February 28, 2017

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: Position Limits for Derivatives; RIN 3038-AD99

Dear Mr. Kirkpatrick:

Managed Funds Association ("**MFA**"), the Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**"), and the Alternative Investment Management Association ("**AIMA**") (collectively, the "**Associations**")[1] appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**" or "**CFTC**") on its reproposed position limits rulemaking (the "**Reproposal**").[2]

The Associations' members have a keen interest in the Commission's efforts to finalize a prudent position limits regime. They utilize commodity derivatives in their capacity as fiduciaries to private and public funds as well as separately managed accounts for a wide range of investors and retirement savers, and rely on fair, competitive and transparent pricing and liquidity. Investment funds and separately managed account clients play a vital role in these markets by assuming price risk from commercial participants (hedgers) on the long and short sides of the

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[1] 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. SIFMA AMG's members represent U.S. asset management firms whose combined global assets under management exceed $34 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. 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, 81 Fed. Reg. 96,704 (proposed Dec. 30, 2016).

market, and providing the liquidity that facilitates price discovery and risk transfer for businesses around the world. As such, the Associations are concerned that any rule that would prevent the Associations' members from trading on behalf of their clients or unnecessarily or disproportionately increase the costs of compliance would harm the liquidity and price discovery function of the derivatives market.

The consideration of whether, how, and at what levels to impose speculative position limits and *bona-fide* hedge exemptions requires that the Commission carefully balance potentially competing goals set forth in the Commodity Exchange Act (the "**Act**") for setting position limits. These include preventing market manipulation, protecting against excessive speculation, ensuring sufficient market liquidity for hedgers, and deterring disruption to price discovery. The complexity of the task is illustrated by the series of rulemaking notices, withdrawals, and re-proposals that have preceded this re-proposed position limits rulemaking. The first rulemaking notice that the Commission issued was subsequently withdrawn.[3] The Commission issued a second notice, and adopted rules in 2011,[4] but ultimately the D.C. District Court vacated the rules because the court found that section 4a(a)(1) of the Act "clearly and unambiguously requires the Commission to make a finding of necessity prior to imposing position limits".[5] In 2013, the Commission issued a third notice, relating to aggregation of positions, and a fourth notice, relating to reproposed position limits (the "**2013 Proposal**").[6] The Commission then issued a revised reproposal pertaining to aggregation of positions and federal position limits,[7] and adopted final rules on aggregation of positions.[8] Collectively, the Associations have commented on all five of the Commission's proposed rulemakings related to the imposition of federal position limits on physical commodity derivatives issued between 2010 and 2015.[9]

The Associations appreciate that the Commission and its staff continue to refine proposed rulemaking on federal position limits; however, our members continue to have serious concerns with the Commission's proposed position limits framework, including its fundamental underpinnings. Without having made a finding that excessive speculation exists in the markets or

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[3]Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4,144 (proposed Jan. 26, 2010), *withdrawn* 75 Fed. Reg. 50,950 (Aug. 18, 2010).

[4]Position Limits for Derivatives, 76 Fed. Reg. 4,752 (proposed Jan. 26, 2011); Position Limits for Futures and Swaps, 76 Fed. Reg. 71,626 (adopted Nov. 18, 2011); vacated by *Int'l Swaps & Derivatives Ass'n v. U.S. Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. 2012).

[5] *Int'l Swaps & Derivatives Ass'n*, 887 F. Supp. 2d at 269.

[6]Aggregation of Positions, 78 Fed. Reg. 68,946 (proposed Nov. 15, 2013); Position Limits for Derivatives, 78 Fed. Reg. 75,680 (proposed Dec. 12, 2013).

[7] Position Limits for Derivatives and Aggregation of Positions, 80 Fed. Reg. 10,022 (proposed Feb. 25, 2015).

[8] Aggregation of Positions, 81 Fed. Reg. 91,454 (Dec. 16, 2016).

[9] See Appendix A for copies of the Associations' previous comment letters related to the position limits regime and the above-referenced D.C. District Court decision. The Associations incorporate these comment letters into this response to the Reproposal.

that position limits are necessary in each of the core referenced futures contracts, we believe that the Commission's economic basis for justifying its regulatory policy and methodology for implementing position limits remains flawed. The Associations believe that regulatory policy, especially a policy as significant and with such a profound market impact as position limits, should be designed based on sound market and economic principles. Instead, the Commission's proposals use a simplistic one-size-fits-all approach to establish position limit levels based on a generic percentage of deliverable supply and open interest.

For these reasons, as discussed in more detail below, the Associations cannot support the Reproposal in its current form and urge the Commission to reject it and reconsider what, if any, additional regulations are needed to meet its statutory objectives.

Nevertheless, if the Commission determines to move forward with position limits, the Associations request that the Commission narrowly tailor the framework to achieve a specific market outcome, in a way that is designed to be minimally disruptive, practical, and not overly complicated to administer by market participants. The Commission's currently proposed position limits framework, in combination with the final aggregation rules, is so complex that market participants may be unable to trade in the U.S. derivatives markets without extensive cost and regulatory burden. Firms will be required to regularly obtain legal advice on highly nuanced issues and implement a comprehensive position limits compliance protocol with operational components that monitor contracts (both referenced and those deemed "economically equivalent") across affiliated entities and accounts that must be continuously aggregated in real-time. Similarly, the proposed framework will require the Commission to continue to dedicate significant resources to administer regulations. We respectfully urge the Commission to consider a streamlined approach that reduces unnecessary regulatory burdens, facilitates compliance, eliminates uncertainty, and leverages the market and regulatory experience and expertise of exchanges.

