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

BY ELECTRONIC TRANSMISSION

Submission No. 21-151
November 1, 2021

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. Position Limit and Exemption Rules 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 the Exchange Rules 6.13, 6.21, 6.23, and 6.29, and the Exchange's Guidance on Position Limits document, as set forth in Exhibits A, B, C, D, E, and F, respectively. The amendments adopt new rules to align existing Exchange rules with the requirements of new Part 150 of the Commission's Regulations. Additionally, related amendments to the Guidance on Position Limits document provide additional guidance and interpretations on the subject matter covered by the amendments to the Exchange rules, as discussed further below.

Amendments to Exchange Rule 6.13 (Exhibit A)

Amendments to paragraph (c) of Exchange Rule 6.13 make clear that retroactive exemptions are available for those contracts subject to federal position limits under CFTC Regulation 150.2, when the need for an exemption results from sudden, unforeseen increases in a market participant's bona fide hedging needs. Additionally, amendments to Exchange Rule 6.13 allow for similar, retroactive relief for contracts which are not subject to CFTC Regulation 150.2, when the need arises from a market participant's bona fide hedge, risk management, or spread position requirements. The latter amendments codify longstanding practice in relation to the Exchange's energy markets, for which a retroactive exemption may be given subject to the discretion of the Market Regulation Department and supported by the market participant's documentation related to spread and risk management positions. The Exchange intends to implement the changes to Exchange Rule 6.13 on January 1, 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.

Amendments to Exchange Rule 6.29 (Exhibit B)

Exchange Rule 6.29 governs exemptions from Exchange-set position limits and sets forth the recognized exemptions and the process to obtain exemptions. The amendments provided in Exhibit B align the rule with new Part 150 of the CFTC's Regulations. Specifically, the references in paragraph (a) of the rule to enumerated bona fide hedges are changed to refer to new Regulation 150.1 in place of former Regulation 1.3(z)(1). Further (and similar to the amendments to Rule 6.13), the amendments make clear that the availability of the risk management exemption for the Exchange's products, specifically: (i) for excluded commodities, risk management exemptions will continue to be available, and (ii) beginning January 1, 2023, for those commodities subject to federal position limits under Regulation 150.2, risk management exemptions will only be available for quantities up to, but not in excess of, the applicable federal position limit. Lastly, the amendments remove the distinction between legacy spread, straddle, and arbitrage exemptions, and instead classify these three exemption types solely as "spread" exemptions, which is consistent with new CFTC Regulation 150.3(a)(2).

Amendments to paragraphs (b) and (c) of Rule 6.29 provide additional flexibility for the Exchange's Market Regulation Department to process exemptions, by removing the requirement to process an exemption within five (5) business days of the submission of the required information and statements. Instead, the Exchange "will endeavor to" respond to the request within five days of the receipt of such materials, provided all the information is complete. As a result, the requests "should" be received by the Exchange no later than five (5) Business Days prior to the first (1st) day such position limits are in effect, however, the Exchange will continue to recognize any request for an exemption from position limits received after position limits are in effect. Additional amendments within paragraph (c) clarify that an approved exemption will remain in effect until the exemption's expiration date specified by the Exchange, a request for withdrawal is received by the Exchange, or the Exchange revokes, modifies or places further limitations thereon.

Additional amendments to new paragraph (d)(iii) provide the requirements for market participants seeking "pass-through swap" exemptions. A pass-through swap is a swap position entered into by one person for which the swap would qualify as a bona fide hedging transaction or position, as defined in CFTC Regulation 150.1, that is opposite another counterparty, typically a swap dealer or other sophisticated counterparty. In order to offset the risks stemming from such pass-through swaps, the counterparty may establish offsetting futures or options positions on the Exchange. The amendment allows the Exchange to recognize such futures and options positions established by the counterparty, which are intended to offset the risks of the pass-through swap, as justification for a bona fide hedge exemption. The new paragraph provides that the counterparty (the applicant requesting the exemption) must prove a close linkage between the over-the-counter market underlying the pass-through swap and the Exchange futures or options market for which the exemption is requested. Additionally, the applicant must provide a written representation that the pass-through swap qualifies as a bona fide hedging transaction, as defined in CFTC Regulation 150.1. The Exchange will honor the representation so long as the counterparty has relied on it in good faith and the counterparty does not possess information that would cause a reasonable person to question the accuracy of such representation. The Exchange intends to implement the changes to Exchange Rule 6.29 on January

