



May 15, 2020

*Submitted Electronically*

Mr. 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:

The Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”)<sup>1</sup> appreciates the opportunity to submit these comments with respect to the notice of proposed rulemaking published by the Commodity Futures Trading Commission (the “CFTC” or the “Commission”) regarding rules governing position limits on derivatives based on physical commodities (the “Proposal”).<sup>2</sup> SIFMA AMG has submitted comment letters, individually and jointly with other trade associations, addressing the Commission’s previously proposed position limits rules,<sup>3</sup> and we appreciate that the Commission and the staff have incorporated many of our comments into this Proposal. SIFMA AMG appreciates the effort and work that has been put forth by the Commission and staff that is reflected in the Proposal, and we respectfully ask that any final rules take into account and incorporate the comments below.

***Executive Summary of Comments***

- SIFMA AMG appreciates the Commission’s commitment to developing and including a robust necessity finding in connection with a final rule and urges the Commission to include such necessity findings in any future position limits proposals.

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<sup>1</sup> SIFMA AMG’s members represent U.S. asset management firms whose combined global assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

<sup>2</sup> See Position Limits for Derivatives, 85 Fed. Reg. 11,596 (Feb. 27, 2020), <https://www.cftc.gov/sites/default/files/2020/02/2020-02320a.pdf>.

<sup>3</sup> For the most recent letter, see Joint MFA, SIFMA AMG and AIMA Comment Letter re: Position Limits for Derivatives (RIN 3038-AD99) (Feb. 28, 2017), <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61101>.

- SIFMA AMG urges the CFTC to take an incremental approach to finalizing the position limits included in the Proposal, starting with the proposed position limits for the legacy agricultural contracts and, with respect to the other core referenced futures contracts, spot month limits for physically delivered futures only.
- Any final rule should explicitly include a risk management exemption in order to allow market participants to continue to manage their financial and other risks.
- In connection with any new Federal position limits, the CFTC should codify its aggregation no-action relief.
- SIFMA AMG supports the inclusion of a twelve-month implementation phase-in period to allow market participants to build out necessary compliance programs and infrastructure.

This letter also includes various other comments and requests for clarification with respect to other aspects of the Proposal.

### *Comments on the Proposal*

#### **I. The CFTC should include a robust necessity finding to support the adoption of Federal position limits.**

The Commodity Exchange Act (the “CEA”) provides that the CFTC may adopt position limits “as the Commission finds are necessary to diminish, eliminate, or prevent [the] burden” of excessive speculation “as appropriate.”<sup>4</sup> SIFMA AMG appreciates and concurs with the CFTC’s view that when Congress used the words “necessary” and “appropriate” in connection with the position limits provisions of the CEA, those words represented real and deliberate boundaries on the scope of the CFTC’s rulemaking authority with respect to position limits. Any exercise of the Commission’s position limits rulemaking authority, therefore, must be supported by robust and data-driven necessity and appropriateness findings that demonstrate that such limits, on a contract-by-contract, commodity-by-commodity and product-by-product basis, are necessary for, and appropriate to, diminishing, eliminating, or preventing the burdens on interstate commerce caused by excessive speculation in the particular contract, commodity and product.

With respect to the current Proposal, the CFTC has stated that it “preliminarily finds that federal speculative position limits are necessary for the 25 core referenced futures contracts, and any associated referenced contracts.”<sup>5</sup> The CFTC’s rationale for that necessity finding, however, does not appear to directly address “associated referenced contracts” (*i.e.*, cash-settled look-alike contracts and “economically equivalent swaps”).<sup>6</sup> Accordingly, SIFMA AMG requests that the

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<sup>4</sup> 7 U.S.C. § 6a(a).

<sup>5</sup> Proposal at 11,664.

