



May 15, 2020

Via Electronic Submission: <http://comments.cftc.gov>

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

Re: RIN 3038-AD99; Position Limits for Derivatives

Dear Mr. Kirkpatrick:

Managed Funds Association (“MFA”) and the Alternative Investment Management Association (“AIMA”) (together, the “Associations”)¹ support the Commodity Futures Trading Commission’s (the “Commission” or “CFTC”) notice of proposed rulemaking to modify the Commission’s position limits rules (the “Proposal”).² The Associations have commented on prior iterations of the Commission’s position limits proposals for the past decade and are appreciative that the Commission has incorporated in the Proposal several of our recommendations, including the need for the Commission to make a necessity finding, using accurate deliverable supply data on which to base spot month position limits, clarifying the definition of linked contracts and economically equivalent swaps, and not adopting position limits outside the spot month (other than for the legacy agricultural contracts). After ten years of deliberation, the Commission has constructed a Proposal that represents a tailored and balanced position limits regime that reflects the need to preserve market liquidity and enhance price discovery while protecting the markets

¹ Managed Funds Association (“MFA”) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants. The Alternative Investment Management Association (“AIMA”) is the trade body for the hedge fund industry globally; AIMA’s membership represents all constituencies within the sector – including hedge fund managers, fund of hedge funds managers, prime brokers, fund administrators, accountants and lawyers – and comprises over 1,800 corporate bodies in more than 50 countries.

² Position Limits for Derivatives, 85 Fed. Reg. 11,596 (proposed Feb. 27, 2020).

against excessive speculation without imposing unnecessary or overly burdensome costs on market participants.

The Associations support the Proposal and, as set forth in **Section I**, commend the Commission for addressing many of our prior concerns. In **Section II**, we offer specific suggestions to refine the proposed rules, including that the Commission: (1) direct exchanges to review deliverable supply estimates on a periodic basis and take appropriate action when current data indicates that position limit levels should be modified; (2) immediately make effective the new spot month and non-spot month limits for the legacy agricultural contracts; (3) clarify the scope of linked contracts and economically equivalent swaps; (4) extend a market participant's good faith determination of the status of an economically equivalent swap to cover all referenced contracts; (5) re-define "spread transaction" to include intramarket and intermarket spread positions and include non-enumerated spread exemptions in the exchange approval process proposed in Regulation 150.9; (6) confirm that it will make available a grace period to reduce a position in the event that a change to an option delta results in a breach of a position limit similar to the Proposal's grace period for option assignments; (7) adjust certain proposed limits; and (8) remain vigilant in assuring that the revised scope of *bona fide* hedging transactions will not be abused to exert market power that results in artificial or non-economic prices.

I. Summary of the Specific Elements of the Proposal that MFA and AIMA Support

The Associations support several elements of the Proposal, many of which reflect our previous comments and recommendations, briefly described below.

A. The Associations Commend the Commission for Using Accurate and Updated Data to Establish Position Limits

The Associations appreciate the Commission's use of updated deliverable supply estimates to establish spot month limits and the resulting increased limits for most referenced contracts. As discussed in further detail in our comments below, the Associations support a position limits regime that is data-driven and tailored to specific commodities.

B. Limiting Most Referenced Contract Position Limits to the Spot Month and Deferring to the Exchanges for Non-Spot Month Limits Reflect a Thoughtful Approach to Curtailing Potential Manipulation

In the Proposal, the Commission has determined not to establish non-spot month limits for the core referenced futures contracts, other than the legacy agricultural contracts, and has provided exchanges with discretion to establish non-spot month limits or accountability levels for these contracts. The Associations support the Proposal's imposition of position limits only to the spot month for the majority of the core referenced futures contracts. This approach results in a more appropriately tailored rule that reflects the Commission's goal to curtail manipulative trading, which tends to be more prevalent during the spot month. The Associations also support the

Proposal's grant of discretion to exchanges in connection with setting non-spot month position limits or accountability levels because exchanges will have the necessary market knowledge and tools to establish appropriate limits or accountability levels, consistent with the current regulatory regime to which exchanges are subject.