1, 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. Relatedly, the Exchange has submitted additional changes to Exchange Rule 6.29 in a separate submission, which provide for the recognition of non-enumerated bona fide hedges for contracts subject to CFTC Regulation 150.2 (See *Exchange Submission No. 21-152*)

Amendments to Spot Month Position Limits for Certain Natural Gas and Oil Americas Contracts (Exhibit C)

a. Amendments to Aggregation Requirements and Position Limits for Same-Day Henry Futures and Options (Exhibit C)

The Exchange's Same-Day Henry Futures and Options contracts (collectively, "SDH") are referenced contracts, as defined in CFTC Regulation 150.1. Historically, positions held in the contracts have not been aggregated with Henry LD1 Fixed Price Future ("H") for position limit or position accountability purposes. Amendments to Resolution No. 2 to Chapter 18 and provided in Exhibit C align the aggregation requirements for SDH futures and options with the federal position limit regulations, which aggregate positions held in SDH with H futures and options.

For the SDH futures and options contracts, the Exchange initially set spot month position limit levels consistent with the NYMEX Henry Hub Natural Gas Futures ("NG") contract, from which the contracts derive their pricing, 4,000 ICE contracts (or 1,000 NG contracts). The amended spot month position limits provided in Exhibit C increase the limits to levels consistent with new CFTC Regulation 150.5, which allows for equivalent exchange-set position limits up to the levels designated by the Commission in Regulation 150.2. In this instance, the limits are equivalent to the 2,000-contract spot month position limit for the core-reference futures contract, NG. The amended limits are consistent with the H contract, for which positions will be aggregated for position limit purposes. The Exchange intends to implement the changes to the spot month position limits and aggregation requirements for SDH futures and options on January 1, 2022.

b. Implementation of Position Limits for Henry Penultimate Futures, Options, and Related Calendar Spread Futures and Options (Exhibit C)

The Henry Penultimate Fixed Price Future ("PHH") and Option on Henry Penultimate Fixed Price Future ("PHE") contracts are also referenced contracts, as defined in CFTC Regulation 150.1, and are subject to the federal position limit regime as a result.[1] Historically, the contracts have had a spot month position accountability level in lieu of a spot month position limit, however, effective January 1, 2022, the contracts will be aggregated for federal position limit purposes with positions held in H and subject to a federal spot month position limit. For similar reasons to those described in the preceding section, the Exchange provides amendments to Resolution No. 2 to Chapter 18 to align the aggregation requirements for PHH and PHE, and the various calendar spread futures and options contracts associated with such futures and options, with the federal position limit regulations to aggregate positions held in PHH and PHE,

[1] The Exchange lists multiple calendar spread futures and options that derive their pricing from the PHH and PHE contracts. A comprehensive list of the contracts affected is provided in Exhibit C.

and the related calendar spread futures and option on futures contracts, with those positions held in H for position limits and position accountability purposes, and to mirror such spot month position limit with the position limit of the H contract, 8,000 ICE contracts, or 2,000 NG contracts. The amendments which provide for the implementation of spot month position limits and the aggregation requirements for the various Henry penultimate futures and options contracts are provided in Exhibit C. The Exchange intends to implement the changes on January 1, 2022.

c. Reduction to Spot Month Position Limits for Certain Oil Americas Futures and Options (Exhibit C)

The Exchange currently lists 15 Oil Americas futures and options contracts that are defined as referenced contracts in CFTC Regulation 150.1, due to the contracts' reference to the NYMEX Light Sweet Crude Oil Futures ("CL"), NY Harbor ULSD Futures ("HO"), or RBOB Gasoline Futures ("RB") contracts, or other futures and options contracts that refer to those core-referenced futures contracts. The Exchange initially set spot month position limits for these contracts at 25% of the estimated deliverable supply for the products. However, the CFTC has codified lower spot month position limits for the CL, HO, and RB contracts of 6,000/5,000/4,000 contracts[2], 2,000 contracts, and 2,000 contracts, respectively. In the rulemaking, the CFTC prescribed that any referenced contracts may provide for a spot month position limit up to the levels codified by the CFTC in its rulemaking. Amendments to Resolution No. 2 to Chapter 19 reduce the spot month position limits for the products to levels equal to the speculative position limits provided in the rulemaking and which are consistent with CFTC Regulation 150.5.[3]

