the Exchange helps to maintain a balanced market and ensure an orderly liquidation. ICE Futures therefore urges the Commission not to exclude spot month positions from eligibility for spread exemptions.

The proposed rules also should be clarified with respect to exemptions for intermarket spread positions. The definition describes an intermarket spread position as a "long position in a commodity derivative contract in a particular commodity at a particular designated contract market or swap execution facility and a short position in another commodity derivative contract in that same commodity *away from that particular designated contract market or swap execution facility*."[4] This definition is not limited to

[4] This definition also has an apparent inadvertent shortcoming as it only applies to a long position at a designated contract market. It would be more accurate to refer to a long (short) position at the designated

referenced contracts; therefore the Exchange interprets the proposal as permitting it to grant exemptions for spread positions held in the Exchange's Cocoa contract and the NYSE Liffe Cocoa contract. This arbitrage activity is an important source of liquidity to the market. Accordingly, the Exchange requests that the Commission confirm that intermarket spread exemptions may be granted by the Exchange with respect to ICE Futures and NYSE Liffe cocoa positions held outside of the spot month. In addition, while the proposed rules support the grant of an intermarket spread exemption, a trader granted such an exemption would still be subject to the Federal position limit for Cocoa. Therefore, a procedure should be developed to allow the CFTC to recognize the intermarket spread exemptions granted by the Exchange. [5]

Cross-Commodity Hedges

The proposed definition of bona fide hedging includes the offset of risks arising from a commodity other than the cash commodity underlying a commodity derivative contract provided that there is a close correlation between the fluctuations in the values of the two commodities. The proposed rule establishes a non-exclusive safe harbor based on two factors which must be considered. The qualitative factor, which is consistent with prior practice, requires a reasonable commercial relationship between the commodities. However, a new, unjustified quantitative factor has been added which requires a correlation between returns in daily spot price series of the commodities of at least 0.80 for a period of at least 36 months. The quantitative test fails to recognize that a spot price series may not exist for one or both commodities, or that the illiquidity of a market is an important factor in risk management decisions. As a consequence, commercial entities may be prevented from using cross-hedges to manage legitimate business risks. Cross-hedging is important for commodities that are processed into products that are not traded commodities and in situations where the traded commodity market is illiquid.

For example, the Sugar No. 11 contract is frequently used to hedge Brazilian ethanol because the alternative hedging vehicles are illiquid and cannot be used as effective hedging tools. If the positions established to hedge ethanol are not considered bona fide hedges, the risk management practices of commercial entities involved in this market will be compromised. Our rules, like those of most other exchanges, permit EFRPS involving products which are derivatives, by-products or related products of the commodity underlying the exchange futures contract. This commercial practice would be undermined if transactions in related products are not considered hedges. In a similar vein, the Sugar No. 11 contract is used by commercial entities to hedge the white sugar premium over raw sugar. For example, a refinery that is export oriented may find that its revenue stream is driven by the differential between the cost of procuring raw sugar and white sugar export prices. To protect its refining margin, the refinery will sell the white sugar premium by going short the Liffe No. 5 White Sugar contract and going long the ICE

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contract market and a short (long) position away from that market. This shortcoming also appears in the definition of intramarket spread position.

[5] One possibility would be for the Exchange to provide the CFTC with all documents related to such exemption requests promptly upon completion so that the CFTC may update its records.

Sugar No. 11 contract. If this well established strategy is not recognized as a hedging transaction, because it doesn't meet the cross-hedging test and/or spread requirements, it would be detrimental to such commercial entities. Accordingly, the Commission should eliminate the quantitative test for cross-commodity hedging.

<u>Conclusion</u>

The Exchange appreciates the opportunity to comment on the proposed rules, which make substantial changes to the current position limit regime and differ greatly from the 2011 final position limit rules. We urge the Commission to exercise great caution in making changes to a well-functioning market and to analyze the impact of its proposal on the Exchange's international soft commodities before implementing any changes. If the Commission determines to go forward with the proposed rules, we suggest that it remove the onerous requirements on bona fide hedging, spread, arbitrage and cross commodity exemptions that impact hedgers, which we believe are contrary to the Commodity Exchange Act.

Please contact Susan Gallant at 212.748.4030, or the undersigned at 212.748.4083, if you have any questions or would like to discuss our comments in any respect.

Sincerely,

Audrey R. Hirschfeld
Senior Vice President and General Counsel
ICE Futures U.S., Inc.

cc: Riva Adriance
Mark Fajfar
Stephen Sherrod

EXHIBIT 1

July 15th, 2013

Mr. Richard Shilts
Director, Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Mr. Shilts:

ICE Futures U.S., Inc. ("ICE" or the "Exchange") submits this letter to clarify for the Commission how the global and domestic sugar market is hedged utilizing the Exchange's different sugar contracts. This explanation clearly demonstrates that the Sugar No. 11 contract should not be included as a Core Referenced Futures Product ("CRFP") that is subject to Federal position limits and that the policies and purposes of the Commodity Exchange Act (the "Act") are properly furthered by including the Sugar No. 16 contract, alone, in such category.

The CFTC's final rule on position limits published in the Federal Register on November 28, 2011 identified 28 CRFPs that would be subject to Federal position limits. These products included the international soft agricultural products (Sugar No. 11®, Coffee "C" ® and Cocoa) traded on ICE, as well as the Exchange's domestic sugar contract, Sugar No. 16. The only commodity among this group that is actually produced in the United States is the raw sugar underlying the Sugar No 16 contract. The other soft agricultural commodities are unique among the CRFP because the physical products deliverable against the respective futures contracts are all produced outside the United States.

The Federal Register release of November 28, 2011 states that the criteria for the CRFP is intended to ensure that "those contracts that are of major significance to interstate commerce **and** show a sufficient nexus to create a single market across multiple venues are subject to Federal position limits." Further, the establishment of position limits by the Act is based on the burden on **interstate commerce**. It is in this respect that the Sugar No. 11 contract is unique

from the other soft commodity contracts that are included as CRFP commodities and fails to meet the predicate from which the establishment of position limits is derived.

Sugar No. 11 is the international benchmark for raw sugar trading. It prices the delivery of raw cane sugar, free-on-board the receiver's vessel to a port within the country of origin of the sugar or in the case of landlocked countries, at a berth or anchorage in the customary port of export. There are currently 30 deliverable growths. Sugar No. 11 is distinct from the other soft commodity contracts because a *de minimis* amount of the raw cane sugar it represents may be legally **imported into the United States** due to the U.S. sugar support program that has been in existence since the early 1980s and recently was re-affirmed by the U.S. Senate. This program sets a loan rate that effectively sets a floor for U.S. sugar prices and establishes tariff-rate quotas that permit a limited quantity of foreign sugar to enter the U.S. each year. Quota sugar and Mexican sugar that enters the U.S. under the terms of the NAFTA agreement is hedged in the Sugar No. 16 contract, which has always traded at a higher price than the Sugar No. 11 contract.[1] Consequently, the price of the international Sugar No. 11 contract, while impacting the wholesale price of sugar elsewhere in the world, is not reflective of the sugar price paid by U.S. consumers.[2]

The foreign raw cane sugar priced by the Sugar No. 11 contract does not meet the criteria established by the Commission for inclusion in the CRFP: it is not imported into the United States due to the restrictions of the U.S. sugar support program described above, and therefore is **not stored in the United States**. This sugar **is also not transported within the United States.** Thus, the foreign raw cane sugar priced by the Sugar No. 11 contract places no burden on interstate commerce because it never enters into interstate commerce.

In contrast, **the Sugar No. 16 contract prices the physical delivery of raw cane sugar of U.S. or duty-free foreign origin**, duty paid and delivered to New York, Baltimore, Galveston, New Orleans or Savannah, as selected by the receiver. This contract is used to hedge primarily domestic- grown sugar that is transported and stored in the United States. Thus, the Sugar No. 16 contract (in contrast to the Sugar No. 11 contract) clearly does meet the test of being of major significance to interstate commerce and we agree it should be subject to Federal position limits insofar as the Commission continues to pursue establishing such limits.

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[1] While sugar from the United States is deliverable against the Sugar No. 11 contract, the U.S. sugar program has resulted in a higher price for U.S. sugar than the Sugar No. 11 price, which means it has never been economic to deliver sugar grown in the U.S. against the Sugar No. 11 contract.

[2] To assess any degree of closeness in the price relationship between the No. 11 and 16 futures, the Exchange did an analysis of the correlation of daily returns between the front month future of the No. 11 and several other IFUS futures products over the past four-and-one-half years; this analysis showed a lower correlation between the No. 11 and 16 futures (25.34%) than between the No. 11 and Coffee "C" futures (31.33%), and barely higher than the correlation between No. 11 and Cotton No. 2 futures (24.89).

In addition to not entering into interstate commerce, raw cane sugar priced by the Sugar No. 11 contract is subject to commercial market practices that generally do not conform to the practices of the domestic markets upon which the definition of bona fide hedging and other Federal rules are based. The longstanding rules and procedures developed by the Exchange to set position limits and position accountability levels, and to review exemption requests for the Sugar No. 11 contract, were designed to incorporate the specific needs and practices of the commercial participants in this international market. Federal position limit rules conflict with some commercial market practices in the foreign raw sugar market and could negatively impact the ability of commercial participants to manage their risks through futures, options and other instruments that are cleared through entities regulated by the CFTC. Please refer to the Exchange's comment letter on the position limit rules dated March 28, 2011.

The Exchange strongly believes that Sugar No. 11 should not be a CRFP subject to Federal position limits and that the current regulatory regime for this contract should remain in effect. This means that Exchange position limits and position accountability levels would continue to be subject to CFTC review and approval, but would not be dictated by the CFTC. In this connection it should be noted that current position accountability levels for Sugar No. 11 are well *below* the position limits that would be set by the CFTC's 10/2.5 percent formula. Maintaining the current model would also mean that exemptions for Sugar No. 11 would continue to be granted by the Exchange pursuant to the rules and procedures which have worked effectively to date and which reflect the commercial market practices of the international raw sugar market. The Exchange believes the important differences in how the global and domestic sugar markets are hedged using the Exchange's Sugar No. 11 and Sugar No. 16 contracts demonstrate that the Sugar No. 11 contract does not meet the statutory test or the Commission's own standards for inclusion in Federal position limits. The contract does not have a major significance to U.S. interstate commerce or a sufficient nexus to create a single market across multiple venues. For the reasons discussed above, the Sugar No. 11 contract should not be identified as a CRFP or otherwise subject to Federal limits. If the Commission nonetheless intends to include Sugar No. 11 in its upcoming rulemaking on position limits, we believe it would be appropriate to expressly solicit public comment on the propriety of doing so, and request that the federal register notice accompanying any such proposal include targeted questions relating to the character and commercial use of this contract, as well as the potential impact of the proposed limits on commercial market participants.