C. Leveraging Exchange Expertise in Connection With *Bona Fide* Hedging Exemptions Reduces the Proposal's Regulatory Burden

The Associations agree that exchanges should have the authority to approve or reject requests for recognition of a position as a *bona fide* hedging transaction (subject to a Commission review process). By leveraging exchange expertise and proposing a process familiar to many market participants, the burden associated with compliance likely will be reduced for market participants and Commission staff. However, with respect to an exemption for a non-enumerated spread position, the Proposal requires a market participant to apply for such an exemption twice: once with the Commission and subsequently with the relevant exchange.³ As discussed below, the Commission should eliminate this two-step process and instead include the recognition of non-enumerated spread exemptions with the exchange procedures pursuant to Proposed Regulation 150.9, similar to the application process for non-enumerated *bona fide* hedging transaction exemptions.

D. The Proposal Appropriately Tailors the Definition of Economically Equivalent Swaps and Excludes Swaps from Exchange-Set Limits

The Associations support the Proposal's tailored definition of economically equivalent swaps, which will provide market participants with regulatory certainty with respect to swaps that are subject to exchange-set position limits. The Associations support the exclusion of all other swaps from exchange-set position limits. The Proposal represents the first time swaps will be included in the Commission's position limits regime. The inclusion of swaps in position limits will be one of the most challenging aspects of the Proposal in light of the legal and operational complexities in identifying economically equivalent swaps subject to position limits and aggregating such swaps with futures contracts subject to the same position limits. While the Proposal's approach is a good first step in facilitating market participants' compliance with position limits, the Commission should consider additional steps to further facilitate regulatory certainty, as discussed in Section II.

E. Regulatory Certainty Will Be Facilitated By Requiring Exchanges to Identify New Contracts as Linked Contracts

The Proposal requires exchanges to identify whether a new contract is a linked contract in their Part 40 contract submissions filed with the CFTC. In this regard, the Proposal would leverage an exchange's knowledge of a contract, thereby reducing any ambiguity a market participant

³ Proposal at 11,602.

would otherwise face when tasked with making a linked contract determination on its own. The Associations support the Commission's efforts to provide clarity on the contracts that are linked contracts, captured by the position limits regime, by requiring an exchange to identify linked contracts when it introduces new contracts for trading on the exchange.

F. The Associations Support the Updated Definition of *Bona Fide* Hedging Transactions or Positions

The Associations support the Proposal's clarified and updated definition of *bona fide* hedging transactions or positions and the expanded list of enumerated hedges. The Associations appreciate the Commission's efforts to clarify the rules in a way that promotes greater regulatory certainty.

G. The Commission's Determination that a Necessity Finding Is Required Is Consistent with the Commodity Exchange Act

The Associations support the Commission's preliminary determination that a necessity finding is required under the Commodity Exchange Act (the "**Act**"). The Associations have previously provided extensive comments on the Commission's obligation under the Act to make a necessity finding that is specific to each core referenced contract, taking into account the characteristics of each commodity and market dynamics, and weighing the potential adverse impact of limits on each such contract.⁴ However, in its prior proposals, the Commission took the position that it did not need to make a necessity finding.⁵ In the Proposal, the Commission has now correctly made a preliminary determination to interpret Section 4a(a)(2) of the Act to incorporate the requirement of Section 4a(a)(1) of the Act that the Commission only establish position limits as it finds are necessary.⁶ While the Associations appreciate that the Commission has made a necessity finding, we continue to advocate for individualized necessity findings based on detailed analyses for each contract, and the Commission should consider including a more

⁴ See [Appendix A](#) for our prior comment letters. The Commission has withdrawn from further consideration the following proposals: Position Limits for Derivatives, 78 Fed. Reg. 75,680 (Dec. 12, 2013); Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38,458 (June 13, 2016); and Position Limits for Derivatives, 81 Fed. Reg. 96,704 (Dec. 30, 2016). Comments on these proposals will not be part of the administrative record with respect to the current proposal unless a commenter resubmits comments relevant to the Proposal and cites the prior comment letters as specifically as possible. Proposal at 11,597, n.15. The Associations have resubmitted comments relevant to the Proposal in [Appendix A](#), cited to by page number and topic.

⁵ See, e.g., Position Limits for Derivatives, 81 Fed. Reg. 96,704, 96,708, 96,710 (proposed Dec. 30, 2016); Position Limits for Derivatives, 78 Fed. Reg. 75,680, 75,683 (proposed Dec. 12, 2013). Nonetheless, we do not believe that the Commission has adequately demonstrated that the concerns related to excessive speculation are warranted to impose position limits in each of the 25 core referenced futures contracts, nor are we aware of any particular threat to, or credible concern about, excessive speculation in derivatives impacting the appropriate functioning of these contracts or the underlying cash markets. However, we understand that the Commission has preliminarily determined that it is prudent to proceed with the imposition of federal position limits, and we appreciate that the Commission appears to be taking an overall pragmatic approach in the Proposal.