Historically, the contracts referencing CL, HO, or RB, or derivatives based on those contracts, have not been aggregated for position limit or position accountability purposes, however, effective January 1, 2022, all cash settled referenced contracts will be aggregated for federal position limit purposes based on their linkage to CL, HO, and RB, separately. Therefore, the Exchange is amending the aggregation requirements for the 15 contracts to be consistent with the requirements of the federal position limit regime and CFTC Regulation 150.5 by creating three groupings for the products based on their linkage to CL, HO, and RB. Based on this grouping, the Exchange will aggregate positions held in 11 futures and/or options contracts based on linkage to CL under the Exchange's Crude Outright – WTI Bullet Future ("WTB") contract. Based on the current aggregation requirements for the Exchange's Heating Oil and RBOB Gasoline futures and options contracts, the products are already separated into the desired groupings, however, additional Exchange products listed for trading that are referenced contracts, as defined in CFTC Regulation 150.1, will be grouped with the Heating Oil Diff – EU-Style Heating Oil vs Low Sulphur Gasoil Future ("EHL") for NY Harbor ULSD Futures and with Gasoline Diff – RBOB Gasoline 1-Month Calendar

[2] The CL contract has step-down spot month position limits. "Step-down spot month limits apply to positions net long or net short as follows: 6,000 contracts at the close of trading three business days prior to the last trading day of the contract; 5,000 contracts at the close of trading two business days prior to the last trading day of the contract; and 4,000 contracts at the close of trading one business day prior to the last trading day of the contract." *Position Limits for Derivatives*, 86 Fed. Reg. 3479 (January 14, 2021).

[3] *Position Limits for Derivatives*, 86 Fed. Reg. 3479-81 (January 14, 2021). (Appendix E to Part 150 provides the spot month and, where applicable, single month and all-months-combined position limits for core-referenced future contracts.)

Spread Future ("RCM") for RBOB Gasoline, the Exchange's sole referenced futures and options contracts in those product sets. The amendments to the spot month position limits and product aggregations are provided in Exhibit C. The Exchange intends to implement the changes on January 1, 2022.

Migration to Single Month and All-Months-Combined Position Accountability for FCOJ Futures and Options and Domestic Raw Sugar No. 16 Futures (Exhibits D and E)

FCOJ-A Futures and Options ("OJ") contracts currently have spot month, single month, and all-months-combined position limits of 300 contracts, 3,200 contracts, and 3,200 contracts net long or short. Similarly, Sugar No. 16 Futures ("SF") have single month and all-months-combined position limits of 1,000 contracts. Amendments to Exchange Rules 6.21 and 6.23, provided in Exhibits D and E, respectively, are consistent with CFTC Regulation 150.5 and provide for the implementation of position accountability levels for single and all-months-combined for OJ and SF in lieu of position limits. The position accountability rules establish a level which may be exceeded, but which requires the market participant, upon instruction from the Exchange, to cease increasing its position. They also obligate the market participant to reduce the position to the accountability level if directed to do so by the Exchange. The amendments to Exchange Rules 6.21 and 6.23 provide for single month and all-months-combined accountability levels for OJ of 2,500 contracts and 1,000 contracts for SF. The Exchange's other agricultural contracts have operated successfully under a position accountability regime for single month and all-months-combined position limits for a number of years and these changes will result in a consistent approach for the agricultural complex.

Additionally, the amendments establish a spot month position limit for the SF contract at a level consistent with the current single month limit, 1,000 contracts. The Exchange has set the spot month position limit be in effect from the opening of trading on the third-to-last business day of the expiring contract until the expiration of the contract. The Exchange intends to implement the amendments to the SF and OJ contracts on January 1, 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.

Addition of Referenced Contract Identifier in Exchange Position Limit Tables (Exhibit C)

To assist market participants in better identifying those contracts subject to CFTC Regulation 150.2, amendments provided in Exhibit C add an identifier to the Exchange Position Limits tables, which are provided on the Exchange's website. The identifier will designate a "Y" for those contracts subject to CFTC Regulation 150.2 and "N" for those contracts that are not.

