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May 15, 2020

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

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

Dear Mr. Kirkpatrick:

ADM appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission" or "CFTC") notice of proposed rulemaking entitled "Position Limits for Derivatives" 85 Fed. Reg. 11596 (Feb. 27, 2020) (the "Proposed Rule" or "proposal"). ADM has been an active participant in the CFTC's rulemaking process on position limits and has commented numerous times to the Commission. Based upon ADM's longstanding work on previous iterations, careful study of this proposal, and with a clear view on the centrality of futures markets to manage the company's commercial risk, the current CFTC proposal appears to recognize and positively reflect many of the comments that have been previously submitted. Accordingly, this proposal makes many key improvements over previous CFTC efforts. Nonetheless, there are important areas of the proposal that bear further attention by the CFTC before releasing a Final Rule.

Headquartered in Chicago, Illinois, ADM connects crops to markets on six continents. ADM unlocks the power of nature to provide access to nutrition worldwide. With industry-advancing innovations, a complete portfolio of ingredients and solutions to meet any taste, and a commitment to sustainability, ADM gives customers an edge in solving the nutritional challenges of today and tomorrow. ADM is a global leader in human and animal nutrition and the world's premier agricultural origination and processing company. The company's breadth, depth, insights, facilities and logistical expertise give it unparalleled capabilities to meet needs for food, beverages, health and wellness, and more. From the seed of the idea to the outcome of the solution, ADM enriches the quality of life the world over.

To fulfill our goals, ADM operates a global network of origination facilities, river-based barge terminals, export elevators and processing facilities. Thus, as we move product from farmers' fields to our global customers through this network, we must manage significant risk



through the use of commodity futures markets. Due to the scale and global reach of our business, the position limits rule is important, and the bona fide hedge exemption process is its most critical aspect.

As the Commission evaluates the comments received on its Proposed Rule, we urge the Commission to carefully evaluate and thoughtfully consider the full suite of comments received by the National Grain and Feed Association (NGFA), Commodity Markets Council (CMC) and the Futures Industry Association (FIA). ADM has worked closely with these associations and believes the comments of these associations reflect our views across key portions of the proposal.

ADM will highlight nonetheless specific areas of the Proposed Rule we support while highlighting a few areas where we believe the CFTC must do additional work so that a final rule is more compatible with the needs of the commercial marketplace.

Specific Sections Supported by ADM

Additional Enumerated Bona Fide Hedge Transactions

ADM appreciates that the CFTC has added in this Proposed Rule additional commercial transactions to the list of enumerated bona fide hedges. Many of these transactions are critical elements of risk management, price discovery and hedging while also playing a role in the acquisition of physical commodities. ADM specifically supports the inclusion of the following transactions as enumerated bona fide hedges:

- **Hedges of Unsold Anticipated Production:** While the CFTC currently deems this transaction a bona fide hedge, ADM supports the CFTC’s proposal to remove the current twelve-month limitation so that this hedge can be used as necessary when commercial needs exceed twelve months.
- **Cross-Commodity Hedges:** ADM supports the inclusion of cross-commodity hedges as a bona fide hedge. ADM routinely manages commodities such as grain sorghum, vegetable oils, crops and oilseeds for which there is no futures contract. Therefore cross-commodity hedges are critical risk management tools. The CFTC’s proposal that commodities have a “reasonable commercial relationship” is a significant improvement over prior proposals which were impractical.
- **Hedges of Unfilled Anticipated Requirements:** As an operator of significant processing facilities that must acquire the inputs necessary for our company to run, ADM supports the inclusion of hedges of unfilled anticipated requirements as a bona fide hedge. We specifically support the CFTC’s proposal to eliminate the twelve-month limitation on this hedge as there may be times this hedge is needed for commercial purposes beyond twelve-months.



Five-Day Rule

ADM supports the CFTC proposal to eliminate the Five-Day Rule and allow futures exchanges to have deference over hedge exemptions during this time period. Parties in the market during the last five days of trading are there for a valid commercial reason. The exchanges have the ability and information to monitor market behavior and market participants during this time.

Specific Sections CFTC Should Address

Hedges of Anticipated Merchandising

ADM supports the CFTC proposal to make anticipatory merchandising an enumerated bona fide hedge because we agree with the CFTC's stated belief that this "is a hedging practice commonly used by some commodity market participants, and that merchandisers play an important role in the physical supply chain." The CFTC proposes to place two constraints on the use of this bona fide hedge: First, it is limited to twelve months quantity, and second, it is limited to merchants with a demonstrated history and practice of conducting this type of activity. Since the CFTC clearly states that it intends for itself and exchanges to "exercise close oversight over such positions to confirm that market participants' claimed exemptions are consistent with their cash market activity" the CFTC should consider eliminating the twelve-month limitation. These transactions should be considered similar to "hedges of anticipated requirements" and not subject to a twelve-month limitation.