Because of the significance of this issue, the Exchange consulted with its World Sugar Committee, which serves as an advisory body to the board of directors with respect to matters relating to the Sugar No. 11 contract and is comprised of an international group of individuals who directly, or through their affiliated firms, actively engage in trading world raw sugar. The

Committee unanimously agreed with the positions articulated in this letter and 18 members have co-signed the letter to emphasize the importance of this issue to their businesses.

If you have any questions or would like to discuss any of the matters addressed in this letter, please contact me at 212-748-4150 or Benjamin.Jackson@theice.com .

Sincerely Yours,

Benjamin Jackson
President & COO
ICE Futures U.S., Inc.

cc: Chairman Gensler
Commissioner Chilton
Commissioner O'Malia
Commissioner Wetjen

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Jamal Al Ghurair
Al Khaleej Sugar Co LLC

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Patrice Bougault
Cargill International S.A.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Soren Hoed Jensen
Copersucar S. A.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Adam Leetham
Czarnikow Group Ltd

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Plinio Nastari
Datagro

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Michael Levitz
E D & F Man

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Michel Roy
Glencore Energy UK Ltd

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

John Stotts
Infinium Capital Management LLC

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Simon McGuigan
J.B. Drax Honore

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

David S. Rossen
Louis Dreyfus Commodities LLC

On behalf of my firm I agree with the views expressed in the ICE Futures U.S., Inc. letter to Mr. Richard Shilts of the Commodity Futures Trading Commission concerning the application of Federal position limits to the Sugar No. 11 futures and options contracts:

Joseph Limone
General Counsel,
Noble Americas Resource Corp.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Narendra Murkumbi
Shree Renuka Sugars Limited

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Michael Gelchie
Sierentz North America

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

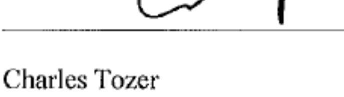
THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Ludovic Herve
Sucden Americas Corp

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS



Charles Tozer
Tate & Lyle Sugars

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Sean Diffley
Managing Partner
Tropix Capital Management LLC

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

Eric Milhoua
UBS

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE

COMMODITY FUTURES TRADING COMMISSION RE:

THE ICE SUGAR NO. 11 CONTRACT AND FEDERAL POSITION LIMITS

DAVID FRANSEN
VITOL S. A.

Atlanta Calgary Chicago Houston London New York Singapore

January 22, 2015

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

RE: Position Limits for Derivatives
RIN 3038-AD99

Dear Mr. Kirkpatrick,

ICE Futures U.S. ("ICE Futures" or the "Exchange") appreciates the opportunity to submit additional comments on the proposed rulemakings 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 and August 4, 2014.

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 working with the Commission to review position limits and exemption requests for the Cotton No. 2 contract while overseeing position limits, accountability levels and exemption requests for the Coffee "C"®, Cocoa, Sugar No. 11®, 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 rulemakings to the maintenance and oversight of these markets by ICE Futures.

The proposed rules are rooted in, and generally extend, the program that currently exists for the enumerated agricultural commodities, such as cotton and wheat, to numerous other commodities including World sugar, coffee and cocoa. Some aspects of the current and proposed rules are based on a definition of bona fide hedging that was largely developed decades ago, driven by practices in domestic agricultural markets. That

approach cannot reasonably be expected to properly account for commercial market practices that have evolved over time in both domestic and international markets.

The Commission has limited the definition of bona fide hedging position in the proposed rules and set forth a specific, narrow list of enumerated hedging positions that will be recognized. In doing so, the Commission will prohibit long-standing risk management practices which are authorized by the Commodity Exchange Act ("CEA") and which have been used by commercial market participants for decades to manage the numerous types of risk encountered in their commercial activities, including, but not limited to, price, time, quality, location and counterparty. While the rules permit applications for non-enumerated hedges, they do not provide a process with firm time limits for the Commission or its staff to act upon requests from market participants for non-enumerated hedging exemptions, and there is no assurance that any would be granted by the Commission. The limitation on the definition of bona fide hedging position coupled with the absence of an effective administrative process and commitment to grant non-enumerated hedge exemptions is likely to have an adverse effect on commercial market participants.

<u>Unfixed Price Commitments as Hedging Transactions</u>

The proposed rules ignore commercial market practices in the Exchange's commodities in other important respects. For example, the proposed rules recognize offsetting unfixed-price cash commodity sales and purchases[1] as hedging transactions provided that the positions are not held in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or during the period the spot month position limit applies in such contract. However, physical contracts for cotton may permit prices to be fixed into the notice or delivery period and this restriction has caused problems for commercial market participants in the cotton market as the Commission has advised the Exchange that it cannot grant cotton spot month exemptions for unfixed-price contracts.

The failure to fully recognize unfixed-price commitments as hedging transactions has additional negative implications for commercial market participants in cotton, as illustrated by the two examples below.

> Example 1: A merchant has sold 100,000 bales on-call with the price based on the March 2016 contract to a mill for delivery in January 2016. The merchant tries to procure the cotton in the market, but is unable to do so, thus he decides to take delivery of the December 2015 contract in order to fulfill his delivery obligations for January 2016. However, under the current and proposed rules the merchant would not qualify for a hedge exemption because the commercial sales contract is not fixed-price. The rules fail to recognize that the sales obligation exists, whether the price is fixed or not.

[1] Unfixed-price contracts in the commercial cotton market are known as On-Call purchases and sales.

> Example 2: A merchant has 2,000,000 bales of on-call purchases from various producers with the price based on the December 2015 contract. The price spread between the December 2015 and July 2016 contracts is in contango, so that the price of the December contract is at enough of a discount to the July contract to allow full financial carry from December to July. The merchant would like to lock-in this financial carry, thus mitigating risk exposure to the December contract, by buying 20,000 lots (the equivalent of the on-call purchases) of the December contract and selling the same quantity of the July contract. However, under the current and proposed rules, the merchant could not buy the contracts because this transaction is not recognized as a bona fide hedge. Thus, the merchant cannot use a risk management strategy that he believes is commercially appropriate to manage his exposure to the December contract.

The Commission has not fully articulated the rationale for not viewing unfixed-price commitments as bona fide hedges except in the very limited circumstances specified; therefore the Exchange and commercial market participants do not have a good understanding of why the Commission believes that the transactions described above should not qualify as bona fide hedges and believe the Commission should reconsider its position.

Anticipatory Hedges

The proposed definition of bona fide hedging enumerates two transactions that are currently used by commercial entities utilizing Exchange contracts to hedge their commercial risks. These positions are hedges of unfilled anticipated requirements and hedges of unsold anticipated production. However, the proposed rules impose a restriction of twelve (12) months of anticipated requirements and anticipated production--which conflicts with the hedging programs of many entities that typically hedge larger quantities than provided for in the definition. The fact that futures contracts have a listing cycle of 24 months or more reflects this need.

Positions held by commercial participants, including producers, processors, merchants and other users, in contract months more than twelve months out generally are anticipatory hedges. The failure to recognize these positions as hedges would severely limit risk management programs for many commercial entities utilizing Exchange markets. The justification for the proposed restriction seems to be based on historical precedent, which is not particularly instructive given the evolution of markets and hedging practices in the decades following the initial adoption of the bona fide hedging definition. The Exchange therefore proposes that anticipatory hedging of more than twelve months of anticipated requirements or anticipated production be permitted.

The proposed rules on anticipatory hedging also fail to recognize the critical role merchants play in the cotton market. These entities provide liquidity and take on counterparty risk for producers, end-users and other commercial market participants. Merchants operating in international markets need to be able to manage the potential for defaults by counterparties. For example, a merchant may have a contract to buy cotton

from a producer located in a third world country. If the producer defaults, the merchant may need to manage that default by buying back the short hedge that had been established against the cotton he anticipated receiving and establish a long position to hedge the cotton he now needs to source.

The proposed definition of "bona fide hedging position" which will apply to all Referenced Products includes in the section on hedges of a physical commodity "assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising." While this language clearly includes anticipated merchandising, comparable language is not included in the section defining "enumerated hedging positions". As a consequence, a merchant cannot obtain an exemption for positions representing anticipated merchandising needs. The Exchange urges the Commission to expand the definition of enumerated hedging positions to recognize this activity which is significant to the cotton market. Such an expansion of the definition would create parity in the treatment of anticipated production/ownership and anticipated merchandising needs.

Gross and Net Hedging

It is also important that commercial entities have the ability to manage their risks as market circumstances dictate. Under the longstanding rules of the Commission, market participants have the flexibility to determine whether to hedge risks on a gross or on a net basis. The proposed rules could place limitations on these decisions. Commercial entities have responsibility for the purchase and sale of cotton globally and use the Cotton No. 2 contract to manage risks for growths and qualities that often differ from Exchange qualities. The proposed rules could be interpreted to prevent the commercial sector from taking delivery simply because an entity owns physical cotton, without consideration of quality, growth, location or availability. In such cases the Cotton No. 2 contract could fail to provide proper risk mitigation, as illustrated by the examples below.

> Example 1: Assume that a merchant has cotton inventory and forward purchase contracts from the United States, Brazil and India. The merchant makes the determination to hedge most of the United States cotton and a portion of the Brazil cotton because of the quality characteristics and the potential customers for the particular qualities of cotton being purchased. However, the merchant decides not to hedge any of the India cotton inventory and forward purchases because of current government programs in India affecting the local price and other factors, such as different potential customers for the quality and type of the specific India cotton being purchased. As market conditions change frequently, such as changes in government policy, the merchant needs to have the flexibility to modify its risk management strategy and decide if it should hedge all or just a portion of its inventory and forward purchase contracts, as determined by its risk managers.
>
> The merchant also has outstanding sales to textile mills in Indonesia for the exact same quantity as its inventory and forward purchase contracts. These sales allow the merchant to deliver United States, Brazil or India cotton. The merchant

decides not to hedge these optional growth sales because its risk managers feel that this is the most economically appropriate decision. Under the proposed rules, the Commission may determine that the merchant's short hedges of its United States cotton inventory and forward purchases are not economically appropriate because the merchant's net cash position is zero. Under this scenario, since the cash positions are offset, the Commission could claim that the merchant's short hedges of its United States cotton increased the value exposure to the enterprise.

Example 2: Assume that a merchant has purchased cotton from cotton producers at $0.60 per pound and after a subsequently large rise in cotton prices, sells the same amount of cotton to textile mill users at $2.00 per pound. The price has been fixed for both transactions. Under the proposed rules, the Commission may determine that the merchant does not have the right to have short or long futures to protect against a large price change, and the risk of counterparty performance. The merchant has determined that contract performance and credit risk were the most economically appropriate risk to mitigate in this example, yet the Commission may not have allowed the merchant to manage this risk due to the Commission's narrow definition of risk as fixed price risk.

Because of the significance of the proposed rules to Exchange contracts, the Exchange consulted with the members of its Cotton Committee, which serves as an advisory body to the board of directors with respect to matters related to cotton. The members represent firms which are actively engaged in the trading of cotton, and many of the Committee members have co-signed the letter to emphasize the importance of the issues discussed to their businesses.