Amendments to Guidance on Position Limits Document (Exhibit F)

Amendments to the Exchange's Guidance on Position Limits document provide guidance on the amendments noted above that are the result of the CFTC rulemaking. As such, Exhibit F provides various amendments to the document to include relevant information related to the Exchange's position limits and accountability levels, processes for obtaining relief from position limits, and guidance specific to position limits for core-referenced and referenced contracts. The amendments to the document mirror the amendments previously described above, however, the document goes further to provide answers to frequently asked questions and to those which the Exchange deems relevant for compliance with the Exchange's position limits. While certain of the FAQs are specific to the changes related to the rulemaking, many codify longstanding guidance that Market Regulation has offered to market participants over the years. The Exchange believes that the amendments to the document will aid the market in remaining in compliance with the Exchange's rules as participants navigate the new federal position limits regime.

Relatedly, the Exchange has submitted additional changes to Exchange Rule 6.29 in a separate submission, which provide for the recognition of non-enumerated bona fide hedges for contracts subject to CFTC Regulation 150.2 (See *Exchange Submission No. 21-152*), however, within this submission, the Exchange has provided for interpretations related to the recognition of such exemptions, which will not be effective until January 1, 2022, or until such time after the approval of the amendments to Exchange Rule 6.29 provided for in Exchange Submission No. 21-152.

Lastly, the Exchange certifies other amendments to the Exchange Rules and Guidance on Position Limits document, which are non-substantive in nature to align the rules and document with the related amendments.

Certifications

The Exchange certifies that the amendments to Exchange Rules 6.13, 6.21, 6.32, and 6.29, and the Exchange's Guidance on Position Limits document 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, 6.21, 6.23, and 6.29, and the Exchange's Guidance on Position Limits document, as well as, amended spot month position limits and accountability levels are set forth in the Exchange Rulebook and FAQ and will be enforced by the Exchange. The amendments to the Exchange's Guidance on Position Limits are provided to give market participants updated guidance on the requirements related to the Exchange's position limits, accountability levels, and position limits exemptions. The additional guidance included in the FAQ is intended to assist market participants in remaining in compliance with Exchange Rules, including Exchange Rules 6.13 and 6.29. In addition, trading of the relevant contracts is subject to all relevant Exchange rules which are enforced by the Market Regulation Department.

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, such 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 and Guidance on Position Limits document 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. The FAQ will also be available on the ICE Futures U.S. website.

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 and document 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. and 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, 6.21, 6.23, and 6.29, and the Exchange's Guidance on Position Limits document 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@theice.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.

All Persons are responsible for maintaining their position and their Customers' positions within the limits contained in this Chapter on both an intraday and end-of-day basis. If, however, a Person exceeds its position limit on any given Business Day due to changes in the deltas of the Options, or as the result of an Option assignment, the Person holding or controlling such position shall have one (1) Business Day to bring the position within the limits.

(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 due to (i) sudden unforeseen increases in its bona fide hedging needs, and/or (ii) for those commodities subject to position limits under CFTC Regulation 150.2, risk management needs for positions up to, but not in excess of, the federal position limit, and/or (iii) for those commodities not subject to position limits under CFTC Regulation 150.2, bona fide hedging, risk management or spread position needs, such Person shall not be considered in violation of the Rules provided that such Person requests an exemption to carry such increased position within one (1) Business Day [~~(unless the Market Surveillance Department has expressly approved a later filing which may not exceed~~], 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.

(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 [~~Rule 803of 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.

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) bona fide hedging positions as defined in [~~Section~~]CFTC Regulation 150.1 [~~1.3(z)(1) of the Regulations under the Act~~] or non-enumerated hedging positions which are otherwise determined by the Exchange to be consistent with the purposes of hedging, and are approved in accordance with this Rule, (ii) [~~arbitrage,~~]spread [~~or straddle~~]positions, and (iii) risk management positions: (A) for excluded commodities 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.[4]

(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 the following:

(i) a description of the size and nature of the proposed positions;

(ii) a statement that the Person seeking the exemption agrees to comply with whatever restrictions or limitations are imposed by the Exchange with regard to said positions;

(iii) a representation that any applicable Federal requirements relating to the proposed positions have been complied with and that any necessary approvals of the Commission have been obtained;

(iv) a statement that the Person seeking the exemption is in compliance with all other applicable Rules and requirements;

(v) a statement that the Person seeking the exemption agrees to submit immediately a supplemental statement to the Exchange explaining any change in circumstances affecting the positions;

(vi) a statement that such positions will be initiated and liquidated in an orderly manner;

(vii) such further information as the Exchange may request.