I. SUMMARY OF RECOMMENDATIONS

As the Commission considers the Reproposal and public comments, it should examine carefully all relevant data and consider available alternatives in determining whether there are demonstrable concerns over excessive speculation. The Associations request the Commission to:

- Identify a clear standard of "excessive speculation" and incorporate that standard in its required necessity findings.
- Before imposing position limits on a core referenced futures contract,[10] make a necessity finding specific to such core referenced futures contract and explain why position limits, and the levels at which they are fixed, are appropriate for each such contract. These steps should be supported by empirical evidence of the need for the position limits and the levels

[10] In the Reproposal, the Commission defines "core referenced futures contract" to mean "a futures contract that is listed in § 150.2(d)." The table in Proposed Rule 150.2(d) identifies 25 contracts as core referenced futures contracts.

at which position limits are established, including substantive economic, data-based rationale.

- To the extent the Commission makes a necessity finding and determines that position limits are appropriate for a specific core referenced futures contract:

  - Provide individual consideration to the contract's economic characteristics and the market dynamics of the underlying commodity to appropriately tailor position limit levels to the contract. This determination should balance the Act's goals of preventing excessive speculation, ensuring sufficient market liquidity for *bona fide* hedgers, and maintaining the price discovery function of the underlying market.

  - Make an independent finding that limits on other than spot month contracts are needed to prevent excessive speculation.

  - Delegate to exchanges the responsibility and authority to administer position limits and/or position accountability levels (in the case of non-spot months), including setting levels, monitoring for compliance, and granting or rejecting requests for exemptive relief.

  - Exclude economically equivalent contracts from position limits at this time to provide more time for the Commission to obtain and carefully analyze higher quality data regarding the trading, liquidity and other market characteristics of economically equivalent contracts and to resolve interpretational and operational challenges caused by the Reproposal.

  - Modify the proposed conditional spot month limit to permit market participants to hold cash-settled contracts five times the limit of the physical-delivery contract regardless of whether positions are held in the underlying physical-delivery contracts.

  - With respect to exchange-granted, non-enumerated *bona fide* hedging exemptions and the Commission's *de novo* review of such exemptions, provide a market participant with the opportunity to be heard by the Commission or its staff before the Commission takes action to modify or terminate the relevant exchange exemption applicable to such market participant, and provide for a more reasonable and less disruptive liquidation provision should the Commission take such action.

  - Permit a risk management exemption involving swap exposure, including commodity index swaps.

- Revise the final aggregation rule to reduce compliance burdens and operational challenges.

II. THE COMMISSION HAS NOT DEMONSTRATED THE NECESSITY AND APPROPRIATENESS OF THE PROPOSED POSITION LIMITS

A. The Commission Offers No Meaningful Necessity Finding for Each of the 25 Core Referenced Futures Contracts

Section 4a(a)(1) of the Act[11] requires the Commission to make a necessity finding before imposing position limits. In *ISDA v. CFTC*, the D.C. District Court interpreted section 4a(a)(1) of the Act, finding that this section "clearly and unambiguously requires the Commission to make a finding of necessity prior to imposing position limits."[12] The Associations believe that the Commission must make a necessity finding that is specific to each core referenced contract,[13] taking into account the characteristics of each commodity and market dynamics, and weighing the potential adverse impact of limits on each such contract.[14]

The Commission's burden is not discharged by its declaration that it "preliminarily finds it necessary to implement position limits as a prophylactic measure for the 25 core referenced futures contracts".[15] The Commission offers as support for its declaration the Hunt Brothers and Amaranth cases, without additional, more meaningful analysis (other than the inconclusive review of studies, discussed below).[16] Moreover, in the Hunt Brothers and Amaranth cases, volatility arose

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[11] Section 4(a)(1) reads in relevant part: "For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity, as the Commission finds are necessary to diminish, eliminate, or prevent such burden." 7 U.S.C. § 6a(a)(1).

[12] *Int'l Swaps & Derivatives Ass'n*, 887 F. Supp. 2d at 269. The court also examines section 4a of the Act in its entirety and determines that Congressional intent is not unambiguous and, therefore, proceeds with Step Two of its Chevron analysis. The court states: "The Court expresses no opinion on whether the construction of Section 6a the CFTC now advances is permissible under Chevron Step Two. Although the Court does not foreclose the possibility that the CFTC could, in the exercise of its discretion, determine that it should impose position limits without a finding of necessity and appropriateness, it is not plain and clear that the statute requires this result." *Id.* at 282. In deciding not to remand the rule to the CFTC but, rather, to remand and vacate the rule, the court states: "The agency failed to bring its expertise and experience to bear when interpreting the statute and offered no explanation for how its interpretation comported with the policy objectives of the Act. The Court cannot be sure that the agency will interpret the statute in the same way and arrive at the same conclusion after further review and cannot be sure whether a similar position limits rule will withstand challenge under the APA." *Id.* at 284.

[13] *See, e.g.*, Position Limits for Derivatives, 81 Fed. Reg. 96,708 (proposed Dec. 30, 2016) (describing past instances where the Commission attempted to make a necessity finding for each contract for which it established position limits).

[14] Section 4a(a)(3)(B); 7 U.S.C. § 6a(a)(3)(B).

[15] Position Limits for Derivatives, 81 Fed. Reg. 96,716.

[16] *Id.* at 96,727. When describing studies related to Amaranth and the Hunt Brothers, the Commission admits that "[s]ome of the evidence cited in these studies is anecdotal". *Id.*

primarily in the spot month, and Amaranth was plagued by inadequate risk management. These cases cited by the Commission also do not support a necessity finding for non-spot month limits and only address the silver and natural gas markets where the alleged conduct occurred in 1979-80 (Hunt Brothers) and 2006 (Amaranth).[17] Although the number of economic studies Commission staff has reviewed increased since the 2013 Proposal (from 132 to 244), the Commission reiterates that "[t]here is a demonstrable lack of consensus in the studies."[18] Nonetheless, the Commission has determined to "act on the side of caution"[19] and establish position limits without analyzing each of the 25 core referenced contracts to separately find that position limits are necessary for each such contract.