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 Susan Gallant at 212.748.4030, or the undersigned at 212.748.4083, if you have any questions or would like to discuss our comments in any respect.

Sincerely,

Audrey R. Hirschfeld
Senior Vice President and General Counsel
ICE Futures U.S., Inc.

cc: Stephen Sherrod
Riva Spear Adriance

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND

FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Phil Bogel
Toyo Cotton Co.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND
FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Thomas Butler
Butler Brokerage

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND
FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Eddy Esteve
Ecom Trading

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Stuart Frazer
Frazer-Blocker Cotton

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Colin Iles
Glencore

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Herman Kohlmeyer
Michael J. Nugent & Company, Inc.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Jordan Lea
Eastern Trading Company

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Stephan Ariyan
Olam International Ltd.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Jarral Neeper
Calcot, Ltd.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Joseph Nicosia
Louis Dreyfus Commodities

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

J. Michael Quinn
Carolinas Cotton Growers Cooperative, Inc.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Crawford Tatum
Noble Americas Resource Corporation

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Anderson Warlick
Parkdale Mills, Inc.

AS A CO-SIGNER TO THE ICE FUTURES U.S., INC. LETTER TO THE COMMODITY FUTURES TRADING COMMISSION RE: THE COTTON NO. 2 CONTRACT AND FEDERAL POSITION LIMITS AND AGGREGATION PROVISIONS

Lonnie Winters
Plains Cotton Cooperative Association

Atlanta Calgary Chicago Houston London New York Singapore

July 13, 2016

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: ***Supplemental Notice of Proposed Rulemaking – Position Limits for Derivatives: Certain Exemptions and Guidance (RIN 3038–AD99)***

Dear Mr. Kirkpatrick:

ICE Futures U.S., Inc. (the "Exchange") and ICE Swap Trade, LLC (collectively "ICE") appreciate the opportunity to provide comments and recommendations to the Commodity Futures Trading Commission's ("CFTC" or "Commission") in response to the Commission's re-opening of the comment period for its proposed supplemental rules establishing position limits for derivatives (the "Supplemental Proposal")[1]. ICE also takes this opportunity to address some of the questions raised in the Supplemental Proposal in Annex 1 to this comment letter.[2] As background, ICE operates regulated derivatives exchanges and clearing houses in the United States, Europe, Canada and Singapore. As the operator of U.S. and international exchanges, trade repositories and a swap execution facility that list both OTC and futures markets, ICE has a practical perspective of the implications of the proposed position limit regime.

Executive Summary

As ICE has previously commented during this rulemaking process, ICE supports enabling the exchanges – as opposed to the Commission -- to recognize *bona fide* hedge exemptions from federal speculative position limits. Permitting the exchanges to recognize non-enumerated, spread, and anticipatory hedge exemptions for federally-established speculative position limits could resolve a number of issues arising from the unduly narrow hedge exemptions that were proposed in the 2013 Position Limits Proposal in a manner that leverages the expertise of the

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[1] *See Position Limits for Derivatives: Certain Exemptions and Guidance*, 81 Fed. Reg. 38458 (June 13, 2016) ("**Supplemental Proposal**"). The proposal supplements the Commission's December 2013 position limits proposed rule. *See Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013) ("**2013 Position Limits Proposal**").

[2] The comments herein supplement prior comments regarding position limits submitted by the Exchange and Intercontinental Exchange, Inc. Prior comments are incorporated by reference and the Commission is urged to evaluate prior comments in conjunction with the comments below prior to adopting any final position limits rule.

IntercontinentalExchange
2100 RiverEdge Parkway
Suite 500
Atlanta, GA 30328
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exchanges, allows commercial risk management practices to evolve over time, and conserves Commission resources.

The Supplemental Proposal, however, goes far beyond permitting the exchanges to recognize these types of hedge exemptions from federally-established speculative position limits. The Supplemental Proposal specifies detailed new standards and requirements that the exchanges must meet in recognizing non-enumerated, spread, and anticipatory hedge exemptions from both federal- and exchange-set position limits, and establishes a new process to provide for Commission review of all such exchange determinations. As such, it is a significant departure from the proposal to authorize the exchanges to recognize non-enumerated hedge exemptions for federally-set limits that were contemplated and discussed in the Energy and Environmental Markets Committee meeting on July 29, 2015 and supported by the exchanges and commercial market participants at that meeting.[3] The Supplemental Proposal is a wholesale re-write of the process previously discussed and supported by the exchanges, and was drafted without input from, or consultation with, the exchanges. The Supplemental Proposal thus proposes a cure for a problem that does not exist, and in so doing creates a host of new problems.

The Supplemental Proposal also introduces new complexities and uncertainties into the process for granting hedge exemptions from both federal- and exchange-set limits. The process set out in the Supplemental Proposal is overly detailed and indeterminate, and will impede the ability of commercial market participants to have positions recognized by exchanges as bona fide hedges. The Commission should remove these unwarranted obstacles to the recognition of bona fide hedge exemptions and facilitate the conclusion of this rulemaking process by simply leaving the current process for the granting of hedge exemptions by the exchanges in place.

As set forth in more detail below, ICE believes the new standards and requirements set forth in the Supplemental Proposal -- particularly with respect to exchange-set limits, either below the federally-set limits or where the exchanges set the limits themselves -- are overly prescriptive, unwarranted in light of the exchange's effectiveness in implementing the hedge exemption process under the current position limits regime, and inconsistent with the statutory division of responsibilities between the Commission and the exchanges in implementing and enforcing exchange rules. The Supplemental Proposal offers no rationale or justification for this dramatic departure from the Commission's current practices and policies regarding the granting of hedge exemptions from exchange-set limits.

[3] See, e.g., Statement of Mr. Oppenheimer, Tr. at p. 40 ("The process would rely, very much, on existing process, and in that sense that's really a benefit I think to both the market and to the regulators"); Statement of Mr. LaSala, Tr. at p. 59 ("Again, I do see this as somewhat of an extension of what we are already doing.");Statement of Mr. Haas, Tr. at p. 74 ("It's allowing us to continue to do our current process, and the CFTC passing some rule allowing the person who receives an exchange exemption to utilize that for – an exchange exemption for non-enumerated hedging, to potentially use that for OTC. The CFTC would still have the responsibility to monitor for that and manage that; all they are doing is allowing us to continue our existing exemption approval process . . . .").

ICE believes the Supplemental Proposal would fundamentally change the respective roles of the Commission and the exchanges in exchange operations. According to the Commodity Exchange Act ("CEA"), the exchanges have the responsibility for establishing, monitoring, and enforcing compliance with the rules of the exchange; the Commission has the authority and responsibility to approve such rules, monitor and review their enforcement generally, and require such changes in rules and practices as the Commission determines may be appropriate. Under this well-established statutory framework, after it has approved an exchange rule the Commission does not reserve authority to review and overturn each specific decision by the exchange as to how the rule is implemented. The Supplemental Proposal, however, provides that the Commission must receive detailed information about each request under the rule, may review exchange determinations on individual applications to the exchange for exemptions, request additional information from the exchange or applicant for any exemption request, and make its own determination regarding whether each application to the exchange for a *bona fide hedge* exemption should be granted. This exemption-by-exemption review of exchange decisions is a novel and significant departure from the longstanding process for the implementation of the position limits regime, imposes substantial burdens on the Commission and the exchanges, and decreases regulatory certainty for market participants regarding the status of an exemption. The Supplemental Proposal both imposes prescriptive obligations and requirements on the exchanges as to how it should meet its responsibilities to recognize hedge exemptions and at the same time undermines those same responsibilities by superimposing a new layer of Commission review upon those exchange decisions.

Further, the Supplemental Proposal radically revises the requirements on both the exchanges and market participants to grant and receive NEBFH exemptions, spread exemptions, and anticipatory bona fide hedge exemptions for all commodities, not just the twenty-eight Core Referenced Futures Contracts defined in the 2013 Position Limits Proposal. Under both current law and the 2013 Position Limits Proposal, the exchanges have considerable discretion (subject to Commission approval of exchange rules and rule enforcement reviews) as to the procedures to be used to recognize hedge exemptions from exchange-set limits, as well as the authority to make such binding determinations. The Supplemental Proposal provides no explanation or rationale as to why the Commission believes a completely different, highly prescriptive approach is now necessary or appropriate to permit the exchanges to recognize these types of hedge exemptions from exchange-set position limits. The Commission's failure to set forth any justification for such significant changes is inconsistent with "the basic procedural requirement[] of administrative rulemaking . . . that an agency must give adequate reasons for its decisions."[4]

As such, ICE urges the Commission to make extensive adjustments to the Supplemental Proposal regarding NEBFHs, spread exemptions, and anticipatory exemptions to reduce administrative burdens on market participants, the exchanges and the Commission. ICE

[4] *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 1538 (2016). ("'In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.'" [*citation omitted*])

recommends that the Commission continue its current practice of providing guidance to the exchanges and overseeing the exemption process. Under the current process, the exchanges grant exemptions and the Commission reviews the exchange administration of its rules through a rule enforcement review. Furthermore, the Commission Staff and the exchanges are in regular contact to ensure the exchanges appropriately identify activity eligible for an exemption. This existing process effectively leverages the expertise of the exchanges and conserves Commission resources to oversee the process.[4]

ICE therefore believes the Commission must adopt extensive modifications to the Rulemaking intended to lessen these burdens, recognize longstanding, effective exchange practices, and clarify certain ambiguous provisions of the rulemaking before moving forward. Based on our review of the Proposed Rules, we respectfully request the Commission to reconsider several key aspects of the Proposal in order to avoid substantial harm to both markets and market participants, as follows:

- **Substantially Revise the Supplemental Proposal to Align With the Commission's Authority Under the CEA**
    - **Clarify That the Supplemental Proposal Does Not Apply to Exemptions Granted By an Exchange Below The Federal Limit or to Commodity Contracts Without a Federal Limit**
- **Reduce the Prescriptive Requirements of the Application and Reporting Process**
- **Revise the Proposal to Avoid Altering Existing Practices**
    - **Allow Bona Fide Hedging or Spread Positions During the Spot Month**
    - **Expand the Bona Fide Hedge Definition and Broadly Interpret the Economically Appropriate Test**
    - **Permit Hedge Exemptions for Unforeseen Hedging Needs**
    - **Permit Cash and Carry Exemptions**
    - **Allow Exchanges to Continue to Consider Anticipatory Merchandising as a Non-Enumerated Hedging Strategy**
- **Address Critical Outstanding Issues When Enacting a Final Position Limit Rule**
    - **Allow for Higher Position Limits for Financially Settled Contracts**

[4] Supplemental Proposal at 38465-38466.