Within five (5) Business Days of the submission of the required information and statements, the Exchange [~~shall~~] will endeavor to respond to the request indicating whether the exemption has been granted and the limitations placed thereon. An exemption will remain in full force and effect until (1) the exemption's expiration date provided by the Exchange, ([~~1~~]2) a request for withdrawal is received by the Exchange; or ([~~2~~]3) the Exchange revokes, modifies or places further limitations thereon.

(c) Written requests for exemptions to the position limits specified in this Chapter **[**~~must~~]should be received by the Exchange no later than five (5**)** Business Days prior to the first (1st) day such position limits are in effect. Failure to file a position limit exemption request on a timely basis [~~shall~~] may subject the Person seeking an exemption to disciplinary action pursuant to the Rules.

(d) Hedge Exemptions

(i) Requests for bona fide hedge exemptions must include information that demonstrates that the proposed positions are bona fide hedging positions, as defined in CFTC Regulation 150.1.

(ii) Requests for non-enumerated hedge exemptions must include information that demonstrates the positions are consistent with bona fide hedging[~~risk management~~] strategies, which are consistent with [~~for the relevant commercial market; *provided, however,* that non-enumerated hedge exemptions pertaining to the Cotton No. 2 contract must comply with~~] the requirements of CFTC Regulation [~~1.3(z)(3)~~]150.1.

(iii) Pass-Through Swap

When applying for a pass-through swap as defined in CFTC Regulation 150.1, the Person seeking such exemption must provide an explanation of the positions in the underlying cash market, related cash market, or related over-the-counter market where there exists a close linkage between the Futures or Options market and the underlying market in question, and a written representation that the pass-through swap qualifies as a bona fide hedging transaction as defined in CFTC Regulation 150.1. The Person may rely in good faith on such written representation, unless the Person has information that would cause a reasonable person to question the accuracy of the representation.

(e) [~~Arbitrage,~~]Spread[~~ and Straddle~~] Exemptions

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[4] Additional amendments to Exchange Rule 6.29(a) and 6.29(d)(ii) related to the recognition of non-enumerated bona fide hedge exemptions pursuant to CFTC Regulation 150.9 have been voluntarily submitted for review and approval. (See *Exchange Submission No. 21-152*)

(i) Exemptions may be granted for strategies consistent with the definition of *spread transaction* in CFTC Regulation 150.1 and/or, for those commodities subject to federal position limits under CFTC Regulation 150.2, for spread positions and strategies consistent with CFTC Regulation 150.3(a)(2)[~~arbitrage, intercommodity spread, intracommodity spread, and eligible option/option or option/futures spread or straddle positions~~].

([~~ii~~]A) When applying for a cash and carry exemption, the Person seeking the exemption must provide the cost of carrying the physical commodity, the minimum spread differential at which it will enter into a straddle position in order to obtain profit, and the quantity of stocks currently owned in Exchange licensed warehouses or tank facilities.

([~~iii~~]B) When granted a cash and carry exemption, the Person receiving the exemption shall agree that, (1) before the price of the nearby contract month rises to a premium to the second (2^{nd}) contract month, it will liquidate all long positions in the nearby contract month.

([~~iv~~]C) Block Trades may not be used to establish positions upon which a cash and carry exemption request is based.

(f) Risk Management Exemptions

When applying for a risk management exemption, the Person seeking such exemption must provide an explanation of the positions in the underlying cash market, related cash market, or related over-the-counter market where there exists a close linkage between the Futures or Options market and the underlying market in question, or, where applicable, an explanation of the corresponding commodity index being replicated.

