ICE FUTURES U.S.
55 East 52nd Street
New York, NY 10055

BY ELECTRONIC TRANSMISSION

Submission No. 22-73
April 18, 2022

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to ICE Futures U.S. Rules 6.13 and 6.29 and Guidance on Position Limits FAQ and Related Amendments - Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6(a)

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission ("CFTC" or "Commission") Regulation 40.6(a), ICE Futures U.S., Inc. ("Exchange") hereby certifies amendments to Exchange Rules 6.13 and 6.29 and the Guidance on Position Limits FAQ, as set forth in Exhibits A, B, and C, respectively. The amendments to the Exchange Rules 6.13 and 6.29 and the Guidance on Position Limits FAQ allow for the Exchange's recognition of financial distress positions and clarify and supplement the Exchange rules and FAQ to align the rules with the requirements of Part 150 of the Commission's Regulations.

Amendments to Exchange Rule 6.13 (Exhibit A)

Exchange Rule 6.13(c) provides descriptions of the circumstances which apply to the exceptions to the Exchange-set position limits. The amendments in Exhibit A provide the circumstances relevant to the Exchange's recognition of positions held pursuant to financial distress circumstances, or those circumstances where, for example, a market participant has taken on the positions and associated risk of another market participant during a potential default or bankruptcy situation. The amendments to Exchange Rule 6.13 allow an exemption based on financial distress circumstances to be granted retroactively, in certain instances, similar to the treatment of sudden or unforeseen increases to bona fide hedging needs. Specifically, in the event any Person exceeds its position limit such Person shall not be considered in violation of the Rules provided that such person requests an exemption to hold such increased position within one business day, but no later than five business days, in each case following the day on which the position limit was exceeded and provided further that such exemption is granted by the Exchange. The amendments to (c)(ii) allow for such circumstances to include financial distress circumstances described in the Exchange Rule 6.29 (Exhibit B) for commodities subject to position limits under CFTC Regulation 150.2 for positions up to, but not in excess of, the applicable federal position limit. Further, under the amendments to (c)(iii), for commodities not subject to position limits under CFTC Regulation 150.2, the overage is based on financial distress circumstances described in Exchange Rule 6.29. Lastly, the Exchange certifies conforming amendments to the text of Exchange Rule 6.13 to align the rule with the Exchange's rulebook.

Amendments to Exchange Rule 6.29 (Exhibit B)

Exchange Rule 6.29 sets forth the recognized exemptions from Exchange-set position limits and the process to obtain such exemptions. Amendments to Exchange Rule 6.29 allow for the Exchange's recognition of financial distress positions: for Commodities not subject to position limits under CFTC Regulation 150.2 or for those Commodities that are subject to position limits under CFTC Regulation 150.2 and CFTC Regulation 150.3(a)(2). Further amendments to paragraph (g) of Exchange Rule 6.29 provide the requirements of such exemptions. Specifically, exemptions may be requested for positions held by an applicant as a result of the financial distress of another market participant: (i) for commodities not subject to position limits under CFTC Regulation 150.2, (ii) for commodities subject to federal position limits under CFTC Regulation 150.2 for quantities up to, but not exceeding, the applicable federal limit, or (iii) for commodities subject to federal position limits under CFTC Regulation 150.2 for quantities in excess of the applicable federal limit, provided, in such circumstances under (iii), the exemption has been approved by the Commission pursuant to CFTC Regulation 150.3(a)(3) and evidence of such approval has been furnished to the Exchange.

Additional amendments to Exchange Rule 6.29 provide clarification on the process for obtaining an exemption from the Exchange's position limits. Specifically, the amendments to Rule 6.29(a) provide that bona fide hedge and spread exemptions must conform to Appendices A and G to Part 150 of the CFTC Regulations, which describe permissible bona fide hedge and spread exemptions, respectively. Paragraph (b) to Rule 6.29 provides the specific application requirements for the Exchange's exemptions. Amendments to 6.29(b)(i) clarify that an applicant must describe any "enumerated" bona fide hedges sought that meet the requirements of CFTC Regulation 150.1. Lastly, amendments to Rule 6.29(d)(i) make clear that a request for a non-enumerated bona fide hedge exemption must conform to the requirements of both CFTC Regulation 150.1 and 150.9.