   - **Adopt Single Month and All-Months Combined Position Accountability Levels Instead Of Single and All Months Position Limits**
   - **Update Deliverable Supply Estimates to Reflect Current Market Conditions**
   - **Maintain Spot Month Accountability Levels for Henry Hub Penultimate Options and Futures Contracts**
   - **Confirm Trade Options are Not Subject to Position Limits**
   - **Allow Market Participants to Net Commodity Index Contracts with Referenced Contracts**
   - **Remove the Quantitative Test and Spot Month Restriction for Cross-Commodity Hedging**
- **Reduce Unwarranted Burdens and Associated Costs**
   - **The Commission Should Reduce the Prescriptive Burdens for Market Participants and Exchanges**
   - **Streamline the Extensive Reporting Requirements for Market Participants and Exchanges**
   - **Revise Cost Estimates to Fully Reflect All Requirements**
- **Provide Regulatory Certainty for Market Participants Regarding Exchange Decisions**

I. SUBSTANTIALLY REVISE THE SUPPLEMENTAL PROPOSAL TO ALIGN WITH THE COMMISSION'S ACTUAL AUTHORITY UNDER THE COMMODITY EXCAHNGE ACT

The Commission Should Clarify that the Proposal Does Not Apply to Exemptions Granted by an Exchange Below the Federal Speculative Position Level and to Exchange-Set Limits

The Commission should revise the Supplemental Proposal to align with the Commission's authority under the CEA to set forth acceptable practices to meet the core principles, approve exchange rules and review exchange operations. The CEA does not contemplate that the Commission will routinely review and make independent determinations

regarding issues of conformance with the exchange rules. The CEA provides the exchanges shall have the responsibility to "establish, monitor, and enforce compliance with the rules of the [exchange]."[5] The CEA does not assign the Commission overlapping authority to monitor or enforce compliance with exchange rules. Rather, the CEA provides the Commission with specific authorities to establish guidelines for exchange operations and review how the exchange is complying with those standards. In this regard, the CEA provides the Commission with the authority to review and approve applications for designation as a board of trade;[6] specify acceptable practices for complying with core principles;[7] review, approve, or disapprove new contracts, rules, or rule amendments;[8] alter or supplement the rules of an exchange if the exchange does not make such changes as requested by the Commission;[9] and to make such investigations "as it deems necessary to ascertain the facts regarding the operation of boards of trade and other persons subject to the provisions of this Act."[10] Notably absent from these specific authorities is the authority to enforce exchange rules.[11] The rule should not blur the clear distinction that the CEA did not contemplate the Commission assuming the exchanges' self-regulatory functions.

The Commission's proposal to radically depart from this structure in the Supplemental Proposal is all the more striking in light of the Commission's recognition of how well the current structure has been working. Under the 2013 Position Limits Proposal, the exchanges would have retained their existing flexibility to devise acceptable procedures for enforcing exchange-set position limits. Further, the most recent Rule Enforcement Review of ICE Futures U.S., which was issued in July 2014, did not identify any fundamental issues with the Exchange rules or the process for granting hedge exemptions. The Supplemental Proposal, however, does not provide

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[5] CEA Core Principle 2 for contract markets provides: "The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including . . . the terms and conditions of any contracts to be traded on the contract market." 7 U.S.C. §7(d)(2) (emphasis added). CEA Core Principle 2 for swap execution facilities provides: "A swap execution facility shall—(A) establish and enforce compliance with any rule of the swap execution facility . . . ." 7 U.S.C. §7b-3(f)(2) (emphasis added).

[6] CEA § 5; 7 U.S.C. §7a-2.

[7] CEA § 5(d)(1)(B); 7 U.S.C. §7(d)(1)(B).

[8] CEA § 5c; 7 U.S.C. §7a-2.

[9] CEA § 8a(7); 7 U.S.C. §12a(7).

[10] CEA § 8a(1); 7 U.S.C. §12a(1).

[11] In light of the specific authorities provided to the Commission regarding exchange operations, the general grant of authority to the Commission in Section 8a(5) to "promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act" cannot be interpreted as a grant of additional authority to the Commission with respect to exchange operations. *See Board of Governors of Federal Reserve System v. Dimensional Financial Corp.,* 474 U.S. 361, 374, n. 6 (1986) ("the Board contends that it has the power to regulate these institutions under § 5(b), which provides that the Board may issue regulations 'necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.' 12 U.S.C. § 1844(b). But § 5 only permits the Board to police within the boundaries of the Act; it does not permit the Board to expand its jurisdiction beyond the boundaries established by Congress . . . ."); *Comcast Corp. v. FCC*, 600 F.3d 642, 653 (D.C. Cir. 2010) ("the Commission's ancillary authority 'is really incidental to, and contingent upon, *specifically delegated powers under the Act*.'" (citation omitted) (emphasis in original)).

any rationale for reversing this longstanding practice. To the contrary, the Commission indicates in the Supplemental Proposal that the current system is working well. The Commission approvingly cites its "long history of overseeing the performance of the DCMs in granting appropriate exemptions under current exchange rules regarding exchange-set position limits."[12] The Commission's favorable view of the exchange's ability to implement the position limits regime was based "on its long experience overseeing DCMs and their compliance with the requirements of CEA section 5 and part 38 of the Commission's regulations, 17 CFR part 38."[13] Given this favorable review of the exchanges' performance in implementing exchange-set position limits regimes, it is not apparent why the Commission now believes it is necessary to exercise greater control and authority over this exchange function.

Even if the Commission determines that it is appropriate to specify highly prescriptive procedures for exchanges to follow and to provide for the review of individual exchange decisions with respect to applications for NEFBH, spread, and anticipatory hedge exemptions from federal limits, such prescriptive procedures and individualized reviews should not apply to exchange rules and processes for granting such exemptions from speculative position limits that are below the federal limits or from exchange-set limits. The Commission should ensure that the rules are clear and free of any ambiguity as to which procedures apply in which circumstances. Although the Supplemental Proposal states in a number of places that the exchanges must follow certain procedures for the granting of these hedge exemptions applies to both federal- and exchange-set limits, the proposed rules are not entirely clear on this point.

The proposed rules should be changed to make it clear that the prescriptive procedures and Commission authority to review do not apply where the exchanges establish limits that are lower than the federally-set levels, or where the exchanges set limits themselves. Section 150.5 (a)(1) states that a DCM "shall set a speculative position limit that is no higher than the level specified in §150.2" (the federal limit). Paragraph (a)(2)(i) requires an exchange seeking to grant exemptions from the limits it establishes under paragraph (a)(i) to comply with the exemption procedures specified in Section 150.3, even though that section, by its terms, applies only to exemptions from federal limits.[14] The Commission should make clear that all of the detailed exemption procedures referred to in the Supplemental Proposal are applicable if, and to the extent that, the exemption granted by an exchange exceeds the federal limit established under Section 150.2, and not otherwise. Depending on where those federal limits are set, it is possible that an exchange-set speculative position limit will be lower than the federal limit for particular contracts. The Commission should not be micromanaging the exchanges in administering their

[12] 81 Fed. Reg. at 38469.
[13] Id., at n. 126.
[14] Similarly, although Section 150.3 requires exchanges to follow Section 150.9(a)(4)(iv)(B) for NEFBH exemptions for exchange-set limits, Section 150.9(a) specifies that the procedures in that section apply only to applications for exemptions with respect to a Referenced Contract. Similarly, although Section 150.3 requires exchanges to establish procedures "in accordance with Section 150.11(a)(3)," Section 150.11(a) also applies only with respect to Referenced Contracts.

own speculative position limit programs. Unfortunately, the proposed rulemaking seeks to impose a comprehensive new regulatory regime under the guise of permitting the exchanges to recognize hedge exemptions from federal limits.

Likewise, the Commission should make clear that the detailed procedures for granting exemptions specified in Sections 150.10 and 150.11with respect to spread and anticipatory hedges are not applicable to exemptions granted by an exchange below the federal level. Further, the Supplemental Proposal inappropriately extends the exemption regime proposed for reference contracts that will be subject to federal limits to contracts in excluded commodities and other products that are not currently subject to federal limits. These prescriptive rules should not be applicable to contracts which have no federal limits. In applying these requirements to contracts not subject to federal limits, the Commission disregards the fact that Exchange exemption programs have been operating successfully without the need for such prescriptive rules regarding the content of exemption applications and the circumstances in which they may be granted. The Commission should remove the requirements of Section 150.5(b) which apply the exemption procedures of Section 150.9 to exemptions granted for contracts in excluded commodities and physical commodities that are not subject to federal position limits.

Sections 150.9, 150.10 and 150.11 also contain onerous new recordkeeping and reporting obligations, none of which have been identified in the context of market surveillance rule enforcement reviews as being necessary elements of an exchange program or important for the Commission to carry out its oversight functions. The over-reaching nature of these requirements is covered separately in Section II of this letter. Whatever form those final requirements take, the Commission should limit their applicability to circumstances where an exemption exceeds a federal limit, and not otherwise.

II. ***REDUCE PRESCRIPTIVE REQUIREMENTS OF THE APPLICATION AND REPORTING PROCESS***

The Supplemental Proposal imposes onerous, unnecessary requirements that may act as barriers to the implementation of non-enumerated hedge exemptions, spread exemptions and anticipatory exemptions. The proposed application requirements should be revised to only require that applicants provide such information as the relevant exchange deems necessary to determine if the requested exemption is consistent with the purposes of hedging. The Commission should eliminate the prescriptive requirements, specifically the requirement that an applicant provides three years of cash market activity. The Commission also should delete from the recordkeeping and reporting requirements the proposed initial and ongoing reporting requirements an applicant must make to an exchange when a position is established as an NEBFH, including the corresponding cash market positions. In lieu of this requirement, exchanges would rely on their existing rules that require participants to produce upon request any relevant information attendant to a position established under an exemption. Moreover, ICE proposes that as an alternative to the proposed reporting requirement, exchanges provide to the

Commission a weekly report regarding newly approved non-enumerated hedge exemptions, spread exemptions and anticipatory exemptions in addition to its other monthly reporting requirements. The Commission would maintain its ability to obtain additional information as needed on call.

III. REVISE PROPOSAL TO AVOID ALTERING EXISTING PRACTICES

The Commission's recent position limits proposals recognize that speculative position limits are not intended to curtail commercial activity and do not apply to or limit positions that are *bona fide* hedges. Given the strong experience of the exchanges in carrying out the position limits regime, and the high level of confidence the Commission has in the ability of exchanges to do so -- as reflected in the Commission's stated rationale for permitting the exchanges to recognize exemption requests for non-enumerated *bona fide* hedges, spreads and anticipatory hedging -- the Commission's rulemaking should not dictate specific exemption procedures at all. Instead, it should focus on determining the proper scope of the information which the Commission reasonably needs from the exchanges and can expect to review in furtherance of carrying out its separate market oversight role. As such, the Commission should appropriately tailor any position limit rulemaking to preserve well-functioning markets and long-standing market practices, as described below.