⁶ 7 U.S.C. § 6a(a)(1)-(2).

specific necessity finding for each contract in the final rule. In addition, the Associations view the necessity findings set forth in the Proposal as being solely applicable to spot month position limits, and any attempt to impose non-spot month limits in the future would be subject to the Act's necessity finding requirement.

II. MFA and AIMA Comments on the Proposal

The Associations appreciate the opportunity to provide comments to the Commission on the Proposal to impose federal position limits on physical commodity derivatives. The Associations' comments are intended to enhance the operation of the proposed rules without compromising the integrity of the markets or the Commission's efforts to achieve the Act's goals of preventing economic burdens that would arise from excessive speculation that causes sudden or unreasonable fluctuations or unwarranted changes in the price of the commodities underlying the core referenced futures contracts.⁷

A. Exchanges Should Periodically Review and Adjust Position Limit Levels to Reflect Growing Markets

Markets are dynamic and applicable position limits must account for and reflect market developments and growth so that position limits established now do not become an undue restraint on liquidity at a later time. The Associations request that the Commission ensure that position limits are set at appropriate levels, based on accurate data, by developing a periodic review program or taking other steps to assure that position limit levels are maintained at appropriate levels. In setting position limits in the Proposal, the Commission has used updated deliverable supply data.⁸ The Associations commend the Commission for using new data and encourage the Commission to continue to use up-to-date data to avoid relying on 20-year-old deliverable supply estimates in the future. While the Proposal does not include a pre-established timeframe by which it will review and update deliverable supply and open interest, the Proposal gives the Commission the authority to request updated estimates of deliverable supply and permits an exchange to provide estimates of deliverable supply or its recommendation for a speculative position limit level in the event that the exchange requests that the Commission consider this information when setting or adjusting federal limit levels. To amend federal limits, the Proposal states that the Commission will adhere to a notice and comment process, with the proposed limits to be published in the *Federal Register* prior to any changes to limits. In addition, the Commission provides guidance on exchange-set non-spot month limits in Appendix F of the Proposed Part 150.

The Associations believe that the Commission should direct exchanges to periodically monitor the proposed new position limit levels to ensure that these levels appropriately reflect the general trend of growing deliverable supply and open interest. Although under the Proposal many

⁷ See, e.g., Proposal at 11,664.

⁸ See *id.* at 11,625.

of the position limit levels will increase from those currently in effect, it is unclear whether this increased trading capacity will effectively account for a trader's linked contracts and economically equivalent swaps, which will now need to be included by a trader in determining compliance with position limits. Accordingly, the Commission should require exchanges to periodically review estimated deliverable supply of each core referenced futures contract, confirm that these newly established levels appropriately account for swaps and other referenced contracts and, if the limits are impacting market liquidity or price discovery, modify position limits accordingly.

In the event that an exchange recommends that position limits should be modified in the future, the Associations support the Commission's proposed notice and comment process for amending position limits. However, the Associations respectfully request the Commission to clarify that the notice and comment process for existing core referenced futures contracts will be limited to relevant data (estimated deliverable supply and position limit levels) without reopening comments on the appropriateness of the position limit or other policy considerations.

B. The Commission Should Immediately Make Effective the New Position Limit Levels for Legacy Contracts

If the Commission adopts final rules, the effective date of the new spot month and non-spot month limits for the legacy agricultural contracts should be immediate. The Commission should direct exchanges to modify their position limits consistent with the proposed levels for these contracts as soon as possible. The Associations believe that it makes sense to adjust position limits for the legacy agricultural contracts as soon as possible after the rules are adopted because market participants already have compliance procedures and operational systems in place with respect to these contracts. As a result, market participants will not need a great deal of time to establish compliance programs associated with increases to existing federal position limits as they would need for the other 16 core referenced futures contracts.