<sup>6</sup> See Proposal at 11,664 (“This preliminary finding is based on a combination of factors including: The particular importance of these contracts in the price discovery process for their respective underlying commodities; *the fact that they require physical delivery of the underlying commodity*;

CFTC confirm, in any final rule, that—as a matter of substance—it has made a necessity finding only on the imposition of federal position limits as follows: (1) with respect to the legacy agricultural core referenced futures contracts, for the spot month and any- and all-months, and (2) with respect to the sixteen, non-legacy core referenced futures contracts, *only* for the spot month. SIFMA AMG continues to evaluate the proposed necessity finding and, in particular, its relationship to those aspects of the Proposal that would put limits on contracts other than the core referenced futures contracts, and we strongly encourage the Commission not to adopt final limits for any product set or product class that has not been the subject of a clear and robust necessity finding—including financially settled futures and any swaps. Given that the CFTC’s actions with respect to the necessity finding for this Proposal will likely set a precedent for future position limits rulemakings and actions, SIFMA AMG urges the CFTC to include an increasingly robust and data-driven necessity finding in any final rule that follows the Proposal.

**II. The CFTC should take an incremental approach to finalizing the Proposal, starting with increases to position limits for the legacy agricultural contracts and, for the other sixteen core referenced futures contracts, spot month limits for physically delivered futures contracts only.**

*A. SIFMA AMG Supports the Increases to Position Limits for Legacy Agricultural Contracts.*

SIFMA AMG supports the Proposal’s provisions that would raise the existing position limits—in both spot months and non-spot months—for the nine legacy agricultural commodities already subject to federal position limits.<sup>7</sup> The markets for these nine legacy agricultural contracts have grown significantly in recent years without corresponding increases in the limits. SIFMA AMG believes the increase to position limits for these contracts will provide much needed liquidity and depth in the markets for these products, both for front month contracts and further out of the curve. SIFMA AMG thus welcomes the increases to legacy agricultural contract limits and further encourages the Commission to finalize this aspect of the rule as soon as possible and as part of its ongoing efforts to ensure liquid, deep and fair markets.

Additionally, SIFMA AMG urges the CFTC to raise the non-spot month limit for Kansas City Hard Red Winter Wheat futures contracts to at least the same level as is included in any final rule for the non-spot month limit for CBOT Wheat futures contracts. SIFMA understands that the actual characteristics of the physical wheat that is deliverable under the Kansas City Wheat futures contract is more similar to the global wheat crop than the wheat that is deliverable under the CBOT Wheat futures contract.<sup>8</sup> SIFMA AMG further understands that there is a larger

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and, in some cases, the especially acute economic burdens that would arise from excessive speculation causing sudden or unreasonable fluctuations or unwarranted changes in the price of the commodities underlying these contracts.”) (emphasis added); *see also* Proposal at 11,664-71 (discussing the importance of core referenced futures contracts and their underlying commodities).

<sup>7</sup> Proposal at 11,624.

<sup>8</sup> *See* Dominic Sutton-Vermeulen, *Kansas City vs. Chicago Wheat Spread: A Tale of Two Markets*, CME GRP. (Jan. 13, 2020), <https://www.cmegroup.com/education/articles-and-reports/kc-vs->

market for deliverable wheat under the Kansas City contract than there is for the CBOT contract. For these reasons, SIFMA AMG understands that the Kansas City Wheat futures contract may be important for hedging for many market participants. Therefore, SIFMA AMG urges the CFTC to raise the position limit for the Kansas City contract to be at least as high as the limit set for the CBOT contract.