The requirement to make a necessity finding was not altered or reduced by the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**"), as illustrated by the D.C. District Court's holding in *ISDA v. CFTC*. Notwithstanding the Court's holding and the Commission's insufficient support for a necessity finding, the Commission continues to contend that a necessity finding is not required because (1) "Congress has made the antecedent judgment on an across-the-board-basis that position limits are necessary for physical commodities"[20] and (2) it would be impossible to make a commodity-by-commodity necessity finding within the 180-day (for exempt commodities) and 270-day (for agricultural commodities) time frames after the Dodd-Frank Act was signed into law for establishing position limits.[21] The Commission's first argument contradicts the D.C. District Court's holding that the Commission must make a necessity finding.

The Commission's second argument that the legislative time frames are too short to make a necessity finding is based on examples from the 1930s where the Commission states that it made necessity findings for six grain contracts in 13 months, for a cotton contract in less than a year, and for soybean and egg contracts in seven months. However, this argument does not consider advances in technology and the Commission's own experience in establishing position limits since that time period that could enable the Commission to make necessity findings for each core referenced contract within the congressionally mandated time frames. The time frames are not pertinent to whether a necessity finding must be made, especially given the number of years that have passed since the Dodd-Frank Act was enacted, and should not restrict the Commission from taking its time to adopt workable rules. The Associations' position is that it is essential that the Commission take the time necessary to gather accurate data and adopt an effective regime that is

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[17] The Associations contend that the Commission's declaration of necessity does not sufficiently address the silver and natural gas markets that were the subject of the cited enforcement actions, which arose in markets that have continued to evolve in the intervening decades.

[18] *Id.* at 96,723 (quoting Position Limits for Derivatives, 78 Fed. Reg. at 75,694) (internal citations omitted).

[19] *Id.*

[20] *Id.* at 96,710.

[21] *Id.* at 96,708.

designed to prevent adverse impacts on the markets. Where the Commission cannot make a necessity finding with respect to a contract, it should not adopt a final position limits rule.

B. The Commission Has Not Demonstrated that the Proposed Position Limit Levels Are Appropriate

The Act provides that, to the extent the Commission establishes position limits, it does so "on the amount of positions, *as appropriate*, other than *bona fide* hedge positions, that may be held by any person".[22] The Commission has not demonstrated that the proposed position limits or position limit levels are appropriate but instead makes broad generalizations about speculation without first defining excessive speculation. For example, the Commission acknowledges that not all commodity markets exhibit the same price behavior at the same time but commodity markets are, over time, "all susceptible to similar risks from excessive speculation."[23] But it has not performed a contract-by-contract analysis of the market dynamics particular to each core referenced futures contract, which is what the Associations believe the Act requires.

Although the Commission stresses that the "focus of the reproposed rulemaking is not speculation *per se*" but, rather, excessive speculation, the Commission has not articulated standards to evaluate and determine when "excessive speculation" exists in a market.[24] In establishing position limits to deter "excessive speculation", the Commission should first define "excessive speculation" to explain the appropriateness of the levels at which position limits are established and to clarify the Commission's objective. By articulating such standards, commenters could then provide thoughtful insight into whether position limits and the proposed levels of such limits on each core referenced futures contract are appropriate. The Commission explains that position limits "constrain *only speculators* with excessively large positions in order to diminish, eliminate, or prevent an undue and unnecessary burden on interstate commerce in a commodity."[25] Based on available data, it is not clear whether the proposed position limits regime would restrict only speculators because the Commission's data do not distinguish between speculative traders and hedgers.[26]

Further, the Commission has not determined that position limits are necessary or appropriate outside of the spot month. The Commission's objective to prevent disorderly markets would be better satisfied by focusing efforts in the spot month only. By imposing position limits in the non-spot months, the Commission will adversely affect the markets by causing decreased

[22] Section 4a(a)(2)(A); 7 U.S.C. § 6a(a)(2)(A) (emphasis added).

[23] Position Limits for Derivatives, 81 Fed. Reg. at 96,727.

[24] *Id.* at 96,718.

[25] I*d.* at 96,720 (emphasis added).

[26] *Id.* at 96,719, n. 176 ("the Commission does not now collect reliable data distinguishing hedgers from speculators").

liquidity and ineffective price discovery, and could push speculators into the cash markets.[27] This is especially true in the further-dated months where there are low levels of liquidity. One end-user has publicly stated that low liquidity appears to be caused by "excessive hedging" that could be solved by increasing the number of speculators to increase liquidity the further out the curve.[28] Similarly, another market participant has described short hedgers and long investors as providing liquidity for each other in the futures markets, serving their interests "in an open, transparent and efficient manner".[29] Liquidity is essential to enable hedgers and speculators to achieve their objectives at efficient prices.[30] Exchange experience demonstrates that certain markets may suffer from insufficient speculation rather than excessive speculation,[31] reinforcing the point that position limits are not necessary in such markets.

Imposing position limits in the non-spot months may have the undesirable effect of raising costs for hedgers by impeding the ability of investment managers to take the other side of such "producer/merchant" positions. Non-spot month position limits may impact the ability of investment managers from taking the other side of producer/merchant positions by further increasing compliance costs or forcing investment managers to choose between contracts/positions closer to the spot month and contracts/positions in further-dated months. Finally, non-spot month position limits may also have the undesirable effect of magnifying the loss of liquidity available to hedgers due to the combination of these limits and consolidation in the investment management industry.[32] Therefore, we again encourage the Commission to avoid any approach that involves the imposition of non-spot month limits, particularly in the absence of evidence or data suggesting that such limits would serve a beneficial purpose. The Associations recommend that the Commission explicitly define excessive speculation to clarify its objectives and to allow market participants an opportunity to more meaningfully comment on whether position limits are

[27] One study found that "additional regulation of the activities of investors is probably unnecessary and…could have adverse consequences for liquidity and market depth, and worse, may force speculators into the cash markets", corroborating studies from 2011 and 2013. Brooks, Prokopczuk, and Wu, *Boom and Bust in Commodity Markets: Bubbles or Fundamentals?* (Jan. 30, 2014).