C. The Commission Should Clarify the Scope of Contracts Included Within the Referenced Contracts Category

Under the Proposal, federal position limits would apply not only to the 25 core referenced futures contracts, but also to linked contracts and economically equivalent swaps (collectively referred to as "**referenced contracts**"). Because this is the first time that position limits will apply to linked contracts and economically equivalent swaps, it is critical that market participants have a clear understanding of exactly which contracts are covered by the rules. The proposed definition of referenced contract includes linked contracts—a futures contract or options on a futures contract, including a spread, that is directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of: (1) a particular core referenced futures contract; or (2) a particular core referenced futures contract for delivery at the same location(s) as specified in that particular core referenced futures contract.⁹ Additionally, certain contracts are

⁹ Proposed Regulation 150.1; Proposal at 11,620, 11,718.

specifically excluded from the Proposal’s definition of referenced contract, namely location basis contracts (contracts that reflect the difference between two delivery locations or quality grades of the same commodity), a commodity index contract, any guarantee of a swap, or a trade option that meets the requirements of CFTC Regulation 32.3. Additionally, while not part of the proposed rule text, the Commission explains in the preamble that a derivative contract whose settlement price is based on an index published by a price reporting agency that surveys cash market transaction prices “would not be directly or indirectly linked to the core referenced futures contract” and, accordingly, would not be a linked contract.¹⁰ As illustrated by the foregoing, it may not always be clear to market participants whether a contract is a referenced contract, which will require each market participant to engage in a burdensome and costly analysis. To avoid ambiguity in the application of the referenced contract definition, reduce unnecessary burdens and costs on market participants, and reduce the potential for inconsistent determinations by market participants, it is important that the Commission require exchanges to publish, update and maintain a list of referenced contracts (other than economically equivalent swaps) subject to federal position limits as an adjunct to the Staff Workbook, discussed below.¹¹

1. The Commission Should Clarify the Definition of “Economically Equivalent Swap” and Should Provide a Longer Phase-In Period for Applying Limits to Such Swaps

The Proposal generally defines the term “economically equivalent swap” as a swap with “identical material contractual specifications, terms, and conditions” to a referenced contract. The Associations request that the Commission revise this definition to be clearer with respect to the meaning of “material contractual specifications, terms, and conditions”. For example, the preamble of the Proposal discusses material specifications, stating that material specifications include terms that drive the economic value of a swap.¹² The Proposal also explains that swap terms that are unique to swaps (ISDA terms and definitions or terms designating a calculation agent, dispute resolution mechanisms, choice of law, or representations and warranties, among others) are not material and, therefore, are not dispositive for the determination whether a swap is an economically equivalent swap for purposes of position limits.¹³

Although a list of the swaps that the Commission deems to be economically equivalent would provide useful clarity to market participants, the Commission has not provided a list of economically equivalent swaps, as it has for linked contracts, because it concluded that such a

¹⁰ Proposal at 11,678.

¹¹ *Id.* at 11,623. Request for Comment No. 16 asks: “Should the Commission require exchanges to maintain a list of referenced contracts and location basis contracts listed on their platforms?”

¹² *Id.* at 11,616 (describing these terms to include: the underlying commodity, including commodity reference price and grade differentials; maturity or termination dates; settlement type (e.g., cash- versus physically-settled); and, as applicable for physically-delivered swaps, delivery specifications, including commodity quality standards or delivery locations).

¹³ *Id.* at 11,617.

determination is a facts and circumstances test best left to market participants.¹⁴ In addition, the Commission has not provided examples of how to convert a swap to a futures equivalent. Accurately converting an economically equivalent swap to a futures equivalent is necessary for a trader to properly count the trader's swaps toward position limits. To promote market participants' compliance efforts and avoid ambiguity, the Commission should clarify the scope of material terms in the definition of economically equivalent swap in the rule text and should provide examples to demonstrate how to convert an economically equivalent swap to a futures equivalent.

Additionally, because this is the first time that swaps will be subject to position limits, and the identification of which swaps would be deemed economically equivalent to a referenced contract will require a fact intensive analysis by each market participant, we are concerned that many market participants will need significant time and resources to perform the necessary analyses. To accommodate the additional time needed to perform these legal and operational tasks, the Associations request that the Commission provide an additional phase-in period for economically equivalent swaps, ideally an additional six to twelve months after the initial twelve-month period following the adoption of final rules, before making position limits applicable to economically equivalent swaps.