Amendments to the Exchange's Guidance on Position Limits FAQ (Exhibit C)

The Exchange's Guidance on Position Limits FAQ provide guidance on the Exchange's position limits, accountability levels, and exemptions from position limits. Amendments to the Exchange's Guidance on Position Limits FAQ provide that on a case-by-case basis, and depending on the facts and circumstances involved, the Exchange may approve an exemption based on positions held by an applicant pursuant to the financial distress of another market participant. The amendments to the FAQ align the document with the amendments described herein which provide for the Exchange's recognition of financial distress positions.

Amendments to FAQs #5-6 provide additional guidance related to identifying core referenced futures contracts and referenced contracts that are subject to CFTC Regulation 150.2 (FAQ #5) and position aggregation for referenced contracts (FAQ #6). The amendments to FAQ #5 correct the terminology used to identify "core referenced futures contracts" and "referenced contracts" in the FAQ and add a citation to CFTC Regulation 150.1, which provides the definition of such contracts. Additionally, amendments to FAQ #6 remove the limitation of the FAQ to solely energy contracts and instead clarify that the "Exchange aggregates (i.e. combines and nets) positions in certain contracts with positions in other contracts on a positive or negative basis." Corresponding amendments to the broader document make clear that the position aggregation guidance provided in FAQ #6 is applicable to all Exchange futures contracts. Lastly, amendments to the FAQ align the section titled "Exemption from Position Limits" with the amendments to Exchange Rule 6.29 noted above and which provide enumerated bona fide hedge exemptions must conform to Appendix A to Part 150 of the CFTC Regulations and spread positions must conform to CFTC Regulation 150.1 and Appendix G to Part 150 of the CFTC Regulations.

The Exchange intends to implement the amendments to Exchange Rules 6.13 and 6.29 and the Guidance on Position Limits FAQ on May 3, 2022, or such other date as the Exchange may determine, which shall be no sooner than 10 business days after receipt of this submission by the Commission.

Certifications

The Exchange certifies that the amendments to Exchange Rules 6.13 and 6.29 and the Exchange's Guidance on Position Limits FAQ comply with the requirements of the Act and the rules and regulations promulgated thereunder. The Exchange has reviewed the designated contract market core principles ("Core Principles") as set forth in the Act and has determined that the amendments comply with the following relevant Core Principles:

COMPLIANCE WITH RULES

The amendments to Exchange Rules 6.13 and 6.29 and Guidance on Position Limits FAQ are set forth in the Exchange Rulebook and in the FAQ and will be enforced by the Exchange, in compliance with Core Principle 2 and CFTC Regulation 38.150(a)(2), which expressly provides that a board of trade shall establish, monitor, and enforce compliance with the rules of the contract market. The amendments to the FAQ are provided to give market participants updated guidance on the requirements related to the Exchange's position limits, accountability levels, and position limit exemptions. The guidance included in the FAQ is intended to assist market participants in remaining in compliance with Exchange Rules, including Rule 6.29.

CONTRACTS NOT READILY SUBJECT TO MANIPULATION

The Exchange's futures and option on futures contracts are not readily subject to manipulation as they are based on established and liquid underlying cash markets and derivative contracts traded at other designated contract markets, in compliance with CFTC Regulation 38.200. In addition, trading of the contracts will be monitored by the Market Regulation Department.

POSITION LIMITS OR ACCOUNTABILITY

Positions in the Exchange's futures and option on futures contracts will continue to be subject to position limits and position accountability levels set by the Exchange, in compliance with Core

Principle 5 and CFTC Regulation 38.300, which expressly provides that a board trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators and such position limits shall be set at a level not higher than the position limitation established by the Commission. Generally, the Exchange's position limits are based upon the deliverable supply in the cash market or position limits at other designated contract markets and have been deemed appropriate by the Commission in its rulemaking. All positions held in options on futures markets are aggregated with the relevant futures contracts underlying the option on futures for purposes of position limits and position accountability levels.

