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February 1, 2008

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMENT

Re: Proposed Revision of Federal Speculative Position Limits – 72 F.R. 65483 (November 21, 2007)

Dear Mr. Stawick:

CME Group, Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") proposed revision of federal speculative position limits.

CME Group was formed by the July 2007 merger of Chicago Mercantile Exchange Holdings Inc. and CBOT Holdings, Inc. CME Group is the parent of Chicago Mercantile Exchange Inc. and the Board of Trade of the City of Chicago, Inc. ("CBOT"). CME Group also owns Swapstream Operating Services Limited, an OTC trading facility, and owns an interest in FXMarketspace Limited, an FX trading platform that is authorized and regulated by the United Kingdom's Financial Services Authority. CME Group serves the global risk management needs of our customers and those who rely on the price discovery provided by the competitive markets maintained by CME Group. CME Group offers a comprehensive selection of benchmark products in most major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, agricultural commodities, energy, and alternative investment products such as weather and real estate. Additionally, CME Group offers order routing, execution and clearing services to other exchanges by means of our Globex® electronic trading platform and our clearing house. CME Group is traded on the New York Stock Exchange and NASDAQ under the symbol "CME."

I. Overview

The Commission has proposed to increase the speculative position limits for all single month and all-months-combined positions in all agricultural commodities that are subject to the federal speculative position limits set forth in Commission Regulation 150.2, except Oats. The affected CME Group products are CBOT Corn, Soybeans, Wheat, Soybean Oil and Soybean Meal.

CME Group believes that the Commission should repeal Regulation 150.2 and permit designated contract markets ("DCMs") to set position limits, where necessary and appropriate, subject to Commission oversight. At a minimum, the Commission should eliminate federal speculative position limits for all months other than the spot month. If the Commission retains

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single month and all-months-combined limits, the Commission should increase those limits based on 2007 open interest data.

We do not believe that the Commission should require the aggregation of positions for the purpose of determining compliance with single month and all-months-combined position limits when a DCM lists a futures contract that is "substantially identical" to a futures contract that is enumerated in Regulation 150.2. The Commission has consistently set non-spot month position limits for the Regulation 150.2 enumerated contracts based on the open interest formula set forth in Regulation 150.5(c). Independent position limits, based on the open interest at each DCM listing "substantially identical" futures contracts, will appropriately recognize any increase in the overall open interest in such contracts, and will serve to deter congestion and interference with orderly trading at each DCM by not permitting a market participant to hold a share of the open interest on a particular DCM that is disproportionate to the total open interest in the contract on that DCM. In addition, DCMs would not be able to effectively monitor for compliance with, or enforce, any aggregated position limits when violations are dependent on positions at another DCM.

II. The Commission should eliminate all federally-mandated position limits and repeal Regulation 150.2.

The Commission should repeal Regulation 150.2 and permit DCMs to set their own position limits, where necessary and appropriate, subject to Commission oversight. When Congress adopted the Commodity Futures Modernization Act of 2000 ("CFMA"), it replaced a rules-based approach to regulation with a more flexible model based upon compliance with Core Principles. Core Principle 5 of Section 5(d) of the Commodity Exchange Act ("CEA"), applicable to DCMs, deals with "Position Limitations or Accountability," and states that:

> To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

Although the Commission retains the authority to set speculative position limits pursuant to Section 4a(a) of the CEA, the CFMA's Core Principles squarely place responsibility for establishing any appropriate position limits upon DCMs. There is no clear distinction between the products on which DCMs set limits pursuant to Regulation 150.5 and the products covered by Regulation 150.2. Rather, the Commission's establishing of speculative position limits for certain agricultural products, and not for other products, both agricultural and non-agricultural, is a matter of historical development, and there is no ongoing justification for these distinctions. In the Federal Register release accompanying the adoption of the 1999 increases to the single month and all-months-combined limits for CBOT and other DCM contracts, the Commission stated that it had never established a speculative position limit for the Minneapolis Grain Exchange's ("MGEX") former durum wheat contract, because that contract was listed after the promulgation of the Commission rule that required contract markets to set their own speculative limits for contracts not subject to limits set by the Commission. The Commission further stated that since the adoption of that rule, it has generally preferred to rely upon exchanges to set their own position limits. Revision of Federal Speculative Position Limits and Associated Rules, [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶27,608, at 47,884, fn. 9 (64 F.R.

24038, May 5, 1999). The Commission also stated that it " . . . believes that this suggestion [that exchanges have primary responsibility] may merit future consideration." Revision of Federal Speculative Position Limits and Associated Rules, [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶27,608, at 47,882-47,883, fn. 7 (64 F.R. 24038, May 5, 1999).