EXHIBIT C

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

Position Limit/Position Accountability Table

Rule	Contract Name	Commodity Code	Contract Size	Unit of Trading	Spot Month Limit	Spot Month Conditional Limit	Spot Month Accountability Level	Single Month Accountability Level	All Month Accountability Level	Aggregate 1 (Positive Correlation)	CFTC Referenced Contract
18.A.139	Henry LD1 Fixed Price Future	H	2,500	MMBtu	8,000	40,000		24,000	48,000	H	Y
18.A.172	Henry LD1 Fixed Price Future 25K	HHL	25,000	MMBtu	800	4,000		2,400	4,800	H	Y
18.E.147	Henry Cal 1X Fixed Price Option	HHA	2,500	MMBtu	8,000	40,000		24,000	48,000	H	Y
18.A.140	Henry LD1 Same Day Fixed Price Future	SDH	2,500	MMBtu	[~~4,000~~] 8,000			24,000	48,000	[~~SDH~~] H	Y
18.E.002	Option on Henry LD1 Same Day Fixed Price Future	SDH	2,500	MMBtu	[~~4,000~~] 8,000			24,000	48,000	[~~SDH~~] H	Y
18.A.145	Henry Penultimate 1-Month Calendar Spread Future	HHM	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.008	Calendar Spread Option on Henry Penultimate 1-Month Calendar Spread Future	HHM	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.A.146	Henry Penultimate 3-Month Calendar Spread Future	HMT	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.009	Calendar Spread Option on Henry Penultimate 3-Month Calendar Spread Future	HMT	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.A.177	Henry Penultimate 4-Month Calendar Spread Future	HHR	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.068	Calendar Spread Option on Henry Penultimate 4-Month Calendar Spread Future	HHR	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.A.178	Henry Penultimate 5-Month Calendar Spread Future	HHV	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.069	Calendar Spread Option on Henry Penultimate 5-Month Calendar Spread Future	HHV	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y

18.A.147	Henry Penultimate 6-Month Calendar Spread Future	HMX	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.010	Calendar Spread Option on Henry Penultimate 6-Month Calendar Spread Future	HMX	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.A.142	Henry Penultimate Fixed Price Future	PHH	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.E.004	Option on Henry Penultimate Fixed Price Future	PHE	2,500	MMBtu	[~~NA~~] 8,000		[~~4,000~~]	24,000	48,000	[~~PHH~~] H	Y
18.A.173	Henry Penultimate Fixed Price Future 25K	HHP	25,000	MMBtu	[~~NA~~] 800		[~~400~~]	2,400	4,800	[~~PHH~~] H	Y
18.E.063	Option on Henry Penultimate Fixed Price Future 25K	HHP	25,000	MMBtu	[~~NA~~] 800		[~~400~~]	2,400	4,800	[~~PHH~~] H	Y
19.C.98	Heating Oil Diff – EU-Style Heating Oil vs Low Sulphur Gasoil Future	EHL	1,000	barrels	[~~2,900~~] 2,000			[~~2,900~~] 2,000	[~~2,900~~] 2,000	EHL	Y
19.F.20	Heating Oil Diff – EU-Style Heating Oil vs Low Sulphur Gasoil Option	EHL	1,000	barrels	[~~2,900~~] 2,000			[~~2,900~~] 2,000	[~~2,900~~] 2,000	EHL	Y
19.C.86	Gasoline Diff – RBOB Gasoline 1-Month Calendar Spread Future	RCM	1,000	barrels	[~~6,800~~] 2,000			[~~6,800~~] 2,000	[~~6,800~~] 2,000	RCM	Y
19.F.25	Gasoline Diff – RBOB Gasoline 1-Month Calendar Spread Option	RCM	1,000	barrels	[~~6,800~~] 2,000			[~~6,800~~] 2,000	[~~6,800~~] 2,000	RCM	Y
19.C.100	Daily WTI 1-Month Calendar Spread Future	DWO	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~DWO~~] WTB	Y
19.F.23	Daily WTI 1-Month Calendar Spread Option	DWO	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~DWO~~] WTB	Y
19.A.27	Crude Outright – Daily EU-Style WTI Future	TDE	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TDE~~] WTB	Y
19.F.14	Daily EU-Style WTI Option	TDE	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TDE~~] WTB	Y
19.C.45	Crude Diff – WTI 1-Month Calendar Spread Future	TIA	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TIA~~] WTB	Y
19.F.1	Crude Diff – WTI 1-Month Calendar Spread Option	TIA	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TIA~~] WTB	Y
19.C.46	Crude Diff – WTI 12-Month Calendar Spread Future	TIZ	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TIZ~~] WTB	Y
19.F.13	Crude Diff – WTI 12-Month Calendar Spread Option	TIZ	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	[~~TIZ~~] WTB	Y
19.A.7	Crude Outright – WTI Bullet Future	WTB	1,000	barrels	[~~10,400~~] 6,000/5,000/4,000			[~~10,400~~] 6,000/5,000/4,000	[~~10,400~~] 6,000/5,000/4,000	WTB	Y
19.A.9	Crude Outright – EU-Style WTI Future	WUL	1,000	barrels	[~~10,400~~] 6,000/5,000			[~~10,400~~] 6,000/5,000	[~~10,400~~] 6,000/5,000	[~~WUL~~] WTB	Y