AVAILABILITY OF GENERAL INFORMATION

The Exchange is publicly posting the amended Exchange Rules 6.13 and 6.29 and Guidance on Position Limits FAQ to ensure that market participants have updated guidance and information related to the Exchange's position limits, accountability levels, and exemptions from position limits, in furtherance of CFTC Regulation 38.401.

PROTECTION OF MARKETS AND MARKET PARTICIPANTS

The amendments to the above-referenced Exchange Rules and FAQ comply with Core Principle 12 and CFTC Regulation 38.650, as the rules are provided in furtherance of the Exchange's promotion of fair and equitable trading and to protect markets and market participants from abusive practices by any market participant and their agents.

FINANCIAL INTEGRITY OF CONTRACTS

The Exchange's futures and option on futures contracts will continue to be cleared by ICE Clear U.S. or ICE Clear Europe, registered derivatives clearing organizations subject to Commission regulation, and carried by registered futures commission merchants qualified to handle customer business.

The Exchange is not aware of any substantive opposing views expressed by members or others with respect to the amended Exchange Rules 6.13 and 6.29 and Guidance on Position Limits FAQ and certifies that, concurrent with this filing, a copy of this submission was posted on the Exchange's website and may be accessed at (https://www.theice.com/futures-us/regulation).

If you have any questions or need further information, please contact me at 312-836-6745 or at patrick.swartzer@ice.com.

Sincerely,

Patrick Swartzer
Director
Market Regulation

Enc.
cc: Division of Market Oversight

New York Regional Office

EXHIBIT A

(Additions are underlined and deletions are [~~struck through~~].)

Rule 6.13. Enforcement of Position Limits and Position Accountability Levels

(a) No Person may for itself or any Customer maintain a combination of Futures Contracts and Futures Equivalent Contracts which is, or which when aggregated in accordance with Rule 6.12 is, in excess of the limits established by this Chapter. For the purpose of the Rules contained in this Chapter:

(i) the futures equivalent of each Option Contract is the delta ratio published daily by the Exchange;

(ii) a long Futures Contract, a long Call Option and a short Put Option are on the same side of the market; similarly, a short Futures Contract, a short Call Option and a long Put Option are on the same side of the market;

(iii) in calculating a Futures Equivalent Contract position, all serial and regular Options for the Underlying Futures Contract shall be combined.

(iv) if 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 limit;

(v) in accordance with CFTC Regulation 150.1, paragraph (a)(iv) of this Rule shall not apply to contracts subject to federal limits under CFTC Regulation 150.2 on the last trading day for the corresponding futures contract.

(vi) 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.

(b) In the event the Exchange learns that any Person maintains positions in accounts with more than one (1) Clearing Member such that the aggregate position in all such accounts exceeds the position limits or position accountability levels established by this Chapter, the Exchange may notify all Clearing Members maintaining or carrying such accounts of the total positions of such accounts. Such notice may also 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, unless as provided by paragraph (c) below, a request for an exemption is made and granted by the Exchange pursuant to this Chapter. Any Clearing Member receiving such notice shall immediately take such steps as may be necessary to liquidate such number of Commodity Contracts as shall be determined by the Exchange in order to cause the aggregate positions of such accounts at such Clearing Members to comply with the position limits and position accountability levels established by this Chapter. Notwithstanding the foregoing, the Clearing Members may reduce the positions of such accounts by a different number of Commodity Contracts so long as after all reductions have been accomplished at all Clearing Members carrying such accounts, the positions at all such Clearing Members complies with the position limits and position accountability levels established by this Chapter.