B. *SIFMA AMG Supports the CFTC’s Focus on Spot Month Limits Only for the Sixteen Non-Legacy Contracts.*

The Proposal also includes spot month limits only (and not any- and all-month limits) for sixteen other “core referenced futures contracts,” (*i.e.*, non-legacy core referenced futures contracts) related financial futures, and economically equivalent swaps. SIFMA AMG supports the Commission’s decision to focus its attention solely on spot month limits for the non-legacy physically delivered core referenced futures contracts, and we are generally supportive of the limit levels that have been proposed – subject to the other comments in this letter. Importantly, we want to emphasize that we support not only the outcome (*i.e.*, applying limits only to the spot month) but also the CFTC’s rationale for this more limited focus. For example, SIFMA AMG agrees with the CFTC that the spot month is where there could develop “concerns regarding corners, squeezes, and other settlement-period manipulative activity.”<sup>9</sup> Consistent with our prior comments on this issue, the spot month, and particularly the spot month trading in the physically delivered core referenced futures contracts, is where futures prices interact most directly with and converge to physical commodity markets, and this is the most (and perhaps only) plausible part of the futures curve where a necessity and appropriateness finding could be made at this time. If the CFTC is going to finalize limits rules, SIFMA AMG strongly encourages the CFTC to continue to focus only on the spot months for these sixteen identified non-legacy commodities and specifically on the core referenced futures contracts. In sections 2.C and 2.D below, we separately discuss financially settled futures and swaps.

SIFMA AMG notes that the proposed spot month limits are generally higher than the existing exchange-set limits, which will further encourage liquidity and depth in the markets for these products during the time periods when it is needed most. We encourage the CFTC to require any exchange that elects to adopt exchange limits that are lower than the limit levels in any CFTC final rule to explain and justify those levels. More importantly, SIFMA AMG encourages the CFTC to coordinate with the respective exchanges in order to ensure that all limit levels, be they set by the CFTC or the exchanges, do not discourage liquidity by unnecessarily restricting the ability of market participants to take positions.

C. *Spot Month Limits Should Not Apply to Financially Settled Futures.*

The Proposal states that the proposed spot month limits “would apply ‘separately’ to physically-settled and cash-settled referenced contracts,”<sup>10</sup> which means that certain financially settled

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[chicago-wheat-spread-a-tale-of-two-markets.html](#) (discussing crop size and characteristic comparability to global market).

<sup>9</sup> Proposal at 11,625.

<sup>10</sup> Proposal at 11,599.

futures would be subject to proposed limits. SIFMA AMG believes that the spot month limits should apply only to physically settled futures contracts (*i.e.*, the core referenced futures contracts), and the Commission should not make any determinations on, or adopt final rules applicable to, financially settled futures at this time.

SIFMA AMG believes that limits for financially settled futures are *not* appropriate and, more importantly, not warranted. In contrast to physically settled spot-month futures contracts, which require market participants to make (or take) delivery of the underlying physical commodity, financially settled futures do not require physical delivery, and therefore do not present the same risk of market disruption since they settle to the pricing of the underlying physical commodity. The risk of market disruption, by way of a “corner” or “squeeze,” is relevant for practical purposes most acutely in the delivery period and in the physically delivered contract, which is when and where the futures market prices converge with the underlying physical commodity markets. Thus, spot month limits for financially settled futures would serve only to reduce market liquidity and depth and increase transaction costs for commercial market participants and hedgers without any corresponding regulatory or policy benefit. Such limits therefore should not be included in any final rule, at least at this time.

Furthermore, imposing spot month limits on financially settled contracts would introduce complexity and confusion as to which futures contracts are intended to be covered, since even the workbook proposed by the CFTC to identify such contracts is non-exhaustive.<sup>11</sup> SIFMA

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<sup>11</sup> SIFMA AMG recognizes that, as part of the Proposal, the CFTC intends to publish a “CFTC Staff Workbook of Commodity Derivative Contracts under the Regulations Regarding Position Limits for Derivatives” in order to provide market participants with “a non-exhaustive list of referenced contracts.” Proposal at 11,621. While SIFMA AMG understands that this workbook “may be helpful to market participants in determining categories of contracts that would fit within the referenced contract definition,” *id.*, there may still be confusion, including on a real-time basis, as to which financially settled futures contracts are covered given that exchange product offerings evolve and change frequently.