2. The Commission Should Improve the Staff Workbook

In an attempt to provide guidance to market participants, Commission staff has published a Staff Workbook¹⁵ identifying 428 contracts that Staff has determined to be linked contracts. The Associations appreciate the Commission's efforts to provide market participants with clarity on the scope of linked contracts; however, we believe that the Staff Workbook could be improved upon. For example, the Staff Workbook does not describe why these 428 contracts are considered linked contracts or otherwise provide guidance to market participants who may be required to determine whether other contracts that are not identified in the Staff Workbook are linked contracts subject to federal position limits. Importantly, we note that the Staff Workbook appears to list contracts that are specifically *excluded* from the definition of a referenced contract. For example, the Staff Workbook includes the ICE Futures U.S. Crude Diff – Argus Mars vs WTI 1st Line Future, a contract that settles based on the difference between the average of the quotations appearing in the Argus Crude report under the heading “US pipeline”, subheading “VWA” for Mars and the average of the settlement prices as made public by ICE for the WTI 1st Line Future for each business day in the determination period. As a location basis contract, this contract is specifically excluded from the definition of referenced contract, and therefore, should not be considered a linked contract and should not be included in the Staff Workbook.

¹⁴ *Id.*

¹⁵ The Commission has made the Staff Workbook available at <https://www.cftc.gov/sites/default/files/2020-03/poslimitsworkbookJan2020.xls>.

To avoid confusion and to facilitate market participants' compliance with the proposed new federal position limits applicable to linked contracts, the Associations respectfully request that the Commission:

- Publish a comprehensive Staff Workbook that accurately reflects the Proposal's scope of linked contracts.
- Identify contracts that Staff reviewed but determined *do not* fall within the definition of referenced contract.
- On a periodic basis, update the Staff Workbook based on exchange contract submissions filed with the CFTC pursuant to Part 40 or based on the Staff's analysis.

As mentioned earlier, this Proposal represents the first time market participants would be required to aggregate core referenced futures contracts with swaps and linked contracts for purposes of calculating position limits. Market participants will need to establish systems that identify and aggregate all relevant contracts for purposes of tracking position limits, applying for exemptive relief where available, and taking other steps involving position limits (*e.g.*, whether to gross or net hedge risks, establish processes to convert economically equivalent swaps to futures equivalents in real time, and update compliance manuals and training programs). The Commission should facilitate market participants' compliance with this rulemaking, for example, by providing clearer guidance on the contracts that it considers to be linked contracts and on the terms it deems to be material for purposes of determining whether a swap is an economically equivalent swap.

The consequences of not providing additional guidance and certainty range from inadvertent noncompliance to new costs and burdens on market participants subject to position limits and exchanges. Without further clarity, market participants may overwhelm exchanges with requests for guidance, incur significant costs associated with retaining professional advisors to analyze whether a contract is a referenced contract, and, despite a market participant's best efforts, ultimately make a determination that the Commission may later view to be incorrect. The Associations strongly encourage the Commission to take the steps mentioned above to promote market participants' compliance efforts and to ensure a smooth transition from the current position limits regime to the new regime.

D. The Proposal's Recognition of a Good Faith Determination Should Apply to All Referenced Contracts

The Proposal permits a market participant to make a good faith determination that a swap falls outside the scope of an economically equivalent swap and further provides that the Commission will not bring an enforcement action for violating position limits so long as the market

participant can provide evidence to support its reasonable, good faith determination.¹⁶ The Associations also request the Commission to extend recognition of good faith determinations to all referenced contracts. The Commission supports its position as to swaps by acknowledging that such flexibility will provide market participants with a greater level of certainty instead of imposing a Commission review process for swaps.¹⁷ The Associations agree with this reasoning, and believe that it applies to all referenced contracts, such that the Commission should extend recognition of good faith determinations to all referenced contracts instead of limiting such recognition of good faith determinations solely to swaps.

E. The Commission Should Further Refine the Proposal by Expanding the Definition of Spread Transaction and Incorporating Non-Enumerated Spread Exemptions in the Exchange Application Process

The Proposal defines “spread transaction” to mean “either a calendar spread, intercommodity spread, quality differential spread, processing spread, product or by-product differential spread, or futures-option spread.”¹⁸ The Associations request that the Commission expand the definition of “spread transaction” to include other commonly used spreads, such as intramarket and intermarket spread positions. It is important to properly define “spread transaction” because, under the Proposal, market participants are subject to two different exemption request processes for recognition of spread positions. The first process provides exchanges with the authority to approve or reject requests for recognition of enumerated spread and certain other positions as *bona fide* hedging transactions (subject to a Commission review process). The second process requires market participants to seek an exemption for a non-enumerated spread position from both the Commission and the relevant exchange.¹⁹

To facilitate compliance and streamline the procedures for seeking an exemption from position limits, the Commission should revise the definition of “spread transaction” and Proposed Regulations 150.3(b) and 150.9 to permit market participants to seek an exemption for a non-enumerated spread position pursuant to Proposed Regulation 150.9, consistent with the exchange application process. The Commission has not provided a reason for the difference, and without a legitimate reason for such a difference, the Commission should leverage existing exchange processes for non-enumerated spread positions similar to the approach for *bona fide* hedging positions, subject to a Commission review process.