(c) In the event any Person exceeds its position limit such Person shall not be considered in violation of the Rules provided that such person requests an exemption to hold such increased position within one (1) Business Day, but no later than five (5) Business Days, in each case following the day on which the position limit was exceeded and provided further that such exemption is granted by the Exchange, subject to the following provisions:

(i) For Commodity Contracts subject to <u>position limits under</u> CFTC Regulation 150.2, the overage is tied to sudden unforeseen increases in its bona fide hedging needs, and such Person provides a detailed explanation of the circumstances warranting the sudden or unforeseen increases to its bona fide hedging needs, subject to CFTC Regulations 150.5 and 150.9, where applicable<u>, and described in Exchange Rule 6.29</u>;

(ii) For Commodities subject to position limits under CFTC Regulation 150.2, the overage is tied bona fide hedging or risk management needs<u>, or based on financial distress circumstances described in Exchange Rule 6.29,</u> for positions up to, but not in excess of, the applicable federal position limit; or

(iii) For Commodities not subject to position limits under CFTC Regulation 150.2, the overage is tied to bona fide hedging, spread, or risk management position needs<u>, or based on financial distress circumstances described by the applicant pursuant to Exchange Rule 6.29 and CFTC Regulation 150.3(a)(3), where applicable</u>; and

(iv) If an application filed pursuant to this paragraph is denied, the applicant must bring its position within the Exchange's speculative position limits within a commercially reasonable time, as determined by the Exchange.

(d) Subject to the foregoing provisions of this Rule, in the event that a Person's position exceeds the position limits or position accountability levels established by this Chapter or ordered by the Exchange such Person shall liquidate such number of Contracts as the Exchange shall direct in order to eliminate the excess within such time as the Exchange may prescribe and shall report to the Exchange when such liquidations have been completed. If a Person fails to liquidate Contracts within the time prescribed by the Exchange, then, in addition to any other actions the Exchange may take, the Exchange may take such steps as it may deem necessary or appropriate to liquidate such Contracts on behalf and at the expense of such Person to the extent necessary to eliminate such excess. Without limiting the generality of the foregoing, if such Person is a Clearing Member, the Exchange may direct the Clearing Organization to effect such liquidation in accordance with the Clearing Organization Rules. In addition, the Exchange in its discretion may require any Clearing Member carrying an account for such Person to obtain and hold additional original Margin from such Person in such amount and form and by such time as the Exchange shall specify until such excess has been eliminated.

[REMAINDER OF RULE UNCHANGED]

EXHIBIT B

(Additions are underlined and deletions are [~~struck through~~].)

Rule 6.29. Exemptions

(a) The position limits for Exchange Futures and Options Contracts specified in this Chapter shall not apply to:

(i) enumerated bona fide hedging positions (as listed in Appendix A to Part 150 of the CFTC Regulations) or non-enumerated hedging positions which are otherwise determined by the Exchange to be consistent with the purposes of hedging, as defined in and subject to CFTC Regulations 150.1 and 150.3(a)(1)[~~(i)~~], and are approved in accordance with this Rule;

(ii) spread positions, as defined in CFTC Regulation 150.1 and consistent with Appendix G to Part 150 of the CFTC Regulations; [~~and~~]

(iii) risk management positions: (A) for [~~excluded commodities~~]Commodities not subject to position limits under CFTC Regulation 150.2 or (B) beginning January 1, 2023, for those commodities that are subject to federal position limits under CFTC Regulation 150.2, for quantities up to, but not exceeding, the applicable federal position limit; and

(iv) financial distress positions: (A) for Commodities not subject to position limits under CFTC Regulation 150.2 or (B) for those Commodities that are subject to federal position limits under CFTC Regulation 150.2 and CFTC Regulation 150.3(a)(3).

(b) To be eligible for an exemption under this Rule, a Person seeking the exemption must submit to the Exchange a written request, in the form provided by the Exchange, which shall include:

(i) a description of the exemption sought, including whether the exemption is for an enumerated bona fide hedging transactions or positions as defined in CFTC Regulation 150.1 (bona fide hedging transaction or position), non-enumerated bona fide hedging transactions or positions, spread positions, or risk management positions;

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(d) Hedge Exemptions

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(ii) Requests for non-enumerated bona fide hedge exemptions must include information that demonstrates the positions are consistent with bona fide hedging strategies and the requirements of CFTC Regulations 150.1 and 150.9.