SIFMA does understand—and appreciate—that the CFTC has recognized that exchange product offerings evolve frequently. *See Id.* (“In order to ensure that the list remains up-to-date and accurate, the Commission is proposing changes to certain provisions of part 40 of its regulations which pertain to the collection of position limits information through the filing of product terms and conditions submissions. In particular, under existing rules, including §§ 40.2, 40.3, and 40.4, DCMs and SEFs are required to comply with certain submission requirements related to the listing of certain products. Many of the required submissions must include the product’s “terms and conditions,” which is defined in § 40.1(j) and which includes, under § 40.1(j)(1)(vii), “Position limits, position accountability standards, and position reporting requirements.” The Commission proposes to expand § 40.1(j)(1)(vii), which addresses futures and options on futures, to also include an indication as to whether the contract meets the definition of a referenced contract as defined in § 150.1, and, if so, the name of the core referenced futures contract on which the referenced contract is based. The Commission proposes to also expand § 40.1(j)(2)(vii), which addresses swaps, to include an indication as to whether the contract meets the definition of economically equivalent swap as defined in § 150.1 of this chapter, and, if so, the name of the referenced contract to which the swap is economically equivalent. This

AMG believes that imposing spot month limits only on physically settled futures contracts would avoid such confusion, and more importantly, would adequately address the products of greatest concern and would serve to reduce compliance costs and related burdens (*i.e.*, technology builds, personnel allocation, training, *etc.*) for the Commission and market participants by allowing the Commission to observe the impact of limits for physically settled futures prior to evaluating whether to extend limits to a broader scope of derivatives products.

D. *Spot Month Limits Should Not Apply to Swaps; However, If Swaps Are Nonetheless Included, SIFMA AMG Supports the Proposed Definition of Economically Equivalent Swap.*

For the same reasons listed above with respect to financially settled futures, SIFMA AMG believes that the federal position limits for economically equivalent swaps that have been proposed are unnecessary and would in fact impose cost burdens and complexities that are not commensurate with any of the suggested benefits of such limits. Indeed, given the minimal possibility of market disruption through swaps trading, such limits would only introduce confusion to the proposed rule that otherwise provides clarity.<sup>12</sup> SIFMA AMG also notes that financially settled swaps are priced against futures, so limits on futures are sufficient to also address any concerns about swaps. Furthermore, SIFMA AMG believes that the Proposal's necessity finding does not support position limits for swaps.

The Commission should defer imposing position limits on swaps unless and until it can make the necessity and appropriateness determinations that are required by the CEA.<sup>13</sup> As noted above, SIFMA AMG believes it is clear that such determinations must be made on a product-by-product basis and the Commission has not yet evaluated the specific need for limits on swaps. In particular, economically equivalent swaps are explicitly addressed in CEA Section 4a(a)(5), which includes the qualifier that the CFTC establish limits, "*as appropriate*", on economically equivalent swaps.<sup>14</sup> The Proposal expressly states that "it is reasonable to interpret the direction to set a position limit 'as appropriate' to mean that in a given context, it may be that no position limit is justified."<sup>15</sup> Given the costs and related complexity associated with the imposition of

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information would enable the Commission to maintain on its website, [www.cftc.gov](http://www.cftc.gov), an up-to-date list of DCM and SEF contracts subject to federal limits.").

<sup>12</sup> The Proposal itself seems to acknowledge that swaps are generally cash-settled instruments. *See* Proposal at 11,636 n. 247 (acknowledging the potential for there to be physically-settled economically equivalent swaps but stating that "[i]n practice, the only physically-settled referenced contracts under this proposal would be the 25 core referenced futures contracts"). Cash-settled swaps, like financially settled futures, would not present the same risks as do physical delivery contracts.

<sup>13</sup> As detailed in Section I above, SIFMA AMG does not believe that the Proposal includes the required necessity finding with respect to swaps. Indeed, the Proposal itself notes that the Commission understands "that prior to imposing position limits, it must make a finding that the position limits are necessary," Proposal at 11,664, which should apply to swaps just as it does to the core referenced futures contracts.

<sup>14</sup> 7 U.S.C. § 6a(a)(5) (emphasis added).