[28] Testimony of Lael Campbell, Director, Governmental and Regulatory Affairs and Public Policy, Exelon, Before the CFTC's EEMAC Meeting 83 (Feb. 26, 2015).

[29] Testimony of Kevin Norrish, Managing Director of Commodities Research, Barclays Capital, Prepared Statement Before the CFTC 4 (Mar. 25, 2010), http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/metalmarkets032510_norrish.pdf.

[30] *Id.*

[31] Testimony of Erik Haas, Director of Market Regulation, ICE Futures U.S., Before the CFTC's EEMAC Meeting 82 (Feb. 26, 2015) ("**Haas Testimony**") (stating that ICE Futures U.S. often receives complaints that markets are too wide out the curve and that "there is not enough participation"); Testimony of Lael Campbell, Director, Governmental and Regulatory Affairs and Public Policy, Exelon, Before the CFTC's EEMAC Meeting 83 (Feb. 26, 2015) (stating "it sounds to me like we may have an excessive hedging problem.").

[32] In recent years, investment management firms have consolidated in order to manage rising overhead and compliance costs, and to realize lower fees for investors through the benefits of scale.

necessary and whether position limits and the levels of such limits are appropriate to achieve these objectives.

III. POSITION LIMITS, IF DETERMINED NECESSARY AND APPROPRIATE, SHOULD BE BASED ON COMMODITY CONTRACT CHARACTERISTICS

If the Commission makes a necessity finding for a core referenced futures contract and determines that position limits are appropriate, the Commission should establish position limit levels for such contract that balance factors enumerated in the Act that, at times, compete with one another. When setting limits, the Act instructs the Commission to do so in a way (1) that diminishes, eliminates, or prevents excessive speculation, and deters and prevents market manipulation, squeezes, and corners, (2) but that also ensures sufficient market liquidity for *bona fide* hedgers while not disrupting the price discovery function of the underlying market.[33] To properly calibrate position limits, these factors must be analyzed on a commodity-by-commodity basis. Yet, the Commission has not performed this analysis.

Instead, the Commission proposes to set position limit levels using the same methodology across all 25 referenced contracts and economically equivalent contracts, without appropriately balancing the desire to eliminate excessive speculation with the goals of ensuring sufficient market liquidity and maintaining the price discovery function of the underlying market. Setting spot month limits based on 25% of estimated deliverable supply and all other months based on 10% of open interest for the first 25,000 contracts (and 2.5% on all open interest in excess of 25,000 contracts) for all contracts fails to recognize the differences among commodities, including differences in liquidity, seasonality, and other economic factors. Such a generic, one-size-fits-all approach is not principled or based on economic analysis, and stands in stark contrast with the Commission's articulated approach to the establishment of position limit levels in its prior rulemakings.[34]The Commission should permit exchanges to establish position limits or accountability levels using an appropriate methodology based on their market expertise as opposed to the application of the same, generic methodology to all core referenced futures contracts, whose underlying commodities possess very different characteristics.

Although the Associations believe that position limits are not necessary or appropriate in non-spot months, the Commission should balance the factors enumerated in the Act if it proceeds with requiring position limits in the non-spot months. The Associations request that the Commission approach non-spot month limits in a way that does not inhibit speculators from

[33] Section 4a(a)(3) of the Act; 7 U.S.C. § 6a(a)(3).

[34] *See, e.g.*, Revision of Federal Speculative Position Limits, 52 Fed. Reg. 38,914, 38,917 (adopted Oct. 20, 1987) ("basing speculative position limits upon the characteristics of a specific contract market is consistent with the practice under Commission Rule 1.61" (adopted in 1981, 46 Fed. Reg. 50,938)); Revision of Federal Speculative Position Limits, 57 Fed. Reg. 12,766, 12,770 (proposed Apr. 13, 1992) ("The fundamental tenet in the Commission's setting of speculative position limits is that such limits must be 'based upon the individual characteristics of a specific contract market'") (citing Revision of Federal Speculative Position Limits, 52 Fed. Reg. 6,812, 6,815 (proposed Mar. 5, 1987)).

trading in non-spot months. As we explain in Section II.B, markets in these months may suffer from insufficient speculation rather than excessive speculation.[35] After balancing the goals of maintaining liquidity and price discovery in non-spot months with the desire to prevent excessive speculation and market manipulation, the Commission may determine that position limits are not necessary or appropriate outside the spot month. The Associations believe that if the Commission establishes a position limits regime in the non-spot month, it should, at most, establish position accountability levels outside the spot month.

If a commodity market has consistently liquid cash markets, abundant storage capacity, and stable levels of supply and demand, it is less likely to be subject to a short squeeze and less susceptible to cornering, even with position limits set at higher than 25% of estimated deliverable supply.[36] For example, the Commission should calculate deliverable supply differently for energy markets than for other commodity classes by considering energy products that are in a different location but that can serve demand in certain areas through the transportation of the products. Thus, estimated deliverable supply should be based on pipeline capacity for natural gas and transmission for power as opposed to load or generation at a certain area.[37] These are just some examples illustrating the need for a commodity-by-commodity analysis using the factors articulated in Section 4a(a)(3) of the Act, rather than the proposed one-size-fits-all approach. The Associations ask that the Commission take an analytical approach to position limits based on the market characteristics of each commodity market or permit exchanges to establish limits.

IV. THE COMMISSION SHOULD ADOPT A PRINCIPLED APPROACH TO POSITION LIMITS

Regulation—as well as the Commission's responses to market participants' concerns about position limits[38]—should be based on economic principles and robust research and analysis. For example, the U.S. Department of Justice ("**DOJ**") and U.S. Federal Trade Commission ("**FTC**") often calculate the Herfindahl-Hirschman Index ("**HHI**") for measuring market concentration in the context of evaluations of mergers. The HHI is calculated by summing the squares of each individual firm's market shares, and thus gives proportionately greater weight to the larger market shares. For example, a market consisting of four firms with market shares of thirty percent, thirty percent, twenty percent, and twenty percent has an HHI of 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Based on their experience, the DOJ and FTC generally classify

[35] Haas testimony at 82.