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(g) Financial Distress Exemptions

Exemptions may be requested for positions held by the applicant as a result of the *financial distress* of another market participant: (i) for commodities not subject to position limits under CFTC Regulation 150.2, (ii) for commodities subject to federal position limits under CFTC Regulation 150.2 for quantities up to, but not exceeding, the applicable federal limit, or (iii) for commodities subject to federal position limits under CFTC Regulation 150.2 for quantities in excess of the applicable federal limit, provided, in such circumstances under (iii), the exemption has been approved by the Commission pursuant to CFTC Regulation 150.3(a)(3) and evidence of such approval has been furnished to the Exchange.

[REMAINDER OF RULE UNCHANGED]

EXHIBIT C

(Additions are underlined and deletions are [~~struck through~~].)

Guidance on Position Limits

[~~January 2022~~] May 2022

Guidance on Position Limits

The ICE Futures U.S. ("Exchange") Market Regulation Department ("MRD") is issuing the following guidance on the Exchange rules pertaining to position limits and position accountability levels. Note that the Rules should always be consulted in conjunction with any guidance document and supersede any information in this guidance document.

Position Limits and Position Accountability Levels

Position limits are levels that may not be exceeded on an intraday or end-of-day basis unless an exemption has been obtained from the MRD. If a position limit is exceeded without an exemption, it is considered to be a violation of Exchange Rule 6.13 or 6.20.[1]

Position accountability levels may be exceeded without an exemption and will not be deemed a violation of Rule 6.13. Market participants who hold a position in excess of an accountability level may be subject to a position accountability review and asked by the MRD to provide information regarding the trading and/or hedging strategy and purpose underlying the position. In addition, Exchange rules provide that a market participant holding or controlling a position in excess of a position accountability level automatically consents to not increase further and to decrease those positions when so ordered by the MRD. Generally, a market participant will be contacted by the MRD to obtain information about the position before such instructions are issued.

Depending on the product, position limits or position accountability levels may be implemented during the following periods:

1. **Spot Month:** a period of days prior to the expiry of the front month contract, or, for physically delivered contracts, during the notice period or a defined period of time prior to expiry.
2. **Single Month:** any single contract month outside of the period the spot month position limit is in effect.
3. **All Months Combined:** net open positions held in all contract months of a product, including the spot month.

The dates on which spot month position limits are in effect vary by contract and market participants should reference the definitions provided for each product in Chapter 6 of the Exchange Rulebook. Additionally, the Exchange publishes a notice each month with the upcoming compliance dates for spot month position limits, which may be found at **https://www.theice.com/futures-us/notices**.

For position limits and position accountability levels, the Exchange aggregates (i.e. combines and nets) positions held in certain [~~energy~~]contracts with positions in other contracts on a positive or negative basis. The Exchange Position Limit Table indicates whether a contract has a positive or negative aggregate. Options positions are aggregated with the underlying futures contract on a futures-equivalent basis using the delta ratio published by the Exchange.

Certain energy contracts are defined as diminishing balance contracts. Generally, diminishing balance contracts are those where the final settlement price is based on the average of daily index prices during the contract month. For those contracts, the front month position decreases by a proportionate amount each day as the contract month nears expiration. Typically, the spot month position will begin to diminish prior to the date on which spot month position limits become effective.

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[1] There are limited circumstances when an exemption may be obtained after a position limit is exceeded. Further information is provided in the Exchange Rule 6.29 and the FAQs that follow.

Exchange position limits, accountability levels, aggregation codes, and diminishing balance identification can be found in the Exchange Position Limit Tables at:

https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Position_Limit_Accountability_and_Reportable_Levels.xls

https://www.theice.com/publicdocs/futures_us_reports/all/IFUS_Position_Limits_Accountability_and_Reportable_Levels_for_Non-Energy_Products.xlsx

Aggregation of Positions

Position limits and position accountability levels apply to all positions in accounts under common ownership (ownership interest of 10% or greater) or control. In addition, where two or more participants trade pursuant to an expressed or implied agreement, the participants' positions will be aggregated as if the positions were held by a single person.