<sup>15</sup> Proposal at 11,659.

and compliance with these limits and the absence of identifiable benefits, SIFMA AMG urges the Commission to forgo finalizing position limits rules for economically equivalent swaps at this time.

To the extent that the Commission determines to impose spot month limits on swaps, SIFMA AMG is generally supportive of the proposed definition of “economically equivalent swaps.”<sup>16</sup> Specifically, SIFMA AMG agrees that financially settled swaps referencing the price of a physically delivered futures contract should not be within scope of the definition. The proposed definition could, however, bring in scope financially settled swaps that reference a financially settled future, if the CFTC determines to finalize rules that include certain financially settled futures as in scope, and the required necessity findings are made. Consistent with the rationale set forth above, financially settled products have not historically been the source of manipulative corners, squeezes, or other disruptions related to physical commodity prices, and SIFMA AMG does not believe limits on these products would be necessary to further deter and prevent this type of trading activity. One potential refinement to the Proposal’s approach to the “economically equivalent swaps” definition would be to include only those physically settled swaps that are economically equivalent to core referenced futures contracts. This approach is consistent with the CFTC’s goal of discouraging the excessive use of swaps with material economic terms (including delivery terms) related to a core referenced futures contract.

Additionally, and consistent with the Commission’s efforts to provide cross-border harmonization, SIFMA AMG strongly encourages the CFTC to consider, and potentially adopt, the definition of economically equivalent swap adopted by the European Union.<sup>17</sup> Many market participants are active in markets and products that are regulated by the CFTC and EU authorities. Having different definitions would be costly for firms, since they would have to

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<sup>16</sup> SIFMA AMG notes, however, that the Proposal includes an anti-evasion provision with respect to the definition that makes the application of the definition less clear. The Proposal states “a swap contract used to willfully circumvent speculative position limits would be deemed an economically equivalent swap, and thus a referenced contract, even if the swap does not meet the economically equivalent swap definition set forth in proposed § 150.1. This provision is intended to deter and prevent the structuring of a swap in order to willfully evade speculative position limits.” Proposal at 11,635. This approach incorporates a subjective measure by requiring an inquiry into the intent of the party entering into the swap into the analysis, which reduces certainty for market participants. SIFMA AMG generally supports the inclusion of anti-evasion provisions and understands their importance, but SIFMA AMG believes that it is better to apply only objective measure with respect to the definition, in order to provide market users with more certainty.

<sup>17</sup> See Proposal at 11,616 n.131 (citing EU Commission Delegated Regulation (EU) 2017/591, 2017 O.J. (L 87)) (“The applicable European regulations define an OTC derivative to be ‘economically equivalent’ when it has ‘identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements.’ While the Commission’s proposed definition is similar, the Commission’s proposed definition requires ‘identical *material*’ terms rather than ‘identical’ terms. Further, the Commission’s proposed definition excludes different ‘lot size specifications or *notional amounts*’ rather than referencing only ‘lot size’ since swaps terminology usually refers to ‘notional amounts’ rather than to ‘lot sizes.’”).

build out different compliance functions, and inefficient for markets. However, SIFMA AMG once again urges to reconsider imposing limits swaps at all.

### **III. Risk Management Exemption Should Continue To Be Recognized and Granted for Positions Taken to Manage Financial and Other Risks Faced by a Market Participant.**

SIFMA AMG strongly believes that any position limits rule that is adopted should include a risk management exemption for positions taken by firms to, for example, manage financial and other risks faced by market participants. While SIFMA AMG does not believe that the CFTC's proposed interpretation of the bona fide hedging language, as added to the CEA by the Dodd-Frank Act, is necessarily the required interpretation,<sup>18</sup> we also observe that the exemptive authority in CEA Section 4a(a)(7) provides an independent basis for the CFTC to create exemptions from its position limits rules.<sup>19</sup> The CFTC and the exchanges have recognized and granted risk management exemptions from position limits for decades, without negative consequences. To the contrary, such exemptions have been essential to commercial and institutional entities in managing their exposures, have allowed end-users to hedge more effectively and efficiently, have provided liquidity to the markets and have not caused any significant issues or problems. Given this history, there is no reason not to maintain the availability of such exemptions. In addition, the European Union is currently revisiting its own MiFID II rules on position limits specifically in order to address its failure to include an appropriate hedge exemption for financial risks,<sup>20</sup> which it now recognizes has had a detrimental impact. The CFTC has the opportunity to avoid making this same omission in its own final rule set.