19.F.16	Crude Outright – EU-Style WTI Option	WUL	1,000	barrels	[~~10,400~~] 6,000/5,000			[~~10,400~~] 6,000/5,000	[~~10,400~~] 6,000/5,000	[~~WUL~~] WTB	Y

			Position Limits				Position Accountability (3)			Reportable Levels		CFTC Referenced Contract
Product Category	**Contract Name**	**Code**	Spot Month/Notice Period	Single Month	All Months	Exchange Rule	Single Month	All Months	Exchange Rule	# Contracts	Exchange Rule	
Agriculture	Cocoa	CC	1,000(1)			6.17	6,000(2)	6,000(2)	6.17	50	6.15	Y
	Cotton	CT	300(1)	5,000(2)	5,000(2)	6.19				100	6.15	Y
	Coffee	KC	500(1)			6.18	5,000(2)	5,000(2)	6.18	50	6.15	Y
	FCOJ-A	OJ	300(1)	[~~3,200(2)~~]	[~~3,200(2)~~]	6.21	2,500	2,500	6.21	50	6.15	Y
	Sugar #11	SB	5,000(1)			6.22	10,000(2)	15,000(2)	6.22	500	6.15	Y
	Sugar #16	SF	1,000	[~~1,000~~]	[~~1,000~~]	6.23	1,000	1,000		100	6.15	Y
Precious Metals	Mini Gold	YG	4,000(1)	4,000	6,000	6.26				200	6.15	Y
	Mini Silver	YI	1,500(1)	1,500	3,000	6.26				150	6.15	Y
	100 oz. Gold	ZG	3,000(1)	6,000	6,000	6.26				200	6.15	Y
	5000 oz. Silver	ZI	1,500(1)	6,000	6,000	6.26				150	6.15	Y

EXHIBIT D

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

Rule 6.21. Position Limits and Position Accountability for FCOJ Contracts

~~(a)~~ [~~Subject to the exceptions contained in this Chapter, the limit on the maximum net long or net short position which any one (1) Person may hold or control in FCOJ Futures Contracts and Futures Equivalent Contracts is:~~

~~(i) three thousand two hundred (3,200) in any one (1) month or in all months combined.~~

~~In addition, the maximum net long or net short position that any one (1) Person may hold or control is three hundred (300) Exchange Futures Contracts for any month for which delivery notices have been or may be issued.~~

~~(b) For purposes of this Rule, Cash-Settled FCOJ Futures Contracts shall be: (i) deemed to be one-tenth of an FCOJ Futures Contract; and (ii) aggregated with FCOJ-A Futures and Options contract positions if such positions are on the same side of the market. There shall be no netting between Cash-Settled FCOJ positions and FCOJ-A positions for position limit purposes.~~]

(a) A Person holding or controlling two thousand five hundred (2,500) or more Exchange Futures Contracts and Futures Equivalent Contracts net long or net short in any single FCOJ month or in all FCOJ months combined:

(i) automatically consents not to increase further and automatically consents to decrease those positions when so ordered by the Exchange acting in its own discretion; and

(ii) shall provide, in a timely manner, information on the nature of that Person's related cash, Exchange Futures and Options Contracts positions, trading strategy and/or hedging strategy. Nothing in this Rule limits the authority of the Exchange to take action under Rules 6.11, 6.12 and 6.13 or to request and collect any information regarding that Person's related cash and Exchange Futures and Options Contracts positions.

(b) Subject to the exceptions contained in this Chapter, the maximum net long or net short position which any one (1) Person may hold or control in the FCOJ Contract is three hundred (300) Exchange Futures Contracts for any month for which delivery notices have or may be issued.