The CBOT filed a petition on March 26, 2004, and an amended petition on April 27, 2004, requesting that the Commission repeal Regulation 150.2, or, at a minimum eliminate federally-mandated single month and all-months-combined speculative position limits. The Kansas City Board of Trade ("KCBOT") and the MGEX also filed petitions requesting the repeal of Regulation 150.2 in April and May 2004, respectively, and the New York Board of Trade filed a letter supporting the petitions in August 2004. Although the Commission did not eliminate federally-mandated limits at that time, in its Federal Register adopting its 2005 increases in single month and all-months-combined limits, the Commission stated that it "intends to continue its review of its current policies regarding the administration of speculative position limits, including a further evaluation of the merits of retaining Federal speculative limits." 70 F.R. 24705 (May 11, 2005). The time has now come for the Commission to grant the sole responsibility to establish speculative position limits to DCMs by repealing Regulation 150.2, and for the Commission to oversee the DCMs' exercise of that responsibility, as envisioned by the CFMA.

III. Even if the Commission determines not to eliminate federally-mandated spot month limits, it should remove single month and all-months-combined limits from Regulation 150.2.

If the Commission determines that it is appropriate to retain Commission-imposed spot month limits, it should nevertheless eliminate the single month and all-months-combined limits set forth in Regulation 150.2. In Appendix B to Part 38 of its Regulations, the Commission has discussed certain acceptable practices that would satisfy Core Principle 5. The Commission specifically noted that provisions concerning speculative position limits are set forth in Part 150 of its Regulations. However, in discussing " . . . markets based on commodities having more limited deliverable supplies or where otherwise necessary to minimize the susceptibility of the market to manipulation or price distortions", the Commission focused on spot month limits. The discussion concluded with the Commission's only reference to non-spot month limits, in which it stated that "[m]arkets may elect not to provide all-months-combined and non-spot month limits." Appendix B to Part 38, Core Principle 5 of section 5(d) of the CEA, Paragraph (b)(4).

Therefore, although in its Regulation 150.2, the Commission has historically imposed single month and all-months-combined position limits upon certain agricultural commodities, the Commission has now explicitly recognized that, for similar markets, such limits may not be necessary to minimize any potential for manipulation or price distortion. In light of the adoption of Core Principle 5 as part of the CFMA, and the Commission's applicable Appendix B guidance, there appears to be no reasonable distinction between the agricultural commodities addressed in Regulation 150.2, and other commodities that have "more limited deliverable supplies", that would support any need for the Commission itself to set single month and all-months-combined position limits for such commodities.

Therefore, even if the Commission determines to continue to impose its own spot month limits, the Commission should amend Regulation 150.2 to eliminate all single month and all-months-combined limits, and rely upon DCMs to impose any such limits that are necessary and appropriate, subject to Commission oversight.

IV. <u>If the Commission retains federally-mandated single month and all-months-combined limits, the limits should be increased based on 2007 open interest data.</u>

CME Group agrees that any federally-mandated single month and all-months- combined speculative position limits that the Commission retains should be increased. The Commission's proposed higher position limits are based on the formula set forth in Regulation 150.5(c), as applied to open interest data from the 2006 calendar year. Specifically, the Commission has proposed to amend the all-months-combined limits to the maximum levels permitted under the open interest formula, and to adjust the single month limits to continue to apply the existing ratio of single month to all-months-combined levels. The Commission noted that a strict application of the open interest formula would result in lower single month limits for some commodities and higher limits for others. CME Group agrees with the Commission that maintaining the existing ratios between single month and all-months-combined limits is the best approach. This methodology is consistent with that proposed by the CBOT in 2004 and used by the Commission with respect to its 2005 increases. However, we believe that the Commission should calculate the new limits based on the now-available open interest data from 2007.

V. <u>The Commission should not aggregate positions for the purpose of determining compliance with position limits when a DCM lists a futures contract that has "substantially identical" terms as a contract enumerated in Regulation 150.2.</u>

The Commission should not require the aggregation of positions across DCMs, when a DCM lists a futures contract for trading that shares "substantially identical" terms with a contract listed on another DCM that is subject to federal limits. As a preliminary matter, in attempting to define "substantially identical" futures contracts, the Commission cited the example of a futures contract that is cash-settled based on the settlement prices of a futures contract that is enumerated in Regulation 150.2, as well as contracts "with substantially identical terms based on the same underlying commodity characteristics". 72 F.R. at 65485. The Commission should define what it means by the "same underlying commodity characteristics" for physically-delivered contracts, and specifically whether there must be a complete overlap in the deliverable supply and the delivery points with respect to the underlying commodity for the Commission to consider two contracts to be "substantially identical."[1] Even if futures contracts listed for trading by two different DCMs are "substantially identical", CME Group believes that such contracts should be subject to separate, non-aggregated speculative limits for single months and all-months-combined positions. The Commission's aggregation proposal, as it relates to individual non-spot months and all months-combined levels, is contrary to the rationale that the Commission has consistently applied in setting such limits. In determining the levels of the federally-mandated limits for single months and all-months-combined positions, the Commission has historically applied the open interest formula set forth in Regulation 150.5(c). The position limit increases for CBOT contracts that are proposed in this rulemaking are based on this formula, as applied to the open interest at the CBOT.