SIFMA AMG therefore urges the CFTC to expressly maintain and continue to recognize risk management exemptions (whether under the CFTC's approach to bona fide hedging or under its standalone CEA Section 4a(a)(7) position limits exemptive authority) and to provide opportunities for market participants to seek risk management exemptions from the CFTC or the exchanges, as appropriate. SIFMA AMG observes that the proposed increases to the limit levels, particularly for non-spot month agricultural contracts, may be of some help in filling the void of losing the risk management exemption (for example, by encouraging additional dealer firms to offer the customized swaps that are used by SIFMA AMG's members and hedged with futures pursuant to risk management exemptions). However, that analysis presumes a prospective

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<sup>18</sup> Specifically, although Congress removed the word "normally" from the temporary physical market substitute test when codifying the bona fide hedging definition, Congress did not add in the word "always" in its place.

<sup>19</sup> 7 U.S.C. § 6a(a)(7) ("The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.").

<sup>20</sup> See European Securities and Markets Authority, ESMA70-156-2311, MiFID II Review Report on Position Limits and Position Management 31-32 (Apr. 1, 2020), [https://www.esma.europa.eu/sites/default/files/library/esma70-156-2311\\_mifid\\_ii\\_review\\_report\\_position\\_limits.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-2311_mifid_ii_review_report_position_limits.pdf).



structural development in the markets that is not guaranteed to occur and that may involve unexpected or unforeseen consequences. For these reasons, SIFMA AMG urges the CFTC to include in any final rule additional guidance or an exemption process that will preserve a market structure mechanism, such as the risk management exemption, that will ensure that this important liquidity provided to markets by users is not disrupted.

#### **IV. Codify aggregation no-action relief.**

Although the Proposal does not address aggregation, SIFMA AMG encourages the Commission, as part of this effort, to finalize and codify various aspects of the aggregation no-action relief that has been issued by the Staff. In 2016, the Commission promulgated a final rule regarding certain position aggregation requirements.<sup>21</sup> In response to requests from various trade associations, including SIFMA AMG, the Commission's Staff granted, in brief, the following no-action relief: (1) advance notice filing requirements applicable to firms relying on certain position aggregation exemptions; (2) reduced/streamlined notice filings for firms relying on the "owned entity" aggregation exemption; (3) expanded the number of entities that could qualify for the "independent account controllers" exemption and (4) limited the application of aggregation requirements for "substantially identical trading strategies."<sup>22</sup> The CFTC extended this relief in 2019, though it is scheduled to expire on August 12, 2022.<sup>23</sup>

In connection with the Proposal, SIFMA AMG strongly urges the Commission to permanently codify this no-action relief. Codification will provide the market with increased certainty, avoid additional compliance costs, and preserve the efficiencies gained through reliance on the no-action relief. Furthermore, if adopted as a final rule, the Proposal would significantly expand the Commission's Federal position limits regime, and one result of that would be that many more contracts would be subject to the CFTC's aggregation rules. Thus, it is even more critical that the CFTC take action to codify this no-action relief. We note that the Commission has taken similar action recently in other areas.<sup>24</sup>

#### **V. SIFMA AMG Supports a Twelve-Month Implementation Phase-In Period.**

SIFMA AMG generally supports the Proposal's twelve-month implementation phase-in period. If the final proposal includes limits on economically equivalent swaps, then SIFMA AMG urges the Commission to phase in any swaps aspect of a final rule over an additional six- to twelve-month time period that follows the initial twelve-month implementation program. A phase-in period is crucial to allow market participants to build compliance and monitoring systems and model risks related to the new position limits rules. Allowing for additional time before any economically equivalent swaps rules become effective will allow market participants to further

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<sup>21</sup> Aggregation of Positions, 81 Fed. Reg. 91,454 (Dec. 16, 2016).