¹⁶ Proposal. at 11,617.

¹⁷ *Id.*

¹⁸ Proposed Regulation 150.1; Proposal at 11,719.

¹⁹ Proposal at 11,602.

F. The Commission Should Confirm that the Grace Period for Options Applies to Breaches that Result from Changes to an Option Delta

The Commission has provided a one-business-day grace period that allows a market participant to exceed position limits if the breach is a result of an option assignment.²⁰ The Associations support this grace period. The Associations also request the Commission to confirm that a similar grace period will apply to an option contract that experiences a change to the option delta that results in a position limit breach. By confirming that a grace period also applies to changes to option deltas, the Commission will treat options in a manner consistent with existing exchange practices.²¹

G. The Commission Should Adjust Certain Proposed Limits

In our review of the proposed revised position limits for core referenced contracts, we identified two contract limits that the Commission should consider adjusting, including the spot month limit for cash-settled contracts based on the NYMEX Natural Gas (NG) physically-settled contract and the non-spot month limit for Kansas City Wheat (KW).

Currently, the NYMEX physically-settled Natural Gas contract (NG) spot month limit is 1,000 contracts. A trader that does not avail itself of the NG spot month conditional exemption (because it wishes to maintain positions in physically-settled NG contracts) may currently hold up to a combination of 4,000 NG physically-settled and related cash-settled Natural Gas contracts, comprised of up to 1,000 NG physically-settled contracts plus 3,000 cash-settled contracts—1,000 cash-settled contracts at each of the three exchanges (NYMEX, ICE Futures U.S. and Nodal Exchange) that offer such cash-settled contracts. Under the Proposal, a trader that does not rely on the conditional exemption for spot month NG may hold up to 2,000 contracts in the spot month for physically-settled NYMEX NG contracts and up to another 2,000 equivalent-size cash-settled positions net long or net short. Thus, the new federal limits in the Proposal of 2,000 physically-

²⁰ *Id.* at 11,718 (defining “futures-equivalent” to include “an option contract, whether an option on a future or an option that is a swap, which has been adjusted by an economically reasonable and analytically supported risk factor, or delta coefficient, for that option computed as of the previous day’s close or the current day’s close or contemporaneously during the trading day, and converted to an economically equivalent amount of an open position in a core referenced futures contract, provided however, if a participant’s position exceeds speculative position limits as a result of an option assignment, that participant is allowed one business day to liquidate the excess position without being considered in violation of the limits”).

²¹ *See* CME Rule 562 (stating in relevant part, “If a position exceeds position limits as a result of an option assignment, the person who owns or controls such position shall be allowed one business day to liquidate the excess position without being considered in violation of the limits. Additionally, if, at the close of trading, a position that includes options exceeds position limits when evaluated using the delta factors as of that day’s close of trading, but does not exceed the limits when evaluated using the previous day’s delta factors, then the position shall not constitute a position limit violation.”); ICE Futures U.S. Rule 6.13(a) (stating in relevant part, “All Persons are responsible for maintaining their position and their Customers’ positions within the limits contained in this Chapter on both an intraday and end-of-day basis. If, however, a Person exceeds its position limit on any given Business Day due to changes in the deltas of the Options, or as the result of an Option assignment, the Person holding or controlling such position shall have one (1) Business Day to bring the position within the limits.”).

settled contracts plus 2,000 cash-settled contracts would effectively decrease the total number of cash-settled NYMEX NG equivalent-size contracts that a market participant may hold in the spot month, from the current 3,000 contracts to 2,000. This reduction could adversely affect the ability of traders to optimize the proportion of physically-settled and cash-settled natural gas contracts that they wish to hold in their portfolio.²² The Associations request that the Commission revise the NG spot month limit to at least the current level of 3,000 cash-settled contracts permitted across the three exchanges.