As provided in Exchange Rule 6.12, certain exemptions from aggregation are available. To obtain an exemption, a written request should be submitted to the MRD detailing the circumstances supporting the exemption. If a market participant has filed an exemption from aggregation request with the CFTC, a copy should be provided to the Exchange.

Exemptions from Position Limits

As provided in Exchange Rule 6.29, the Exchange may grant position limit exemptions for positions held for the purposes of (i) enumerated bona fide hedging, as defined in CFTC Regulation 150.1 and listed in Appendix A to Part 150 of the CFTC Regulations, non-enumerated bona fide hedging strategies which are determined by the Exchange to be consistent with the purposes of hedging and are approved in accordance with Exchange rules and CFTC Regulations 150.1 and 150.9, where applicable, and pass-through swaps (as referenced in CFTC Regulation 150.1), (ii) spread positions as defined in CFTC Regulation 150.1 and Appendix G to CFTC Regulation Part 150, and (iii) risk management strategies. For those contracts subject to CFTC Regulation 150.2, exemptions from position limits for risk management strategies may only be provided for positions up to, but not in excess of, the applicable federal position limit, as defined in CFTC Regulation 150.2. On a case-by-case basis, and depending on the facts and circumstances involved, the Exchange may approve an exemption based on positions held by an applicant pursuant to the financial distress of another market participant. To request an exemption for contracts not subject to CFTC Regulation 150.2, an exemption request form should be completed and submitted to the MRD no later than five business days before the first day the position limit is in effect. To request an exemption for contracts subject to CFTC Regulation 150.2, a completed exemption request form must be submitted to and approved by the MRD prior to exceeding the applicable position limit. The form for requesting annual exemptions for energy, foreign exchange, and certain agricultural contracts may be found at the link below.

https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Position_Limit_Exemption_Form.doc

Additionally, Exchange Rule 6.20(c) allows for a Conditional Limit in the Henry Hub LD1 Fixed Price Future that allows a market participant to hold up to 40,000 contracts net long or short while position limits are in effect. The form for requesting a Conditional Limit for Henry Hub LD1 along with the corresponding requirements may be found at the link below.

https://www.theice.com/publicdocs/otc/advisory_notices/IFUS_Energy_Conditional_Limit_Form.doc

For exemption request forms for non-energy contracts, the MRD should be contacted using the information provided below.

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5. How is a market participant able to identify what Exchange contracts are deemed core referenced <u>futures contracts</u> or referenced [~~futures~~] contracts for federal position limits (150.2)?

Please refer to the Exchange's position limit Excel table(s) located on the **Market Resources** page, which identify whether a futures or options contract is deemed a <u>"</u>core<u> </u>[-]referenced <u>futures contract"</u> or "referenced [~~futures~~]contract<u>" (as defined in CFTC Regulation 150.1)</u> for federal position limits (CFTC Regulation 150.2). For the avoidance of doubt, contracts deemed referenced contracts will have position limits in effect during the same time periods as the core-referenced futures contracts, or as otherwise determined by the Exchange.

6. How are positions in multiple contracts aggregated for purposes of position limits?

For position limits, the Exchange aggregates (i.e., combines and nets) positions held in certain [~~energy~~] contracts with positions in other contracts on a positive or negative basis. The Exchange Position Limit Table indicates whether a contract has a positive or negative aggregate. Positions held in aggregated contracts are converted to a futures-equivalent position in the parent contract, which is identified by commodity code in the Position Limit Table. Options positions are aggregated with the underlying futures contract on a futures-equivalent basis using the delta ratio published by the Exchange and subsequently aggregated with positions held in the parent contract. Compliance with Exchange position limits for the aggregated position is assessed with relation to the parent contract's position limit.

Equivalent spot month position limits are provided as a courtesy in the Position Limit Table using the relevant commodity's contract size.

At this time, IFUS contracts subject to federal position limits will maintain the current aggregation as provided in the position limit table. Changes to position aggregation as a result of the new CFTC position limit regulations will become effective as of the CFTC compliance date of January 1, 2022.

[REMAINDER OF FAQ UNCHANGED]