The Commission Should Not Prohibit Bona Fide Hedging or Spread Positions During the Spot Month

The statutory definition of *bona fide* hedging does not limit hedging positions during the spot month, and as such the Commission's rules should not categorically prohibit exchanges from granting non-enumerated and anticipatory hedge exemptions, as appropriate, during the spot month.[15] If the Commission or the exchange has concerns about a particular *bona fide* hedge exemption during the spot month, they should address those concerns with individual market participants. In addition, orderly trading requirements apply to all positions, including *bona fide* hedge positions. Holding a position in the spot month or last five days under a non-enumerated *bona fide* hedge exemption does not pose additional risk to the markets or the price discovery process versus holding a *bona fide* hedge position. A one-size-fits-all prohibition will unnecessarily restrict commercially reasonable hedging activity during the spot month.

The Commission should also authorize the exchanges to grant spread exemptions during the spot month.[16] As stated above, the orderly trading requirements apply to all positions, including spread positions and as such the Commission should not have concerns about market participants holding spread positions. Holding a position in the spot month or last five days under a spread exemption does not pose additional risk to the markets or the price discovery process versus holding a *bona fide* hedge position. Moreover, as the Commission is aware, price

[15] *See* Supplemental Proposal RFC 7.
[16] *See* Supplemental Proposal RFC 20.

discovery often occurs during the spot month, including during the last five days of trading. Price convergence between the physical and futures markets is a fundamental component of price discovery and risk management. A prohibition on the use of spread positions during the spot month hinders convergence and, in turn, the price discovery function of the futures market.

The Commission Should Expand the Bona Fide Hedge Definition and Should Broadly Interpret the Economically Appropriate Test to Cover More Than Just Price Risk

The 2013 Position Limits Proposal defines what constitutes a *bona fide* hedging position and sets forth a specific, narrow list of enumerated positions that will be recognized as *bona fide* hedges. These proposed rules would prohibit long-standing risk management practices which are authorized by the CEA and which have been used by commercial market participants for decades to manage the numerous types of risk encountered in their commercial activities, including, but not limited to price, time, quality, location and counterparty, which can be a considerable concern in all commodity markets. The Commissioners and CFTC staff have heard clear and direct testimony on these associated risks in several roundtable and committee discussions. The restrictive *bona fide* hedge definition and limited exemption list will constrain the ability of firms to use the derivatives markets to hedge and will impede the price discovery process on derivatives exchanges. As such, the Commission should provide greater flexibility in the various *bona fide* hedging tests.

The Commission should read the term "risks" in the economically appropriate test to encompass more than just price risk.[17] CEA Section 4a(c)(2)(A)(ii) requires that a *bona fide* hedge be "economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise." As other commenters have pointed out, and Commissioners and CFTC staff have heard directly, commercial market participants face numerous risks in the conduct of a commercial enterprise, such as execution and logistics risk, credit risk and default risk to name a few. Each of these risks has potential economic consequences for the commercial enterprise. The purpose of hedging these risks is to minimize these potential economic consequences. Hedging activity that reduces the economic consequences to the enterprise from these risks is therefore "economically appropriate" to the conduct and management of the enterprise.

Contrary to the Commission's statement in the Supplemental Proposal, its interpretation is inconsistent with "the policy objectives of position limits in CEA section 4a(a)(3)(B) . . . ." Permitting commercial market participants to obtain hedge exemptions to reduce these economic risks to their operations should not lead to any "excessive speculation" or market squeezes and corners, impair market liquidity or disrupt the price discovery function. The Commission should continue to allow market participants to rely on the derivatives markets, as they have done for many years, to reduce these types of risks in a commercially appropriate manner.

[17] *See* Supplemental Proposal RFC 35.

The Commission Should Permit Hedge Exemptions to be Granted for Unforeseen Hedging Needs as Currently Provided in Exchange Rules

The Commission should add a provision to the final regulations for recognizing position limits that are exceeded due to unforeseen hedging needs. This provision is currently in Exchange rules and is critical in reflecting commercial hedging needs that cannot always be predicted in advance. Exchange rules provide that an entity that exceeds a position limit due to unforeseen hedging needs must submit an exemption request for the position within one business day (unless the Market Surveillance Department approves a later filing which may not exceed five business days). If the exemption is approved, the entity will not be considered in violation of the exchange rules. If the exemption is not approved, an investigation will be opened to pursue a disciplinary action. 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.

The Commission Should Continue to Permit Cash and Carry Exemptions

Previous comment letters submitted by the Exchange and market participants have discussed the benefits that cash and carry exemptions provide for contracts involving certain warehoused commodities--specifically, cocoa, coffee and FCOJ. The bullets below briefly summarize the comments previously submitted and add details about Exchange procedures for reviewing and granting cash and carry exemptions. [18]

-Cash and carry exemptions may only be activated when market conditions permit the establishment of spread positions at levels that cover the applicant's cost of carry. The positions must be established as spreads in the period immediately preceding first notice day so that current market conditions are reflected. Further, the applicant's entire long position in the front month is subject to the exemption requirements, including exit points, not just the quantity in excess of the spot-month position limit.

-The terms of the exemption include multiple exit points between the applicant's cost of carry and the point when the price of the nearby contract rises to a premium to the second contract month. All long positions in the nearby contract month must be liquidated before an inverse (backwardation) occurs.

-Such exemptions serve an economic purpose by helping to maintain an appropriate economic relationship between the nearby and next successive delivery month. The exemptions help to maintain a balanced market and ensure an orderly expiration.

[18] *See* Supplemental Proposal RFC 23-25.

The Commission Should Specify that Exchanges May Continue to Consider Anticipatory Merchandising as a Non-Enumerated Hedging Strategy

As has been stated in previous comment letters submitted by the Exchange and others, the provisions in the 2013 Position Limits Proposal on anticipatory hedging fail to recognize the critical role that merchants play in many of the commercial markets underlying Exchange contracts. These entities provide liquidity and take on counterparty risk for producers, end-users and other commercial market participants. The Commission should specify that exchanges may continue to recognize this critical function as a non-enumerated hedging strategy.

IV. ADDRESS CRITICAL OUTSTANDING ISSUES WHEN ENACTING A FINAL POSITION LIMIT RULE

Conditional Spot Month Limits Should be Maintained for Financially Settled Contracts

Since February 2010, the CFTC has provided for a "Conditional Limit" for financially settled natural gas contracts during the last three days of contract trading. Under the Conditional Limit, a market participant may carry a position in the financially-settled natural gas contracts (ICE H or CME NN) that is up to 5 times that of the physically-settled natural gas contract's (CME NG) position limit if the participant agrees not to hold a position in the physically-settled NG contract in the last three days. In the Commission's 2011 and current position limit rule, the Commission codified the Conditional Limit. In the four years since the Conditional Limit provision went into effect, natural gas prices have been lower and less volatile than historical levels. ICE has received no complaints regarding natural gas markets or convergence during that timeframe and is not aware of any complaints received by CME or the CFTC. Liquidity in the physically-settled CME NG contract has also increased during the time the Conditional Limit has been in effect.

The Commission has already recognized the need for and benefits of the higher cash-settled limits through the current Conditional Limit for natural gas. The position limit rule now pending before the Commission reaffirms this policy and recognizes that many market participants have a need to pay or receive the final settlement price of the Referenced Contract to perfect their hedges and that this is most effectively accomplished by holding cash-settled futures or bilateral swaps to expiration. The proposal endorses this policy, which has served the natural gas market well, by applying it to all referenced contracts. Any changes to the current terms of the Conditional Limit would disrupt present market practice for no apparent reason. Furthermore, changing the limits for cash-settled contracts would be a significant departure from current rules, which have wide support from the broader market as evidenced by multiple public comments supporting no or higher cash-settled limits. Finally, ICE supports the many commercial participants who believe the Commission should explore a higher cash-settled limit that also allows participation in the physically-settled market, similar to the Commission's 2011 position limit rule.

The Commission Should Consider Whether Position Limits in Non-Spot Months Are Appropriate

The Commission should consider whether all-month position limits are necessary or appropriate in energy markets for the long-dated portions of the trading curve. While hard limits in the expiration month and months surrounding the expiration month are appropriate, blanketing such limits across all contract months may have unintended effects on the proper operation of markets, such as draining liquidity from the longer dated portions of the trading curve where it is most needed. Another potential impact of an all-month regime is that large traders could choose to exit the longer dated portion of the market, sapping valuable liquidity from commercial market users and their ability to hedge long-dated risk. Hard position limits in the first 18 months of a contract and position accountability levels in the remainder of the contract would encourage speculative participants to assume risk in out months and give commercial participants the ability to hedge exposure farther in the future. The accountability level approach to monitoring exchange-specific positions provides the necessary flexibility to address the unique circumstances of each large position holder, but avoids the clearly anticompetitive effects of exchange-specific concentration limits. The Commission could proscribe aggregate hard limits in the nearby months, where price discovery principally occurs and allow position accountability levels for contracts months further out the curve. Accountability level regulation, by design, is intended to serve as an early warning system that triggers heightened surveillance by the exchange and puts the trader on notice. Position accountability levels are set low for this very reason.[19]

The Commission should also consider whether single month and all-month position limits are necessary or appropriate for the Coffee "C", Cocoa and Sugar No. 11 contracts. The position accountability regime has worked well for these contracts for almost 15 years and should be maintained. The establishment of such position limits could limit the activity of certain market participants, resulting in a reduction in liquidity that could be detrimental to the price discovery function of the market.

The Commission Should Update Deliverable Supply Estimates to Reflect Current Market Conditions

The Commission proposes to set spot-month limits at 25% of deliverable supply of the underlying commodity. In doing so, the CFTC proposes considering deliverable supply estimates submitted by the exchanges. ICE supports using alternative estimates which update deliverable supply to reflect current market circumstances.[20] ICE believes that where deliverable

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[19] The current position accountability levels for ICE's Henry Hub contract are approximately 1% of open interest, far lower than the proposed concentration limits.

[20] On March 3, 2016, the Exchange submitted a filing providing its revised estimates for deliverable supply. This submission provided evidence and justifications for higher deliverable supply estimates.

supply is used to determine position limits, the Commission must ensure that it measures deliverable supply broadly enough to avoid unnecessarily and inappropriately limiting trading. As such, ICE urges the Commission to incorporate its updated deliverable supply estimates into its calculation of spot-month position limits.

Spot Month Accountability Levels Should be Maintained for the Henry Hub Penultimate Options and Futures Contracts

Penultimate options serve as price protection for commercial market participants so they can secure the economic equivalent of a futures contract. Penultimate futures serve as a risk mitigation strategy against the penultimate option position; they do not trade independently. Both contracts expire one business day prior the expiration of the Henry Hub LD1 CRFC. Currently, penultimate options and futures have spot-month accountability levels while both the Henry Hub LD1 physical delivery and cash-settled contract have spot-month limits. The Proposed Rules aggregate Henry Hub penultimate options and futures with positions in the CRFC thus subjecting penultimate futures and options to hard spot-month position limits. ICE strongly recommends that the Commission continue to allow exchanges to impose spot-month accountability levels which expire during the period when spot-month limits for the Henry Hub CRFC are in effect. Natural gas is the only commodity where options, and the corresponding future they exercise into, expire during the spot-month period for the underlying futures contract. As such, the Commission must recognize these nuances and accordingly impose accountability levels in the spot month. The Commission has no reason to believe that market participants will arbitrage these contracts in the spot month as the penultimate contracts currently trade side-by-side with the Henry Hub LD1 futures and there has been no evidence of a migration to the penultimate contracts due an accountability limit versus a hard spot-month limit. In addition, prices in the penultimate future have no ability to impact to the settlement of the CRFC.