With respect to wheat futures, the Associations agree with the increase in the non-spot month limit for CBOT Wheat (W). However, the Commission left the Kansas City Wheat (KW) and Minneapolis Wheat non-spot month limits unchanged, and at the same levels. We believe that exchange open interest data and supply data published by the USDA for hard red winter wheat, which is the underlying commodity for the KW contract, would also justify an increase in the KW contract non-spot month limit.²³

H. The Commission Should Monitor the Expanded *Bona Fide* Hedge Exemption

Traditionally, the exemption for *bona fide* hedging transactions has permitted legitimate commercial entities to manage their commercial risks. The Associations believe that it is important that the new position limits regime continue to recognize *bona fide* hedging transactions for commercial entities, and we support the expanded list of enumerated *bona fide* hedging transactions. We also support the Proposal's provisions that leverage exchange expertise and existing processes to approve *bona fide* hedge and intra- and inter-commodity spread exemptions. At the same time, the Associations hope that the Commission and exchanges will carefully oversee the use of the expanded *bona fide* hedging exemptions to assure they are not being abused.²⁴

III. Conclusion

The Associations support the Proposal and the Commission's efforts to adopt a position limits regime that attempts to take a pragmatic approach that balances all market participants' needs for market liquidity and market integrity, while preventing market manipulation and unwarranted, sudden price changes. To help promote compliance with the proposed expanded position limit regime, the Associations respectfully request the Commission to refine the proposal by incorporating our suggestions enumerated in this letter.

²² In speaking with their Members, the Associations understand that traders view the physically-settled and cash-settled contracts as separate markets and need the flexibility to be able to allocate their holdings among contracts without giving up their current ability to hold 3,000 cash-settled contracts.

²³ Open interest in the KW contracts is over three times the open interest of the Minneapolis Wheat contract, and the total supply of hard red winter wheat is much larger than the supply of hard red spring wheat (1,353 vs. 836 million bushels) (<https://www.ers.usda.gov/data-products/wheat-data/>).

²⁴ See, e.g., *CFTC v. Kraft Foods Group, Inc.*, Case No. 15-C-2881 (N.D.Ill.).

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We appreciate the opportunity to offer our comments on the Proposal. We would be happy to discuss our comments or any other issues raised in Proposal at greater length with the Commission or its staff. If the staff has any questions, please do not hesitate to contact Jennifer Han at (202) 730-2600 or Adam Jacobs-Dean of AIMA at 44 20 7822 8380.

Respectfully Submitted,

/s/ Jennifer Han
Jennifer Han
Associate General Counsel
MFA

/s/ Adam Jacobs-Dean
Adam Jacobs-Dean
Head of Markets,
Governance and Innovation
AIMA

cc: Honorable Chairman Heath P. Tarbert
Honorable Commissioner Brian D. Quintenz
Honorable Commissioner Rostin Behnam
Honorable Commissioner Dawn DeBerry Stump
Honorable Commissioner Dan M. Berkovitz



APPENDIX A

The Associations' Prior Comments Regarding CFTC Proposed Rules on Position Limits and the Related Court Decision

A. Proposed Rule on Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations (75 FR 4,144; Jan. 26, 2010)

1. Letter from Richard H. Baker, President and CEO, Managed Funds Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (Apr. 26, 2010), *available at*:

<http://www.managedfunds.org/downloads/MFA%20CFTC%20energy%20spec%20limits.4.26.10.pdf>

- MFA incorporates its comments on page 6, stating that position limits will not achieve the Commission's desired results; pages 13-14, stating that the Commission did not meet its statutory burden to demonstrate the necessity of position limits; and pages 14-15, arguing that the benefits of position limits are not outweighed by the costs.

B. Proposed Rule on Position Limits for Derivatives (76 FR 4,752; Jan. 26, 2011)

1. Letter from Richard H. Baker, President and CEO, Managed Funds Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (Mar. 28, 2011), *available at*: http://www.managedfunds.org/wp-content/uploads/2011/06/3.28.11-MFA_Position_Limits_final.3.28.pdf

- MFA incorporates its comments on pages 5-11, asking the Commission to balance statutory goals of diminishing excessive speculation and deterring market manipulation and ensuring sufficient market liquidity and the price discover function; pages 16-17, regarding the justification of applying position limits to cash-settled contracts; and page 18, asking the Commission to use deliverable supply estimates based on current data to adequately consider seasonal fluctuations or trends in volume.