[36] *See* 17 C.F.R. § 1.61(a)(2).

[37] Haas Testimony at 100.

[38] For example, commenters expressed concerns that non-spot month limits will deter speculation that does not pose risks of manipulation or price volatility. The Commission's response is that concerns over non-spot month limits are no longer prevalent because position limits have been set at higher levels. *See, e.g.*, Position Limits for Derivatives, 81 Fed. Reg. at 96,722, 884, 857.

markets into three types: Unconcentrated Markets: HHI below 1500; Moderately Concentrated Markets: HHI between 1500 and 2500; Highly Concentrated Markets: HHI above 2500.[39] While the Associations are not suggesting that the Commission adopt the HHI as the basis for establishing excessive speculation or position limit levels, we note that the HHI methodology, while it is applied generally, does take into account particular market composition and dynamics, and is in the form of guidance rather than a rigid rule. The Associations suggest that the Commission take a similar market- and data-based analytical approach rather than just applying an across the board 25% of estimated deliverable supply or 10% of open interest threshold to all contracts without distinction and without the flexibility to adjust for the unique attributes of various markets.

A principled approach to position limits will enhance the Commission's ability to effectively "diminish, eliminate, or prevent" the burden caused by "sudden or unreasonable fluctuations or unwarranted changes in the price of [a] commodity".[40] Such fluctuations or unwarranted changes rarely occur outside of the spot month, but the Commission continues to impose non-spot month limits in the proposed regime. By purporting to set limits at "high" levels, the Commission adopts a regulatory policy not supported by economic research. Moreover, the Commission itself admits to the poor quality of the data it used to establish the position limits in the Reproposal, calling into question the Commission's statements that position limit levels have been established at "high" levels.

In response to a commenter that voiced a concern that "improperly calibrated nonspot month limits would also deter speculative activity that triggers no risk of manipulation", the Commission states that it "sees little merit in this objection because the Reproposal would calibrate the levels of the non-spot month limits to accommodate speculative activity that provides liquidity for hedgers."[41] The Commission explains that position limits are set high and, therefore, the concern that position limits will deter lawful speculative trading should no longer be a concern. Instead, the Commission should have explained the analysis and method it used to calibrate position limits to avoid deterring lawful speculation or adversely impacting liquidity. The Commission's approach, reflected in its repeated comment that the limits are "set high" enough, could adversely affect markets in the future by failing to properly analyze legitimate market concerns over whether position limits are, or could become in the future, improperly calibrated in a way that deters speculative trading and negatively impacts commodity markets.

In any event, no one—including the Commission—really knows whether position limits have been set "high" because current position limits apply only to futures whereas the Commission's proposal, if adopted, would cover futures and economically related over-the-counter ("**OTC**") instruments. The Commission used part 20 swaps data and data on open interest

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[39] Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission 18 (Aug. 19, 2010).

[40] *See, e.g.*, Section 4a(a)(1) of the Act; 7 U.S.C. § 6a(a)(1).

[41] *Id.* at 96,722.

in physical commodity futures and options from exchanges to establish position limit levels, noting that it "has determined that it is not yet practicable to use data from swap data repositories" to establish position limits.[42] Thus, it remains unclear whether the Commission's data appropriately considered swaps and all other economically equivalent instruments.[43]

Additionally, the Commission explicitly describes the integrity of the data that it did use as low quality and riddled with errors[44] and states that it "continues to be concerned about the quality of data submitted in large trader reports pursuant to part 20 of the Commission's regulations".[45] Yet, the Commission has established position limits using data from these reports. With respect to part 20 data, the Commission provides that it observed both under- and over-reporting by market participants.[46] Commission staff edited *over 90%* of the available records in some commodities and describes common, *known* errors that it found and edited in the data.[47] The Commission explains that in choosing the approach where it has used data with known errors, it "chooses to repropose higher non-spot month limit levels."[48]

Swap data analyzed by the Commission does not appear to have improved in quality over the past several years based on the Commission's descriptions of such data. For example, Commission staff deleted all swap position data reports submitted by one swap dealer from its analysis because "the reports were inexplicably anomalous in light of other available information, reasonable assumptions and Commission expertise".[49] In describing errors related to swaps, the Commission explains that market participants may have reported swaps that do not satisfy the definition of "referenced contract" (such as trade options), resulting in higher open interest and, therefore, higher limits.[50] By again citing to "high" limit levels, the Commission attempts to resolve deficiencies in its data and conceptual approach that should be resolved with higher quality data and in-depth analysis.

Even where limits are set at a level a market participant is unlikely to breach, poor public policy and "high" position levels do not mitigate the administrative complexity associated with monitoring and aggregating core referenced futures contracts and economically equivalent

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[42] *Id.* at 96,755, n. 507.

[43] *Id.* at 96,722.

[44] *See id.* at 96,755-59.

[45] *Id.* at 96,759.

[46] *Id.*

[47] *Id.* at 96,757. In addition, Commission staff "adjusted the average daily open interest for positions resulting from inter-affiliate transactions and duplicative reporting of positions due to transactions between reporting entities." *Id.* at 96,757.

[48] *Id.* at 96,755, n. 513.

[49] *Id.* at 96,756.

[50] Position Limits for Derivatives, 81 Fed. Reg. at 96,755, n. 514.

contracts. Similarly, Commission staff will continue to expend resources to analyze aggregation exemption notice filings and hedge exemptions even where levels are set "high". The Associations recommend that the Commission prioritize its efforts on obtaining high-quality data from market participants rather than imposing position limits until it can do so based on reliable data regarding futures, swaps and OTC contracts.