[1] Since the Commission has historically imposed position limits upon KCBOT and MGEX Wheat contracts in parity with the limits for the CBOT Wheat contract without suggesting that they should be aggregated, it has apparently, and appropriately, determined that these contracts are not "substantially identical". The quantities, delivery months, and minimum price fluctuations are identical for the CBOT, KCBOT and MGEX Wheat contracts, but there is only a partial overlap in the deliverable supply and the delivery points are different.

We believe that the same open interest formula should be separately applied to the open interest at each DCM that lists a "substantially identical" futures contract for purposes of determining applicable position limits outside of the spot month. Any approach that would cap the position limit for both DCMs at the level set for the Regulation 150.2 enumerated market would not account for the fact that the other DCM's open interest will have added to the total open interest when both contracts are considered. However, although a customer should be permitted to hold the sum of the maximum positions determined by the application of the open interest formula to each DCM's open interest, he should not be allowed to exceed the separate position limit established at either DCM based on that DCM's own open interest. Each DCM's open interest must be viewed separately for the purpose of determining position limits on that DCM in light of the fact that the two contracts are distinct contracts that cannot be offset against each other. It is not only logical that a particular DCM's position limit should be based on that DCM's open interest, but it is necessary in order to protect the integrity of the market at each DCM. If another DCM's position limit is not proportional to its own open interest, but instead is based on the open interest of a Regulation 150.2 enumerated market, the size of the position on the other DCM could be so large in comparison to its own open interest that congestion and interference with the orderly functioning of the market at that DCM could ensue.

Additionally, if the Commission were to require positions in those contracts that are enumerated in Regulation 150.2 to be aggregated with "substantially identical" positions traded on another DCM, neither DCM would be able to effectively monitor for compliance with, or enforce, such aggregated position limits. Although a DCM could request that its clearing members provide information regarding the positions held by market participants on another DCM on a case-by-case basis, large trader information would only be filed on a daily basis with each DCM with respect to positions held on that DCM. Therefore, each DCM would only be able to conduct routine monitoring, on a daily basis, for possible speculative position limit violations with respect to its own contracts. Furthermore, a single DCM would not have the jurisdiction to bring an enforcement action with respect to a position limit violation that depended on the existence of positions held on another DCM, nor would it be able to order the liquidation of positions when the positions held on its markets did not independently exceed speculative position limits. Therefore, if the Commission does choose to adopt a requirement for aggregation, it should make it clear that it would not expect any DCM to conduct surveillance for, or to take any action with respect to, any violations of speculative position limits that do not exist based on the positions held at that DCM but which only exist when positions are aggregated across DCMs.

If the Commission nevertheless determines to require any "substantially identical" positions to be aggregated, it should clarify that although long and short positions in one futures contract on one DCM will continue to be netted against each other as is currently the case, long and short positions will not be netted across DCMs for the purpose of determining compliance with any aggregated position limits. This will result in published open interest in an expiring contract more accurately reflecting the true liquidity pool in the contract and ensuring that delivery demand is responsive to market economics rather than used to facilitate the making and taking of delivery across the two DCMs.

Finally, the Commission proposes to add the following footnote to the chart in Regulation 150.2, in order to impose its proposed aggregation requirement:

> For purposes of compliance with these limits, positions in a futures contract that shares substantially identical terms with a contract market enumerated herein, including a

> futures contract that is cash-settled based on the settlement price of an enumerated contract market, shall be aggregated with positions in the enumerated contract market."

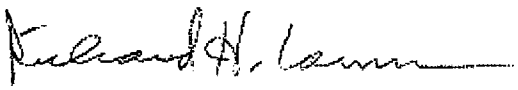
If the Commission determines to require aggregation, CME Group proposes that the language of this footnote would be clearer if it read as follows:

> For purposes of compliance with these limits, positions in a futures contract that shares substantially identical terms with a contract enumerated herein, including a futures contract that is cash-settled based on the settlement price of an enumerated contract, shall be aggregated with positions in the enumerated contract."

By eliminating the word "market" in several places, these changes would eliminate any confusion with "designated contract markets", and each contract enumerated in Regulation 150.2 is identified with reference to the DCM on which it trades.

We would be happy to discuss any of these issues with Commission staff. Please feel free to contact me at (312) 930–2041 or Richard.Lamm@cmegroup.com; or Anne Polaski, Associate Director and Regulatory Counsel, at 312-338-2679 or Anne.Polaski@cmegroup.com. Thank you for your consideration.

Sincerely,



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