2. Letter from Jiří Król, Director of Government & Regulatory Affairs, Alternative Investment Management Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (Mar. 28, 2011), *available at*: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33565>

- AIMA incorporates its comments on pages 2-3, requesting accurate deliverable supply data be used to establish position limits; and page 4, requesting the Commission to retain exemptions from position limits for non-speculative hedging of financial activities.

C. Interim Final Rule on Position Limits for Futures and Swaps (76 FR 71,626; Nov. 18, 2011)

1. Letter from Jiří Król, Director of Government & Regulatory Affairs, Alternative Investment Management Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (Jan. 17, 2012), *available at*: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50064>
 - AIMA incorporates its comments on pages 2-3, requesting the Commission to use accurate data on which to base position limits and introduce rules for cash-settled futures in the spot month only if they are appropriate.

D. *Int'l Swaps & Derivatives Ass'n v. United States CFTC*, 887 F. Supp. 2d 259 (D.D.C. 2012), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv2146-69

E. Comments on Proposed Rule for Aggregation of Position Limits for Futures and Swaps (77 FR 31,767; May 30, 2012)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (June 28, 2012), *available at*: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58278>
2. Letter from Jiří Król, Director of Government & Regulatory Affairs, Alternative Investment Management Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (July 6, 2012), *available at*: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58303>

F. Comments on Proposed Rule for Aggregation of Positions (78 FR 68,946; Nov. 15, 2013)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Melissa D. Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 7, 2014), *available at*: <https://www.managedfunds.org/wp-content/uploads/2014/02/MFA-Aggregation-Limits-final-2-7-14.pdf>
2. Letter from Jiří Król, Deputy Chief Executive Officer, Head of Government & Regulatory Affairs, Alternative Investment Management Association, to Melissa D. Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 10, 2014),

available *at:*
<https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59619>

G. Proposed Rule for Position Limits for Derivatives (78 FR 75,680; Dec. 12, 2013)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Melissa D. Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 9, 2014), *available at:* <https://www.managedfunds.org/wp-content/uploads/2014/02/MFA-Position-Limits-final-2-9-14.pdf>
 - MFA incorporates its comments on pages 14-15, commenting that position limits are not an effective tool to address excessive speculation; pages 15-16, requesting clear guidance on referenced contracts and the economically equivalent determination to allow market participants to effectively determine whether a contract is within the position limits regime; pages 17-18, urging the Commission to base position limit levels on current estimated deliverable supply data; and page 19, requesting the Commission to forego setting position limits on cash-settled contracts or, alternatively, not using deliverable supply to establish position limits on cash-settled contracts.
2. Letter from Jiří Król, Deputy Chief Executive Officer, Head of Government & Regulatory Affairs, Alternative Investment Management Association, to Melissa D. Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 10, 2014), *available at:* <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59618>
 - AIMA incorporates its comments on pages 1-2, describing challenges associated with determining the contracts that are captured by position limits regime and the operational burdens associated with the real-time contract determinations and monitoring of positions.

H. Proposed Rule for Position Limits for Derivatives and Aggregation of Positions (79 FR 37,973; July 3, 2014)

I. Proposed Rule for Position Limits for Derivatives and Aggregation of Positions (80 FR 10,022; Feb. 25, 2015)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission (Mar. 30, 2015), *available at:* https://www.managedfunds.org/wp-content/uploads/2015/03/MFA-CFTC-Position-Limits-Letter.final_3.30.15.pdf

- MFA incorporates its comments on pages 4-7, requesting the Commission to establish position limits using accurate data.

J. Supplemental Notice of Proposed Rule for Aggregation of Positions (80 FR 58,365; Sept. 29, 2015)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission (Nov. 12, 2015), *available at*: <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60533>

K. Proposed Rule Position Limits for Derivatives (81 FR 96,704; Dec. 30, 2016)

1. Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, Jiří Król, Deputy Chief Executive Officer, Head of Government & Regulatory Affairs, Alternative Investment Management Association, and Laura Martin, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group, to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission (Feb. 28, 2017), *available at*: https://www.managedfunds.org/wp-content/uploads/2017/02/Final_Position-Limits-Comment-Letter-2017-MFA-AIMA-SIFMA-AMG.pdf
 - The Associations incorporate their comments on pages 9-13, requesting that the Commission base position limits on each contract's characteristics rather than applying the same methodology across all contracts and adopting a principled approach to position limits; and page 18, requesting the Commission to revise the position aggregation rule to resolve practical challenges.