The Commission Should Confirm that Trade Options are Not Subject to Position Limits

ICE agrees with the Commission's recent determination in its trade option rule that "federal speculative position limits should not apply to trade options."[21] Unlike financially-settled swaps, trade options are a form of physical supply agreement that require physical settlement.[22] To the extent these physical supply agreements incur risk in the same manner as a forward contract, the Commission should allow market participants to utilize the derivatives markets to hedge that risk. Therefore, trade options should be eligible to serve as the basis for a *bona fide* hedge.

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[21] *See Trade Options*, 81 Fed. Reg., 14971 (Mar. 21, 2016).

[22] *See* CFTC Rule 32.3(a)(3).

The Commission Should Allow Market Participants to Net Commodity Index Contracts with Referenced Contracts

The position limits rule should not prohibit market participants from netting commodity index contracts with Referenced Contracts.[23] When market participants enter into Referenced Contracts to hedge exposure to the various components of a commodity index Contract, the Referenced Contract hedges should net against the components of the commodity index contract.

When a market participant hedges commodity index exposure by entering positions in the individual components of the index, the participant's position is net flat. Neither the 2013 Position Limits Proposal nor the Supplemental Proposal explain why a flat position should count toward a position limit. Furthermore, the CFTC's netting rules create a distinction between Referenced Contracts and commodity index contracts. As noted above, the Referenced Contracts positions do not net with exposure from commodity index contract. However, if a market participant held the same exposure as a commodity index contract, but rather in the form of several individual swaps, the participant's Referenced Contract hedges would net down to zero.

The Commission Should Remove the Quantitative Test and Spot Month Restriction for Cross-Commodity Hedging

ICE notes that the Supplemental Proposal did not remove the limitation in the 2013 Position Limits Proposal that a cross-commodity hedge only qualifies as a *bona fide* hedge if the correlation between the 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 at least 36 months. In the energy markets, it is common for companies to hedge multiple commodity risks, such as an electric utility hedging the commercial risks of its input (natural gas as fuel) and output (electric generation / deliverable electric energy). Cross-commodity hedging is also commonplace due to correlations between commodities. The correlation can often be highest out the curve with the correlation decreasing in the spot month. The Commission's proposed quantitative factor inappropriately measures correlation only between the spot prices of the target commodity and the spot prices of the commodity underlying a derivative contract to determine whether a cross-commodity hedge meets the rebuttable presumption of a *bona fide* hedge. This is not the same analysis that the exchanges or market participants use to make commercial judgments about the appropriateness of cross-commodity hedges. In certain commodities, the correlation between the target commodity and the commodity derivative contract is higher farther out the forward price curve. As such, using spot prices to make a correlation determination is problematic. For example, many market participants hedge long-term electricity price exposure with natural gas futures contracts because there is no liquidity in deferred electricity futures contracts.

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[23] ICE supports the FIA Letter to the CFTC, Section VI (Feb. 6, 2014).

As such, ICE restates its prior comment that the Commission should remove the quantitative test because it represents an overly narrow standard for cross-commodity hedging and presents substantial administrative burdens for market participants and the Commission.[24] ICE also re-iterates its prior comment that the Commission should remove the restriction on cross-commodity hedging during the spot month because it prevents market participants from hedging risk.

V. *REDUCE UNWARRANTED BURDENS AND ASSOCIATED COSTS*

The Commission Should Reduce the Prescriptive Burdens for Market Participants and Exchanges

The Supplemental Proposal fails to recognize the extensive experience and expertise exchanges have in their contracts and, as a result, imposes onerous, unnecessary requirements that pose a burden for both market participants and the exchange required to collect data that is not needed for it to make a reasoned decision on an exemption request. An example is the requirement to collect detailed information about the applicant's activity in the relevant cash market for the past three years. In many cases, the Exchange will already have this information in its files--and if it doesn't and believes it requires additional information to make a decision about an exemption request, it will request it--just as it does now. The Commission need only require that applicants provide such information as the relevant exchange deems necessary to determine if the requested exemption is consistent with the purposes of hedging.

The Commission Should Streamline the Extensive Reporting Requirements for Market Participants and Exchanges

The requirement for exchanges to submit weekly and monthly reports to the Commission is unnecessary and extremely burdensome. While the Exchange currently submits weekly reports to the Commission regarding new exemptions granted for certain products, the proposed requirements include many additional data points and will require considerable resources to produce without a clear benefit to the Commission's review process. The Exchange believes that the current process, whereby the Commission requests additional information on data submitted in the weekly reports that it determines may warrant additional review, is sufficient and should continue.[25]

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[24] *See* ICE Letter to CFTC, (Feb. 10, 2014).
[25] *See* Supplemental Proposal RFC 2, 8, 9, 11, 13, 21, 22, 27, 29.

The Commission Should Revise Its Cost Estimates to Fully Reflect All Requirements

The considerations of the costs[26] of proposed Sections 150.9, 150.10 and 150.11 significantly underestimates the number of exemptions that the Exchange will be required to review. Currently the Exchange reviews over 400 exemption requests annually and this number does not include the additional exemptions that will be required for single month and all month combined positions for contracts that currently operate under position accountability regimes for these categories nor does it include additional exemptions that will arise from swaps being subject to federal limits. Thus, under the proposed rules, the Exchange could be required to review as many as 500 exemption requests annually, compared to the estimate of 285 used in the Supplemental Proposal. In addition, the costs provided in the Supplemental Proposal do not consider that the proposed rules provide for the collection of considerably more documents than are currently required for Exchange exemption requests. The review and consideration of these documents will result in additional time spent on each exemption request. The Exchange estimates that the proposed rules will add two hours to each exemption review, resulting in an average of seven hours per request.

Further, the Exchange estimates that the summaries required to be published on the Exchange's Web site on at least a quarterly basis will also require seven hours per summary to prepare. The time required to prepare, review and submit the weekly reports to the Commission required by the proposed rules is also significantly understated. Based on the amount of time required to prepare the weekly reports currently submitted regarding exemptions and the significant increase in the quantity of information required for the reports by the proposed rules, the Exchange estimates that each report will require six hours to prepare. Finally, the estimate provided for the monthly reports to the Commission is also significantly understated. Based on the requirements of the proposed rules, the Exchange estimates that each monthly report will take six hours to prepare.

Following a review of all the new requirements established by the proposed rules, the Exchange estimates that compliance with the proposed rules will require the hiring of one additional senior level employee who has extensive experience with exemptions and commodities markets and three additional regulatory analysts who have some experience with commodities markets. In addition, the analysis does not consider any cost associated with the development of new, automated processes and procedures for reporting information to the Commission. For non-enumerated hedge exemptions, spread exemptions, and anticipatory exemptions, the costs associated with enhanced reporting do not appear to provide a tangible benefit.[27] Under the Supplemental Proposal, a market participant will already provide the exchange (and, in turn, the Commission) with information regarding the nature of the participant's activity and the size of the participant's positions.

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[26] *See* Supplemental Proposal RFC 43.

[27] *See* Supplemental Proposal RFC 67.

VI. THE COMMISSION MUST PROVIDE REGULATORY CERTAINTY FOR MARKET PARTICIPANTS REGARDING EXCHANGE DECISIONS

While ICE does not believe the Commission should be reviewing exchange decisions regarding hedge exemptions, as discussed above, any final rule should set a time limit for Commission review.[28] The Supplemental Proposal provides the Commission with an indefinite review period. After a reasonable amount of time, exchanges and market participants need regulatory certainty that a position will continue to be recognized as a *bona fide* hedge exemption. In addition, the Commission's rules should provide market participants with an appeal process if an exchange allows a market participant to rely on an exemption, but the Commission or the exchange subsequently determine that the same activity is no longer eligible for an exemption. The Commission should also recognize that a commercially reasonable period to reduce a position that no longer qualifies for an exemption will depend on the liquidity of the contract(s) in which the position exists and that it may take more than one business day to liquidate such positions without disrupting the market.

Conclusion

ICE appreciates the opportunity to comment on the Supplemental Proposal. As discussed previously, the intent of the Commodity Exchange Act ("CEA") and Dodd-Frank Rulemakings is not to fundamentally modify business models and curtail commercial activity and risk management practices. Instead, Congress specifically included in the CEA a long-standing, express prohibition against limits on *bona fide* hedging transactions or positions of commercial parties. Congress also recognized that restrictive speculative position limits would impede market liquidity and price discovery. To that end, ICE encourages the Commission to be cognizant when it exercises its regulatory oversight authority of the effect of the proposed federal limits on the ability of derivatives markets to perform their fundamental price discovery, risk transfer, and risk management functions, which depend on the existence of liquid, fair, and competitive markets. Any proposal that could compromise these functions must be carefully scrutinized.

Again, ICE thanks the Commission for the opportunity to comment on the proposed rules.

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[28] *See* Supplemental Proposal RFC 18.

Sincerely,

Kara Dutta
Intercontinental Exchange, Inc.

cc: Honorable Timothy G. Massad, Chairman
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Vincent A. McGonagle, Director
Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel
Lee Ann Duffy, Assistant General Counsel
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Annex 1
ICE's Responses to Specific Questions Contained in the Supplemental Notice of Proposed Rulemaking ─ Position Limits for Derivatives

1)The Commission requests comment on all aspects of the proposed delay in implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring by exchanges of position limits for swaps. Does any DCM or SEF currently have access to sufficient data regarding individual market participants' open swaps positions to so set and monitor swaps position limits other than by special call? If yes, please describe in detail how such access could be obtained. If no, how easy or difficult would it be for an exchange to obtain access to sufficient swap position information by means of contract or other arrangements?

The Exchange is not aware of any SEFs that currently have access to sufficient data to set and monitor swap position limits. From the perspective of ICE Swap Trade, LLC, the data required to set and monitor position limits for swap contracts is not available. Further, the Commission has not determined that position limits or position accountability levels are necessary and appropriate for any swap contracts currently listed for trading on a SEF or DCM.

2) Are there any facts and circumstances specific to DCMs that, for purposes of exchange limits, currently recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1), that the Commission should accommodate in any final regulations regarding the processing of NEBFH applications?