<sup>22</sup> CFTC Letter No. 17-37, No-Action Relief from Certain Position Aggregation Requirements under Commission Regulation 150.4 (Aug. 10, 2017).

<sup>23</sup> CFTC Letter No. 19-19, Extension of No-Action Relief from Certain Position Aggregation Requirements under Commission Regulation 150.4 (July 31, 2019).

<sup>24</sup> *See, e.g.*, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 Fed. Reg. 27,674 (May 11, 2020).

refine their compliance systems based on their experience with the position limits on the core referenced futures contracts.

A phase-in period is warranted for a number of other reasons as well. SIFMA AMG understands that many economically equivalent swaps would be OTC swaps, which have never been subject to CFTC or exchange position limits—the CFTC therefore has relatively limited experience with respect to the application of position limits to swaps contracts. Since the exchanges do not have visibility into OTC swaps markets, market participants and the CFTC would be responsible for implementing position limits on swaps without the benefit of the exchanges’ extensive experience in monitoring and applying position limits for exchange-listed contracts. We also note that in the Proposal, the CFTC acknowledges that identifying which swap contracts would be considered to be economically equivalent to a referenced contract (and thus subject to the Proposal’s position limits) would depend on a facts and circumstances analysis by each market participant.<sup>25</sup> A phase-in period would give market participants and the Commission time needed to implement position limits on this new category of contracts. Therefore, SIFMA AMG supports a proposed implementation timeline of at least twelve months—with an additional phase-in period for the economically equivalent swaps should they be included in the final rule—perhaps to be revisited during the implementation period to evaluate where further extensions are warranted.

## **VI. Other Comments:**

- A. *The Commission Should Revisit and Update Position Limits on a Periodic Basis, as Markets Grow and Evolve.*

Under the current Proposal, prior to amending any of the proposed spot or non-spot month levels, if adopted, the Commission would provide for public notice and comment by publishing the proposed levels in the Federal Register. SIFMA AMG encourages the Commission to make explicit in any final rule a requirement that the Commission regularly consult with exchanges and review and adjust position limits when it is necessary to do so based on relevant market factors. This could include changes in data related to volume, deliverable supply, open interest, volatility, or other liquidity- and depth-related metrics. Importantly, the CFTC must act regularly in order to ensure that limit levels do not become inappropriately low or stale as markets grow and products change and evolve.

- B. *Conditional Limits for Financially Settled Natural Gas Products Should Not be Conditioned to Exiting the Physically Settled Futures. The Commission Should Also Increase the Proposed Limit for NYMEX NG Contracts.*

To the extent the Commission determines to include financially settled products within the scope of the rulemaking, SIFMA AMG does not believe that the higher limits for financially settled natural gas futures and swaps (as compared to the limits for physically delivered natural gas futures) should be conditioned on exiting the physically delivered contract. Consistent with our general comments on financially settled futures and swaps above, the financially settled contracts do not sit at the intersection of the physical and derivatives markets in the way that the physically

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<sup>25</sup> Proposal at 11,617.

settled futures does and therefore do not raise the same issues and concerns. The conditional limit aspects of the Proposal would force liquidity out of the physical contract when it is needed most – during the spot month – and will raise costs for hedgers and increase volatility. Instead, the proposed higher conditional limits for financially settled natural gas products should be tied to staying at or below the proposed limit in the physically settled futures, ensuring that liquidity does not leave the physically settled product while also providing market participants with sufficient ability to carry a position on natural gas prices. Similarly, financially-settled penultimate day expiry products in natural gas should be excluded from limits to the same extent as penultimate day expiry contracts for each of the other 24 core referenced futures contracts. To introduce a change from existing exchange practice (under which these financially settled penultimate day contracts are out of scope) could introduce an otherwise avoidable disruption to trading during the closing days of the natural gas contract month, with no corresponding benefits to market oversight or integrity.