Unpriced Physical Purchase/Sale Commitments

ADM strongly advocates that unpriced purchase/sale commitments should be an enumerated bona fide hedge. The Commission will find explicit, detailed examples and additional commentary on these specific transactions in the submissions of the NGFA, CMC and FIA. We ask that you carefully consider these comments and this particular category of transactions in your deliberations. Unpriced transactions are commonplace in our industry. Unpriced does not mean without a price or without risk. While the contract may not have flat price risk, it has price risk as measured between the price at an origin and at a destination market. This price relationship must be managed to manage the commercial risk. In the case of an unpriced contract, there is a bona fide contract requiring physical delivery of the product. The contract has a price—a premium or discount from the futures price—which is set as the futures contract matures. Hedges of unpriced purchase/sale commitments are currently recognized as bona fide hedges by derivative contract markets (DCMs) in markets with exchange set limits with no federal limits. Market participants and DCM's are uniformly advocating for the inclusion of these transactions as an enumerated bona fide hedge under the current proposal. The CFTC should recognize what exchanges and market participants understand about the management of risk associated with these conventional cash market contracts. Further, it would be incongruous for the CFTC to find that hedging a bona fide physical contract, even if it



is unpriced, is not an enumerated bona fide hedge while also concluding, as it has in this proposal, that an irrevocable bid/offer is conditionally bona fide, even if a physical contract does not yet exist.

To evaluate unpriced commitments as an enumerated bona fide hedge, the CFTC should look to the statutory, plain-language definition of a bona fide hedge:

- Section 4a(2) of the Commodity Exchange Act clearly defines a bona fide hedge as a transaction that:
 - “represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;
 - is economically appropriate to the reduction of risks in the conduct and management of commercial enterprise; and
 - arises from the potential change in the value of –
 - assets that a person owns, produces, manufactures, processes or merchandises or anticipates owning, producing, manufacturing, processing or merchandising;
 - liabilities that a person owns or anticipates incurring; or
 - services that a person provides, purchases, or anticipates providing or purchasing.”
- In light of the plain language of the statute, consider the case where a company engages in the following:
 - Executes a bona fide unpriced FOB sales contract at a premium to futures with an export customer with agreement to Exchange Futures for Physical when the flat price is established.
 - Executes long nearby futures position to hedge unpriced and anticipated purchases from suppliers and to acquire product, if necessary and economic, using the delivery mechanism.
 - Executes short deferred futures position to hedge unpriced sale to export customer and manage price risk between origin and destination prices. The short futures will be offset with buyers long when EFP is executed.



- Applying the statutory test yields the following results:
 - *Do the futures transactions represent a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel?* Yes. The long position is used to hedge the acquisition of physical product or to acquire the physical product that will ultimately be delivered to the customer. The short position will lead to the sale and delivery of that product to a customer.
 - *Are the transactions economically appropriate to the reduction of risks in the conduct and management of commercial enterprise?* Yes. The merchant must buy product to sell it and is exposed to changes in the price movement between origin and destination over time. Therefore, the merchant buys nearby futures and sell deferred futures to manage this risk. Price risk related to the sale to the customer is managed through the short position and the associated Exchange For Physical.
 - *Do the transactions arise from the potential change in the value of assets that a person owns, produces, manufactures, processes or merchandises or anticipates owning, producing, manufacturing, processing or merchandising; liabilities that a person owns or anticipates incurring; or services that a person provides, purchases, or anticipates providing or purchasing.* Yes. The merchant has a liability with the export customer to deliver the product FOB. Further, the merchant is at risk if the underlying asset prices move against each other during the term of the transaction. Hence the change in value impacts assets the merchant owns, anticipates owning or will merchandise. Further the transaction is driven by the contractual liability to deliver product to the customer.

For these reasons, the CFTC should declare unpriced purchase and sale commitments an enumerated bona fide hedge.

Price Risk

When market participants discuss “risks” such as, political, weather, delivery, transportation, production, and more, they are discussing the impact these factors may have on the price. Hence the risk being hedged is price risk as influenced by these factors. Risk managers must evaluate all of the individual factors that can impact price and make a judgement about the collective impact these factors have on the price. It is ultimately price and price alone that is being managed. All of these other “risks” are more appropriately called “risk factors” that risk managers have deemed to impact price.



Ten-Day Time Period to Review Exchange Determination of Bona Fide Hedge

ADM offers that ten business days is too long for the Commission to review a bona fide hedge determination by an exchange. A shorter time period—five business days—would be preferred to reduce risk on the hedger. There is a degree of uncertainty over whether the CFTC may countermand an exchange’s approval. While the exchange will likely not make a decision in a vacuum, the risk remains until the CFTC review period lapses. ADM therefore supports a hold harmless provision so that a hedger that relies in good faith upon the approval of the exchange is not subsequently penalized by the CFTC. Once approved by the exchange, the hedger should be able to execute the position within the CFTC review period. If the CFTC takes no action within ten business days, the exchange determination should be deemed approved by the CFTC. Should the CFTC take affirmative action to disapprove the exchange determination within ten business days, the CFTC must hold the market participant harmless for any position limit violation and provide a commercially reasonable time period and commercially responsible manner, in consultation with the exchange, for the market participant to exit a position that may exceed an applicable position limit. The Commission should note that a commercially reasonable time period and commercially responsible exit may vary from market to market.

Two-Day Review of Retroactive Submissions

There are situations where a one-day CFTC review would be preferable to a two-day turnaround. A more timely review would remove risk and uncertainty on the part of the hedger. The CFTC should consider a one-day review for retroactive submissions.

ADM understands and appreciates the extensive undertaking the position limits proposal is and has been for the CFTC Commissioners and staff. We appreciate your hard work on this issue. It goes without saying that price discovery, risk management and fair efficient markets are in everyone’s interest.

Thank you for your diligence and thoughtful consideration of our comments.

Sincerely,

JOHN McGOWAN

John McGowan
President, ADM Risk Management