V. EXCHANGES SHOULD ADMINISTER THE POSITION LIMITS REGIME

To the extent that the Commission makes a necessity finding for a core referenced futures contract, the Commission should allow exchanges to impose and administer position limits in the spot month and position accountability levels in non-spot months. Exchanges should be delegated the responsibility and authority to administer position limits, including setting levels, monitoring for compliance, and granting or rejecting requests for exemptive relief. In taking this approach, the Commission can reallocate its resources to other regulatory priorities, such as data quality.

Traditionally, the Commission has adhered to the principle that exchanges have exceptional knowledge of individual contract markets to enable them to implement position limits and exemptions "most appropriate" for individual markets.[51] The Associations recommend that the Commission discontinue its duplicative and burdensome efforts in the area of position limits. At a minimum, if the Commission were to insist on itself administering spot month limits, the Commission should permit exchanges to administer non-spot month accountability levels and hedge exemption requests.

The Commission should permit exchanges to establish position limits or accountability levels using an appropriate methodology based on their market experience as opposed to applying the same generic limit methodology to all core referenced futures contracts, whose underlying commodities possess very different characteristics. Accountability levels have been used by exchanges for years to identify and understand large positions, and this regulatory tool allows exchanges to carry out responsible market surveillance without impacting liquidity or unduly limiting beneficial risk management activities of market participants. In addition, position accountability levels for non-spot month contracts will provide greater flexibility to market participants and regulators and will reduce the costs of compliance with hard position limits in non-spot month contracts. Futures exchanges impose position accountability levels because they maintain the market's integrity by providing necessary oversight of market participants while ensuring sufficient liquidity to allow traders to enter or exit the market, without being overly burdensome to traders who, at times, may hold large positions. Position accountability levels are similar to position limits in that a trader who reaches the position accountability level will be exposed to increased exchange scrutiny of the trader's positions. Unlike position limits, position

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[51] *See, e.g.*, Establishment of Speculative Position Limits, 46 Fed. Reg. 50,938, 50,940 (adopted Oct. 16, 1981) (finalizing rules directing exchanges to "employ their knowledge of their individual contract markets to propose the position limits they believe most appropriate").

accountability levels do not prohibit a trader from reaching or exceeding the level. Instead, once a trader hits or exceeds a position accountability level, an exchange may take certain actions, including preventing the trader from increasing the position or requiring the trader to reduce the position and/or requiring the trader to provide the exchange with information about its trading strategy or intentions.[52] Exchanges value the flexibility provided by position accountability levels because they can make educated determinations as to whether a trader's positions could become problematic.

VI. ECONOMICALLY EQUIVALENT CONTRACTS SHOULD NOT BE INCLUDED IN THE POSITION LIMITS REGIME UNTIL DATA QUALITY IMPROVES AND FURTHER ANALYSIS IS COMPLETED

The inclusion of economically equivalent contracts in the position limits regime—despite the Commission being unable to use data from swap data repositories[53]—poses interpretation and operational challenges that could cause inadvertent violations of position limits. A market participant is faced with operational challenges with respect to the necessary monitoring of contracts subject to position limits, not only because of the position aggregation rules, but also because traders would be required to include economically equivalent contracts in their position limits calculations. Tracking bilateral swaps in real-time is onerous and, especially where futures contracts and swaps are booked in different systems, impractical.

In some cases, it may not be clear whether the Commission would consider a swap "economically equivalent" to one of the 25 reference contracts. A market participant would need to seek legal advice on the proper interpretation of this term and implement methods for including swaps that fall within the scope of "economically equivalent" in the market participant's position limits compliance program. Although the Commission has provided a workbook on position limits,[54] the workbook does little to provide guidance on how a market participant should analyze swaps to determine whether a particular swap is economically equivalent to a core referenced contract.

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[52] CME Rule 560 (stating in part: "A person who holds or controls aggregate positions in excess of specified position accountability levels or in excess of position limits pursuant to an approved exemption shall be deemed to have consented, when so ordered by the Market Regulation Department, not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability or position limit levels."); ICE Futures U.S. Rule 6.13 (providing the exchange with the authority to "instruct each such Clearing Member to reduce the positions in such accounts twenty-four (24) hours after receipt of the notice, proportionately or otherwise so that the aggregate positions of such accounts at all such Clearing Members does not exceed the position limits and position accountability levels established by this Chapter").

[53] Position Limits for Derivatives, 81 Fed. Reg. at 96,755.

[54] *CFTC Staff Workbook of Commodity Derivative Contracts Under the Reproposal Regarding Position Limits for Derivatives*, http://www.cftc.gov/idc/groups/public/@swaps/documents/file/ poslimitsworkbook120516a.pdf.

The Associations are concerned that if the position limits regime includes economically equivalent contracts, the position limits levels would apply to core referenced futures contracts as well as the economically equivalent contracts rather than just the core referenced futures contract as was the case previously. As a result, position limit levels would be lower than what they should be after taking into account economically equivalent positions that now must be counted toward such position limit levels. Thus, position limit levels may not be as "high" as the Commission contends by including economically equivalent contracts in position limits.[55] The scope of the position limits regime should not include economically equivalent contracts until the Commission has more reliable data and can ensure that limits that include economically equivalent contracts are appropriate. By deferring the inclusion of economically equivalent contracts in the position limits regime, the Commission would allow more time to market participants to analyze their portfolio of contracts and the impact of position limits if they were to include economically equivalent contracts in the position limits calculation. The Commission would also have more time to provide guidance and greater certainty on the types of swaps that are economically equivalent.