Separately, with respect to the limits for firms who will transact in both physically delivered and financially settled spot month futures contracts for natural gas, SIFMA AMG supports the 2,000 limit level for the physically settled contract. However, SIFMA AMG requests that the CFTC raise the non-conditional limit levels for financially settled natural gas futures to 3,000 contracts, rather than the proposed level of 2,000. In the current exchange rules, firms may have up to 1,000 financially settled futures at each of NYMEX, ICE Futures U.S., and Nodal Exchange, for a total of 3,000. The CFTC should ensure that the new limit levels for financially settled spot month natural gas futures do not decrease as compared to existing exchange set limits, as this would disrupt existing trading practices and business models without any corresponding regulatory or policy benefit.

*C. The CFTC Should Require Exchanges to Publish and Maintain a List of Referenced Contracts.*

The Proposal does not indicate which entities are responsible for determining whether any particular contract is a referenced contract (other than an economically equivalent swap) subject to Federal position limits. Rather, the Proposal requests comments on whether the CFTC should require exchanges to maintain and publish such a list of contracts offered on their platforms.<sup>26</sup>

SIFMA AMG urges the CFTC to (1) require that exchanges publish and maintain a definitive list of referenced contracts (other than economically equivalent swaps) that are subject to Federal position limits and (2) eliminate the CFTC workbook described in Section II.C, above, or at least make clear that that workbook is not the definitive source. A number of problems may arise if there is lack of clarity with respect to whether a contract is properly subject to Federal position limits. For example, market participants may incur significant costs attempting to ascertain any particular contract's regulatory status without a definitive, published list. Additionally, market participants might unintentionally violate position limits and face enforcement proceedings brought by the CFTC or exchanges without greater certainty. Furthermore, some market participants might reduce or stop altogether their trading in certain contracts—not based on economic decisions—but rather due to potential expose to position limits violations that may arise without a definitive list of contracts published by the exchanges. Finally, SIFMA AMG

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<sup>26</sup> Proposal at 11,623 (Request for Comment (16)).

believes that exchanges are best positioned (and in any case, better positioned than the CFTC) to resolve any uncertainties with respect to a contract's status under the proposed position limits regime, as they already have the resources and legal and compliance functions in place to publish and maintain this list in an efficient manner.

### *Conclusion*

Thank you again for the opportunity to share our thoughts on the Proposal with the Commission. SIFMA AMG appreciates the CFTC considering our comments for any final rules that the CFTC adopts, and we stand ready to provide the Commission and its staff any additional information that may be helpful in the review and consideration of these comments. Importantly, SIFMA AMG emphasizes that any final position limits rule that is adopted should sustain the ability of market participants to hedge risks and make investments, and provide liquidity to hedgers, as relevant to a given market participant's needs and objectives. To the extent a final position limits rule is adopted, the SIFMA AMG would also encourage such final rule to be designed to allow the CFTC to continue to support and encourage deep and liquid markets and avoid unnecessary disruptions.

\* \* \* \*

We thank the Commission for considering our views and we hope to have an opportunity to meet with the Commissioners and Staff to discuss our suggestions above. Should you have any questions, please feel free to contact or Jason Silverstein as (212) 313-1176 or [jsilverstein@sifma.org](mailto:jsilverstein@sifma.org), or Tim Cameron at (202) 962-7447 or [tcameron@sifma.org](mailto:tcameron@sifma.org).

Sincerely yours,

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Rostin Behnam, Commissioner  
Dan M. Berkovitz, Commissioner  
Brian Quintenz, Commissioner  
Dawn D. Stump, Commissioner

Dorothy Dewitt, Director, Division of Market Oversight