The Exchange has extensive experience in granting exemptions for both enumerated positions and non-enumerated positions and has always employed general criteria that must be satisfied when reviewing exemption requests. The overarching standard in each case is that the transactions and/or positions must be consistent with risk management strategies for the relevant commercial market. Applying this principle allows the Exchange to recognize the fundamental differences among the commercial markets for the physical commodities underlying its contracts and the commercial market practices that have developed in the countries where these commodities are grown, merchandised, processed and consumed. The final regulations should reflect the extensive experience and expertise exchanges have in their contracts and not impose extensive, unnecessary requirements that pose a burden for both market participants and the exchange required to collect data that is not needed for it to make a reasoned decision on an exemption request. An example would be the requirement to collect detailed information about the applicant's activity in the relevant cash market for the past three years. In many cases, the Exchange will already have this information in its files--and if it doesn't and believes it requires additional information to make a decision about the exemption request, it will request it--just as it does now.

The Commission should add a provision to the final regulations for recognizing position limits that are exceeded due to unforeseen hedging needs. This provision is currently in Exchange rules and is critical in reflecting commercial hedging needs that cannot always be predicted in advance. Exchange rules provide that an entity that exceeded a position limit due to unforeseen hedging needs must submit an exemption request for the position within one business day (unless the Market Surveillance Department approves a later filing which may not exceed five business days). If the exemption is approved, the entity will not be considered in violation of the Rules. If the exemption is not approved, an investigation will be opened to pursue a disciplinary action. 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.

The Supplemental Proposal includes certain requirements that are inconsistent with the Exchange's current procedures for reviewing and granting spot month exemptions for physical delivery agricultural contracts. Many of these exemptions recognize non-enumerated hedging positions that the Exchange has determined to be consistent with the purposes of hedging. Specifically, spot month exemptions are only granted by the Exchange for a single delivery month such as July 2016 based on an applicant's near-term hedging needs and physical obligations for the contract's delivery period. This approach permits the Exchange's Market Surveillance staff to consider current market conditions when reviewing exemption requests and to make reasoned decisions that are limited to a particular delivery month. The Supplemental Proposal includes requirements that are not consistent with these procedures as the cash market obligations supporting any exemption that is granted by the Exchange are specifically related to the expiring futures contract so there would not be any updates to provide once the contract expires. Further, the requirement to provide the maximum gross futures and options positions that could be acquired over the next year is not relevant when considering an exemption for a specific spot month period. The proposed rules should be modified to permit exchanges to require only the information relevant to the specific exemption request. The Exchange acknowledges that maximum gross positions are relevant to exemption requests for single month and all month combined limits as well as spot month exemptions that do not expire for a year.

7) Are there concerns regarding the applicability of NEBFH positions in the spot month? Should the Commission, parallel to the requirements of current regulation 1.3(z)(2) (i.e., the "five-day rule"), provide that such positions not be recognized as NEBFH positions during the lesser of the last five days of trading or the time period for the spot month?

There are no specific concerns about the applicability of NEBFH positions in the spot month. As the Exchange has stated in its prior comment letters, the "five-day rule" does not reflect the needs of certain commercial markets. The exchange reviewing the exemption request will place limitations, as necessary, on any exemption it grants, just as it does now. Further, orderly trading rules apply to all positions, including enumerated bona fide hedge positions which currently are

not subject to the "five-day rule." NEBFH positions held during the last five days of an expiring contract do not pose any added risk to markets or to the price discovery function.

8) If the Commission permits NEBFH positions to be held into the spot month, should recognition of NEBFH positions be conditioned upon additional filings to the exchange—similar to the proposed Form 504 filings required for the proposed conditional spot month limit exemption? As proposed, Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to the exchanges in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.9(c)(2).

It is not necessary to condition the recognition of NEBFH positions in the spot month on additional filings to the exchange or to the Commission. If the Exchange requires additional information from the exemption holder, it will request it, just as it does now. For example, the Exchange's current procedures provide that market participants granted spot month exemptions for a specific expiring futures contract in the Sugar No. 11 contract may be required to provide information about cash market holdings several times during the spot month period. Requiring the reporting of daily positions for all NEBFH positions is overly burdensome and offers no added market protection.

9) Alternatively, if the Commission permits NEBFH positions to be held into the spot month, should the Commission require market participants to file the Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate, although the Commission could share such a filing with the exchanges. The Commission would adjust the title of the Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c). Consistent with the restrictions regarding the offset of risks arising from a swap position in CEA section 4a(c)(2)(B), proposed § 150.9(a)(1) would not permit an exchange to recognize an NEBFH involving a commodity index contract and one or more referenced contracts. That is, an exchange may not recognize an NEBFH where a bona fide hedge position could not be recognized for a pass through swap offset of a commodity index contract.

Please see the Exchange's response to RFC 8 above.

11) Is the proposed core set of information required of market participants adequate for an exchange to review applications for NEBFHs?

Please see the Exchange's response to RFC 2 above. The proposed core set of information required of market participants is overly burdensome and unnecessary for the Exchange's review.

12) The Commission invites comment regarding the discretion proposed for exchanges to process NEBFH applications in a timely manner.

Exchanges currently process exemption requests in a timely manner and will extend current procedures to the processing of NEBFH applications.

13) Should the Commission provide further guidance regarding the types of information that exchanges should seek to elicit from reporting rules with respect to NEBFH positions?

Further guidance regarding the types of information that exchanges should seek with respect to NEBFH positions is unnecessary and is overly burdensome, as proposed. Exchanges will use their experience and expertise to determine the information needed to make reasoned decisions regarding NEBFH exemption requests.

14) Should the Commission prescribe that exchanges publish any specific information regarding recognized NEBFHs based on novel facts and circumstances?

The Commission should provide exchanges with specific guidance regarding the information that should be published on exchange websites regarding recognized NEBFHs. The information that is published should not include any data that could identify specific market participants granted exemptions or the quantities that have been granted.

15) Should the Commission require exchanges to publish summary statistics, such as the number of recognized NEBFHs based on non-novel facts and circumstances?

Specific information such as the number of recognized NEBFHs should not be disclosed as such statistics could disclose confidential information.

16) Does the proposed flexibility for exchanges to request Commission review provide market participants with a sufficient process for review of a potential NEBFH?

Yes, if the Commission is able to respond in a timely manner i.e. within a few days of receiving a request.

17) The Commission requests comment on all aspects of the proposed reporting requirements.

The requirement for exchanges to submit additional weekly and monthly reports to the Commission is unnecessary and extremely burdensome. The exchange proposes to continue its

weekly reports to the Commission regarding new spot month exemptions granted for certain products. The proposed new reporting requirements include many additional data points which will require considerable resources to produce without a clear benefit to the Commission's review process. The Exchange believes that the current process, whereby the Commission requests additional information on data submitted in the weekly reports that it determines may warrant additional review, is sufficient and should continue.

18) The Commission requests comments on all aspects of the proposed review process.

The Commission should set a time limit for it to review an exemption that has been granted by an exchange in order to provide regulatory certainty to exchanges and market participants. The Commission should also recognize that a commercially reasonable period to reduce a position that no longer qualifies for an exemption will depend on the liquidity of the contract(s) in which the position exists and that it may take more than one business day to liquidate such positions without disrupting the market.

19) Would permitting exchanges to process applications for spread exemptions from federal limits, subject to Commission review, provide for an efficient implementation of the Commission's statutory authority to exempt such spread positions?

Yes, permitting exchanges to process spread exemptions from federal limits, subject to Commission review, would provide an efficient implementation of the Commission's statutory authority to exempt such spread positions.

20) Are there concerns regarding the applicability of spread exemptions in the spot month that the Commission should consider? Should the Commission, parallel to the requirements of current § 1.3(z)(2), provide that such spread positions not be exempted during the lesser of the last five days of trading or the time period for the spot month?

Exchanges must be allowed to use their experience to determine whether it is appropriate to grant spread exemptions in the spot month, and the restrictions that should be imposed on such exemptions. It is not necessary for the Commission to provide that spread exemptions should not be granted for the last five days of trading or the time period for the spot month. There are no exceptions to the orderly trading requirement, including bona fide hedge positions. Allowing spread positions, if the exchange considers it appropriate, does not add any additional risks to the price discovery process or the expiration of the contract.

21) If the Commission permits exchanges to grant spread positions applicable in the spot month, should recognition of NEBFH positions be conditioned upon additional filings similar to the proposed Form 504 that is required for the proposed conditional spot month limit exemption? Proposed Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this

alternative, market participants would submit daily cash position information to an exchange in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.10(c)(2).

It is not necessary to condition the recognition of spread positions in the spot month on additional filings to the exchange or to the Commission. If the exchange requires additional information from the exemption holder, it will request it, just as it does now. Requiring the reporting of daily positions for all spread positions is overly burdensome and offers no added market protection.

22) Alternatively, if the Commission permits exchanges to grant spread exemptions applicable in the spot month, should the Commission require market participants to file proposed Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate. The Commission would adjust the title of proposed Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c).

Please see the Exchange's response to RFC 21 above.

23) Do cash-and-carry spread exemptions further the policy objectives of the Act, as outlined in proposed § 150.10(a)(3)? Why or why not? Do cash and carry spread exemptions facilitate an orderly liquidation? Do these exemptions impede convergence or distort the price of the expiring futures contract?

All spread exemptions, including cash and carry exemptions, granted by DCMs further the policy objectives of the Act by facilitating orderly liquidation and ensuring market liquidity for all market participants that choose to carry positions into the notice period. As noted in comments previously submitted by market participants, these exemptions are beneficial for convergence and help to stabilize price relationships between futures contract months.

24) If cash-and-carry spread exemptions are allowed, what conditions should be placed on the exemptions? For example, on what basis should a trader be required to exit futures positions above position limit levels? Should such exemptions be conditioned, for example, to require a market participant to reduce the positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction? Are there other types of spread exemptions that may not further the policy objectives of CEA section 4a and, thus, should be prohibited or conditioned?

DCMs must maintain the flexibility to determine the appropriate restrictions on spread exemptions, including cash and carry exemptions. In regards to cash and carry exemptions, the procedures currently used by the Exchange to establish exit points have been modified over the

years to address concerns raised by the Commission. The Exchange believes that current procedures are effective in ensuring liquidity and an orderly expiration.

25) With cash-and-carry spread exemptions still under review by the Commission, should the proposed rules allow such exemptions to be granted under proposed § 150.10? Why or why not?

Cash and carry exemptions have been under review by the Commission for decades. During those years, the Exchange has continued to grant the exemptions and, as has been noted in previous comment letters, the Exchange and market participants believe that such exemptions are beneficial for the market. The Exchange should be permitted to continue to grant cash and carry exemptions.

26) If the proposed rules do not prohibit such exemptions, an exchange could determine that cash-and-carry spread exemptions—or another type of spread exemption—further the policy objectives in proposed § 150.10(a)(3) and so begin to grant such exemptions from federal position limits. If, after finishing its review, the Commission disagrees with the exchange's determination, is the proposed process in § 150.10(d) for reviewing exemptions sufficient to address any concerns raised?

The proposed process in §150.10(d) should be modified to require a time certain for the Commission to determine whether the exemption is appropriate. The proposed open-ended process results in regulatory uncertainty for exchanges and market participants.