VII. ADDITIONAL COMMENTS

A. The Commission's Conditional Spot Month Limit for Natural Gas Should Be Revised to Use a Formula that Will Not Increase Volatility

The Commission revised the proposed conditional spot month limit, making it applicable only to natural gas cash-settled referenced contracts, provided that positions do not exceed 10,000 contracts and the person holding or controlling such positions does not hold or control positions in spot-month physical-delivery referenced contracts. The conditional spot month limit may have adverse consequences, including causing an increase in volatility on the last trading day and hurting liquidity in the physical market. The Associations respectfully request that the Commission adopt an alternate proposal, originally introduced in the 2013 Proposal, where the Commission considered "[s]etting an expanded spot-month limit for cash-settled contracts at five times the level of the limit for the physical-delivery core referenced futures contract, regardless of positions in the underlying physical-delivery contract."[56] The Commission itself recognized that "this alternative would give more weight to protecting liquidity for *bona fide* hedgers in the physical-delivery contract in the spot month".[57]

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[55] In 1987, the Commission determined not to cumulate positions in contracts with identical terms and conditions based on comments that "the proposal would adjust downward their combined current speculative position limits in the spot months". Revision of Federal Speculative Position Limits, 52 Fed. Reg. 38,914, 38,917 (adopted Oct. 20, 1987).

[56] *See, e.g.*, Position Limits for Derivatives, 78 Fed. Reg. 75,680, 75,736-38 (proposed Dec. 12, 2013).

[57] *Id.* at 75,738 (the Commission also notes that this alternative may give "less weight to protecting the price discovery function of the underlying physical-delivery contract in the spot month."). The Associations believe that the alternate approach will protect the price discovery function more than the current conditional spot month limit proposal.

The Associations support this approach because of the concern that the revised proposed conditional spot month limit would unnecessarily constrain funds in their day-to-day trading. For example, for a fund with multiple trading strategies, some of which use physically-delivered contracts and others use cash-settled contracts in the same commodity, the proposed rule's prohibition on holding any positions in the physical-delivery contract would severely constrain the fund's trading strategies. Thus, this type of fund would be blocked from one market altogether and unnecessarily constrained. Another concern is that the revised proposed conditional spot month limit may incentivize some traders to trade only in the cash-settled contract, adversely affecting price discovery and liquidity in the physical-delivery contract. Under the alternate approach considered in the 2013 Proposal, this concern is mitigated. The Commission should strive to promote price discovery and market participation. The Reproposal's rule has the opposite effect. The Associations' approach, suggested by the Commission in the 2013 Proposal, would allow traders to implement multiple trading strategies without blocking them from certain markets or unnecessarily constraining their trading strategies. Therefore, the Associations recommend that the Commission adopt a conditional spot month limit for cash-settled contracts that is set at five times the level of the limit for the physical-delivery core referenced futures contract regardless of positions in the underlying physical-delivery contract.

B. Clarification of Commission Review of Exchange Exemptions from Position Limits is Needed, and *De Novo* Review Should Not Result in Liquidation of a Market Participant's Positions

The Reproposal would permit exchanges to grant non-enumerated exemptions from position limits.[58] The Associations support this provision and suggest improvements to clarify when a Commission review could occur and the standards for such review. In addition, the Associations recommend that the Commission ease the overly prescriptive application requirements for an exchange exemption and clarify *de novo* review standards. Under the proposed regime, the Commission would be permitted to perform a *de novo* review of exchange-granted exemptions.[59] Without clear standards, a *de novo* review presents unnecessary uncertainty and raises practical issues over how to liquidate positions if the Commission disagrees with an exchange exemption. The Commission should abide by an objective standard before it conducts a *de novo* review, and an exchange determination should be presumed correct absent underlying data that reasonably supports the exemption having been granted. Even with an objective standard, the Commission's *de novo* review provision should include an opportunity for the market

[58] Proposed Rule 150.9.

[59] Proposed Rule 150.9(d)(1) ("The Commission may ***in its discretion at any time*** review any non-enumerated *bona fide* hedging position application submitted to a designated contract market or swap execution facility, and all records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application, ***for any purpose***, including to evaluate whether the disposition of the application is consistent with section 4a(c) of the Act and the general definition of *bona fide* hedging position in § 150.1.") (emphasis added).

participant to be heard (i.e., due process and a hearing) before the Commission makes a determination to terminate an exchange-granted exemption.

Further, the Associations recommend that, rather than automatically ordering liquidation after the Commission determines that an exchange exemption is not appropriate, the Commission should instead instruct the exchange prospectively not to renew the exemption. A forward-looking approach would alleviate practical challenges and prevents market disruptions associated with forced liquidation. Market participants need, and are entitled, to rely with certainty on relief provided by exchanges. If, however, the Commission chooses to apply its determination on a retroactive basis and retain the forced liquidation provision, traders should be provided with a commercially reasonable period of time to liquidate such positions. We note that the Commission describes a commercially reasonable period of time to liquidate as "less than one business day".[60] A less-than-one-business-day time frame is not a commercially reasonable period for a market participant to perform an orderly liquidation, could result in economic hardship, and could potentially disrupt trading in the market in which such an abrupt liquidation is required because it may not be realistically possible to "orderly" liquidate in less than one business day.

C. Commodity Index Contracts Should Be Excluded From Position Limits and Be a Permissible Risk Management Exemption

Association members continue to support the exclusion of "commodity index contracts" from the proposed definition of "referenced contract." We agree with the Commission's rationale for this exclusion. Commodity index contracts do not "involve a separate and distinct exposure to the price of a referenced [] contract's commodity" price.[61] The exclusion of commodity index contracts from position limits benefits many asset managers and their customers who invest in such products in order to gain price exposure to a diversified array of commodities over a diverse set of maturities. The liquidity added to commodity markets by these investments is particularly beneficial in longer dated maturities where liquidity can be scarce. Commercial, *bona fide* hedgers that might use long-dated commodity derivatives can more cost-effectively establish long-term hedges because of the liquidity that commodity index contracts provide.

The Commission explicitly prohibits exchanges from recognizing a non-enumerated *bona fide* hedging position where such non-enumerated *bona fide* hedging position involves a commodity index contract.[62] Such a prohibition represents a significant deviation from current practice. Counterparties to commodity index swaps currently can remain in compliance with position limits rules if they exceed a position limit based on a position that hedges OTC swap

[60] Position Limits for Derivatives, 81 Fed. Reg. at 96,826, n.1099.

[61] Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4,144, 4,153 (Jan. 26, 2010).

[62] Proposed Rules 150.9(a)(v); 150.10(a)(iv).

exposure, including commodity index swap price risk under the rules of a designated contract market.

The Associations respectfully request the Commission to reconsider the prohibition on a risk management exemption involving swap exposure. The failure to do so will have the effect of reducing liquidity and causing worse pricing for swaps, including commodity index swaps. Such effects were displayed in the commodity index swaps markets leading up to the effective date of the Commission's vacated part 151 position limits rules (rules that did not provide for an exemption for positions offsetting commodity index contract price risk). During this time period, the Associations' members were forced to consider trading with less creditworthy counterparties to source liquidity because their regular counterparties were concerned about violating the position limits rules.

D. The Commission Should Revise the Aggregation Rule to Resolve Practical Challenges

The rules governing aggregation prior to the February 14, 2017 effective date of the final aggregation rule published late last year[63] were used effectively for decades to comply with existing agricultural commodity position limits. The final aggregation rules present a number of operational and interpretive challenges, which had been raised by the Associations but not addressed in the final rule. We would strongly urge the Commission to revisit the recent changes to the aggregation rule and reconsider its approach.

VIII. CONCLUSION

The Associations do not support a position limits regime that is not based on a finding of necessity, where limits are established based on incomplete or inaccurate data and generic formulas rather than substantive economic analysis of applicable market dynamics.

The Associations believe that the Commission needs to clearly articulate its interpretation of "excessive speculation" and apply position limits only to those contracts for which it makes a specific necessity finding and determination of the appropriateness of the limits for each such contract. While we believe that such an assessment should lead the Commission to reject the Reproposal, should the Commission proceed, the Associations recommend that the Commission:

- Make its finding specific to such core referenced futures contract and give consideration to a commodity contract's economic characteristics to appropriately tailor position limits to the contract;

[63] Aggregation of Positions, 81 Fed. Reg. 91,454 (Dec. 16, 2016).

- Make an independent finding that limits on other than spot month are needed to prevent excessive speculation;
- Delegate to exchanges the responsibility and authority to administer position limits, including setting levels, monitoring for compliance, and granting or rejecting requests for exemptive relief;
- Exclude economically equivalent contracts from position limits at this time;
- Allow market participants to hold cash-settled contracts five times the limit of the physical-delivery contract regardless of positions in the underlying physical-delivery contracts;
- Eliminate the forced liquidation provision and provide a market participant with the opportunity to be heard before the Commission terminates an exchange-granted non-enumerated *bona fide* hedge exemption;
- Permit a risk management exemption involving swap exposure, including commodity index swaps; and
- Revise the final aggregation rule to reduce compliance burden and operational challenges.

We appreciate the opportunity to offer comments to the Reproposal. We would be happy to discuss our comments or any of the issues raised by the Commission's position limits proposal at greater length with the Commission or its staff. If the staff has any questions, please do not hesitate to call Jennifer Han of MFA at 202.730.2943, Laura Martin of SIFMA AMG at 212.313.1176, or Adam Jacobs-Dean of AIMA at 44 20 7822 8380.

Respectfully Submitted,

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cc:

The Honorable Acting Chairman J. Christopher Giancarlo
The Honorable Commissioner Sharon Bowen

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 4144; open, 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

B. Proposed Rule on Position Limits for Derivatives (76 FR 4752; open, 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

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

3. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, to David A. Stawick, Secretary, Commodity Futures Trading Commission (June 20, 2011), *available at:* http://www.sifma.org/comment-letters/2011/sifma-amg-submits-supplemental-comments-to-the-cftc-on-proposed-position-limits-for-derivatives/

C. Interim Final Rule on Position Limits for Futures and Swaps (76 FR 71626; open, 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

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, Position Limits for Futures and Swaps (77 FR 31767; open, 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 68946; open, 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

3. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, Matthew J. Nevins, Esq., Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, and Robert Pickel, Chief Executive Officer, International Swaps and Derivatives Association, to Melissa Jurgens, Secretary, Commodity Futures Trading Commission (Dec. 20, 2013), *available at:* http://www.sifma.org/comment-letters/2013/sifma-amg-and-isda-submit-comments-to-the-cftc-on-aggregation-of-positions/

4. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, and Matthew J. Nevins, Esq., Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Melissa Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 10, 2014), *available at:* http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-cftc-on-the-aggregation-of-position-limits/

G. Proposed Rule for Position Limits for Derivatives (78 FR 75680; open, 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

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

3. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, and Matthew J. Nevins, Esq., Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Melissa Jurgens, Secretary, Commodity Futures Trading Commission (Feb. 10, 2014), *available at:* http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-cftc-on-position-limits/

H. Proposed Rule for Position Limits for Derivatives and Aggregation of Positions (79 FR 37973; open, July 3, 2014)

1. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, and Matthew J. Nevins, Esq., Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Melissa Jurgens, Secretary, Commodity Futures Trading Commission (Aug. 1, 2014), *available at:* http://www.sifma.org/comment-letters/2014/sifma-amg-submits-supplemental-comments-to-the-cftc-on-the-aggregation-proposal-relating-to-position-limits/

I. Proposed Rule for Position Limits for Derivatives and Aggregation of Positions (80 FR 10022; open, 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

J. Supplemental Notice of Proposed Rule for Aggregation of Positions (80 FR 58365; open, 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

2. Letter from Timothy W. Cameron, Esq., Managing Director, Asset Management Group, Securities Industry and Financial Markets Association, and Matthew J. Nevins, Esq., Managing Director and Associate General Counsel, Asset

Management Group, Securities Industry and Financial Markets Association, to Christopher J. Kirkpatrick, Secretary, Commodity Futures Trading Commission (Nov. 13, 2015), *available at:* http://www.sifma.org/comment-letters/2015/sifma-amg-submits-comments-to-commission-on-aggregation-of-positions/