27) Does the application process solicit sufficient information for an exchange to consider whether a spread exemption would, to the maximum extent practicable, further the policy objectives of CEA section 4a(a)(3)(B)? For example, how would an exchange determine whether an applicant for a spread exemption may provide liquidity, such that the goal of ensuring sufficient market liquidity for bona-fide hedgers would be furthered by the spread exemption?

When reviewing spread exemption requests, the Exchange will use its years of experience in granting such exemptions to determine whether the exemption furthers the policy objectives of CEA Section 4a(a)(3)(B). While the application process should provide enough information for the Exchange to make this determination, if additional information is required, the Exchange will request it--just as it currently does.

28) How would exchanges oversee or monitor exemptions that have been granted, and, if the exchange determines it necessary, revoke the exemption?

The Exchange currently has procedures in place to oversee and monitor exemptions that have been granted. Every exemption that is currently granted is subject to review, modification or

cancellation if market conditions change, or for any other reason deemed necessary. These procedures will continue to be effective under the proposed rules.

29) Is it appropriate to have the same processes under § 150.10(b) through (f) for spread exemptions as proposed for NEBFHs outlined under § 150.09 (b) through (f)? If no, explain why and how those processes should differ.

The processes under § 150.10(b) through (f) and § 150.09 (b) through (f) are unnecessary and overly burdensome. The processes should be streamlined.

30) The Commission requests comments on all aspects of proposed §150.11, including whether the Commission should consider any other factors in addition to those listed in proposed § 150.11(a)(1)(i), (ii), (iii), (iv) and (v).

The Exchange questions the purpose of proposed §150.11 as it only permits exchanges to grant enumerated anticipatory requirements and involves extensive data collection, recordkeeping and reporting obligations. The Exchange will grant exemptions to exchange position limits for enumerated anticipatory requirements, as required and appropriate, but is unlikely to take on the Commission's responsibilities for this type of exemption request given the burden the proposed rules provide. The Exchange currently grants exemptions to exchange limits for enumerated bona fide hedging positions for cotton without the burdens imposed by these rules. The Commission has never indicated that there is any issue with our current procedures with respect to such exemptions--and it is not clear why the proposed rules provide such a radical increase in the data collection, recordkeeping and reporting requirements for enumerated positions.

32) The Commission invites comment on all aspects of its proposed expanded definitions of "intermarket spread position" and "intramarket spread position."

The Exchange believes that "intermarket spread positions" and "intramarket spread positions" should fall under the same exemption process for any other spread position. It is not necessary for the purpose of evaluating an exemption request that these types of positions receive disparate treatment.

33) The Commission requests comment on its consideration of the benefits and costs associated with the proposed amendments to guidance. Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data, or other information of support for such assessments. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

The Exchange believes that the Commission has used assumptions that result in understated costs for many elements of the proposed rules, as explained in the response to RFC 43 below.

35) Futures contracts function to hedge price risk because they lock-in prices and quantities at designated points in time. Futures contracts, thereby, create price certainty for market participants. Thus, the Commission believes that bona fide hedging positions need to ultimately result in hedging against some form of price risk as discussed in Section IIB3(i), above. Is the Commission reasonable in concluding that by eliminating the incidental test market participants will benefit from regulatory certainty and reduced compliance costs because they need only focus on price risk or other risks that can be transformed into price risk?

The Exchange is concerned that the Commission's belief that bona fide hedging positions need to ultimately result in hedging against some form of price risk is too narrow and does not account for various other forms of risk that commercial market participants must hedge against. Limiting what constitutes a bona fide hedge position to this narrow definition will prohibit long standing risk management practices, impede commercial market participants' ability to hedge bona fide commercial risks, and in turn threaten the integrity of the price discovery process on derivatives exchanges. Derivatives contracts are critical to commercial market participants' ability to manage many other risks besides price, including, but not limited to, currency, time, liquidity, location, quality and counterparty. As discussed previously, the Exchange recommends that the Commission instead read the term "risks" in the economically appropriate test to encompass more than just price risk.

36) It is challenging to interpret the orderly-trading requirement in the context of the over-the-counter swaps market and permitted off-exchange transactions as discussed in Section IIB3(ii), above. Given this challenge, is it reasonable for the Commission to conclude that by eliminating the orderly-trading requirement, market participants benefit from avoiding the compliances costs of an unclear requirement?

As noted previously, the Commission has not determined that position limits are necessary and appropriate for over-the-counter swaps currently listed for trading on a SEF or DCM. The same challenges that the Commission and industry recognize in setting position limits for swap contracts would also apply to adopting an order-trading requirement for swaps.

42) The Commission requests comment on its considerations of the benefits of proposed § 150.9. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

As has been stated in previous comment letters, the Exchange believes that the current structure--whereby the Commission oversees certain domestic agricultural commodities while the listing exchanges oversee their other products--reflects an efficient allocation of responsibility and resources that ensures commercial market participants will continue to be able to hedge their risks in a timely manner.

43) The Commission requests comment on its considerations of the costs of proposed § 150.9. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

The considerations of the costs of proposed § 150.9, § 150.10 and § 150.11 uses grossly understated estimates of the number of exemptions that the Exchange will be required to review. Currently the Exchange reviews over 400 exemption requests annually and this number does not include the additional exemptions that will be required for single month and all month combined positions for contracts that currently operate under position accountability regimes for these categories nor does it include additional exemptions that will arise from swaps being subject to federal limits. Thus, under the proposed rules, the Exchange could be required to review as many as 500 exemption requests annually, compared to the estimate of 285 used in the Supplemental Proposal.

In addition, the costs provided in the Supplemental Proposal do not consider that the proposed rules provide for the collection of considerably more documents than are currently required for Exchange exemption requests. The review and consideration of these documents will result in additional time spent on each exemption request. The Exchange estimates that the proposed rules will add two hours to each exemption review, resulting in an average of 7 hours per request.

Further, the Exchange estimates that the summaries required to published on the Exchange's Web site on at least a quarterly basis will also require 7 hours per summary to prepare. The time required to prepare, review and submit the weekly reports to the Commission required by the proposed rules is also significantly understated. Based on the amount of time required to prepare the weekly reports currently submitted regarding exemptions and the significant increase in the quantity of information required for the reports by the proposed rules, the Exchange estimates that each report will require 6 hours to prepare.

Finally, the estimate provided for the monthly reports to the Commission is also significantly understated. Based on the requirements of the proposed rules, the Exchange estimates that each monthly report will take six hours to prepare.

Following a review of all the new requirements established by the proposed rules, the Exchange estimates that compliance with the proposed rules will require the hiring of one additional senior level employee who has extensive experience with exemptions and commodities markets and three additional regulatory analysts who have some experience with commodities markets.

44) The Commission requests comment on whether a Commission administered process promotes more consistent and efficient decision-making. Commenters are encouraged to include both quantitative and qualitative assessments, as well as data or other information to support such assessments.

Please see the Exchange's response to RFC 42 above.

45) The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) not permitting exchanges to administer any process to recognize NEBFHs; or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

Please see the Exchange's response to RFC 42 above.

46) The Commission requests comment on whether the options for recognizing NEBFHs outlined in the December 2013 position limits proposal are superior from a cost-benefit perspective to proposed § 150.9. If yes, please explain why.

Please see the Exchange's response to RFC 42 above.

47) The Commission requests comment on its considerations of the benefits of proposed § 150.10. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data or other information of support such assessments.

Please see the Exchange's response to RFC 19 above.

48) The Commission requests comment on its considerations of the costs of proposed § 150.10. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of costs as well as data or other information of support such assessments.

Please see the Exchange's response to RFC 43 above.

49) The Commission recognizes that there exist alternatives to proposed § 150.10. These alternatives include: (i) maintaining the status quo, or (ii) pursuing the changes in the December 2013 position limits proposal. The Commission requests comment on whether retaining the framework for spread exemptions as proposed in the December 2013 position limits proposal is superior from a cost-benefit perspective to proposed § 150.10. If yes, please explain why. The Commission requests comment on whether any alternatives to proposed § 150.10 would result in a superior cost-benefit profile, with support for any such alternative provided.

The Exchange recommends maintaining the status quo, whereby exchanges review and grant spread exemptions, as appropriate, and notify the Commission of spread exemptions that have been granted. As an alternative, the extensive data collection, recordkeeping and reporting requirements provided in proposed § 150.10 should be streamlined to reduce the unnecessary burden on market participants and exchanges.

50) The Commission requests comment on its considerations of the benefits of proposed § 150.11. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

Please see the Exchange's response to RFC 30 above.

52) The Commission recognizes that there may exist alternatives to proposed § 150.11, such as maintaining the status quo, or adopting only § 150.7 as proposed in the December 2013 position limits proposal. The Commission requests comment on whether alternatives to proposed § 150.11 would result in a superior cost- benefit profile, with support for any such alternative provided. The Commission requests comment on whether the framework for recognizing enumerated anticipatory bona fide hedging positions as proposed in the December 2013 position limits proposal would be superior from a cost-benefit perspective to proposed § 150.11. If yes, please explain why.

Please see the Exchange's response to RFC 43 above.

53) Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges further the goals of CEA section 4a(a)(3)(B) and properly protect market participants and the public? Please explain.

Please see the Exchange's response to RFC 19, 30 and 42 above.

57) Should the Commission provide more guidance to exchanges on how to assess recognitions under this supplemental proposal, for example, guidance on cash-and- carry spreads, or any other spreads involving the spot-month contract?

Exchanges do not require additional guidance from the Commission on how to assess recognitions under this Supplemental Proposal. Additional guidance, if required, should be provided through the Rule Enforcement Review process.

58) What costs and benefits would accrue to exchanges and market participants should the Commission provide additional guidance to exchanges on how to assess recognitions under this supplemental proposal? Please explain.

Please see the Exchange's response to RFC 57 above.

60) How might the rules proposed in this supplemental proposal affect price discovery? Please explain.

Price discovery and liquidity would be negatively impacted if the exemptions outlined in this supplemental proposal are not permitted because commercial entities would be restricted in their ability to manage their hedging needs, resulting in reduced trading and liquidity.

61) How might the rules proposed in this supplement proposal affect liquidity?

Please see the Exchange's response to RFC 60 above.

62) Will price discovery be improved on exchanges because of the exemptions outlined in this supplemental proposal?

Please see the Exchange's response to RFC 60 above.

63) How might spread exemptions that go into the spot month affect price discovery?
Please see the Exchange's response to RFC 23 above.

64) What price-discovery costs and benefits would accrue for spread exemptions that go into the spot month? Please explain.

Please see the Exchange's response to RFC 23 above.

65) How might the rules proposed in this supplemental proposal affect sound risk management practices?

Please see the Exchange's response to RFC 35 above.

68) The Commission requests comment on whether there will be any lost benefits related to position limits because of the recognitions and exemptions in the proposed rules in this supplemental proposal.

Please see the Exchange's responses to RFC 19, 30 and 42 above.