EXHIBIT E

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

Rule 6.23. Position Limits and Position Accountability for Domestic Raw Sugar No. 16 Contracts

~~(a)~~ [~~Subject to the exceptions contained in this Chapter, the maximum net long or net short position which any one (1) Person may hold or control in the Domestic Raw Sugar No. 16 Contracts is one thousand (1,000) Exchange Futures Contracts in any one (1) month or in all months combined.~~]

(a) A Person holding or controlling one thousand (1,000) or more Exchange Futures Contracts net long or net short in any single Domestic Raw Sugar No. 16 month or in all Domestic Raw Sugar No. 16 months combined:

(i) automatically consents not to increase further and automatically consents to decrease those positions when so ordered by the Exchange acting in its own discretion; and

(ii) shall provide, in a timely manner, information on the nature of that Person's related cash, Exchange Futures and Options Contracts positions, trading strategy and/or hedging strategy. Nothing in this Rule limits the authority of the Exchange to take action under Rules 6.11, 6.12 and 6.13 or to request and collect any information regarding that Person's related cash and Exchange Futures and Options Contracts positions.

(b) Subject to the exceptions contained in this Chapter, as of the opening of trading on the third-to-last Business Day of the expiring contract, the maximum position net long or net short which any one (1) Person may hold or control in an expiring Domestic Raw Sugar No. 16 Contract is one thousand (1,000) Exchange Futures Contracts.

EXHIBIT F

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

Guidance on Position Limits

[~~March 2018~~] January 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.[5]

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

[5] 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.

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.

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) bona fide hedging as defined [~~by the~~] in CFTC Regulation 150.1[~~ or~~], non-enumerated 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 Regulation 150.9, if necessary, and pass-through swaps, (ii) [~~arbitrage,~~]spread [~~or straddle strategies~~]positions, 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. To request an exemption, an exemption request form [~~must~~]should be completed and submitted to the MRD no later than five business days before the first day the position limit is in effect. The form for requesting exemptions for energy 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.

QUESTIONS

1. **Is it a violation of Exchange rules if a market participant exceeds position limits as a result of changes in option delta(s) or as a result of an option assignment?**

   The Exchange will allow a one-day grace period to bring a position within position limits in connection with position limit overages resulting from delta change(s) based on the price movement of the underlying futures contract or the assignment of an option position, provided the applicable futures equivalent position does not exceed position limits when evaluated under the previous business day's delta(s).

   For contracts subject to federal limits, this grace period does not apply on the last day of the spot month for the corresponding referenced futures contract for either changes in delta(s) or option assignments.

2. **If a market participant currently holds a position limit exemption, do they need to refile under the new rules, and if so, when?**

   Market participants currently holding a position limit exemption may continue to rely on that exemption until the expiration date noted in their approval letter. Market participants looking to hedge using strategies not previously allowed or approved by the Exchange must file a new position limit exemption application.

3. **Are position limits effective intraday?**

   Yes, any positions, including positions established intraday, in excess of those permitted under the rules are deemed to be position limit violations.

4. **What happens if a market participant 1) exceeds a position limit and does not qualify for an exemption or 2) reduces the elevated position (while limits are in effect) to at or below the applicable position limit, but does not apply for an exemption?**

   MRD would consider any of the above circumstances to be a violation of the Exchange's applicable position limit Rules. The Department will consider a number of factors in determining the appropriate regulatory action, including, but not limited to, the size of the position in excess of the limit, previous violations, length of the violation, the circumstances that resulted in the violation and profitability.

5. **How is a market participant able to identify what Exchange contracts are deemed core-referenced 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 core-referenced or referenced futures contract for federal position limits (CFTC Regulation 150.2).

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.

7. **What information is required to be provided to the Exchange to support a bona fide hedge exemption?**

The applicant must provide: (1) an explanation or description of the hedging strategy; (2) a statement that the strategy complies with the bona fide hedge definition requirements; and (3) the relevant information that shows why or how the strategy meets the bona fide hedge definition requirements.

8. **Is the fixed-price cash market information currently submitted on Form 304 to the Commission required to be submitted to the Exchange?**

Yes, the Commission requires the Exchange to collect month-by-month fixed-price cash market positions in cotton in connection with bona fide hedging applications at least annually. This information will be shared with the Commission upon request and, as a result, is not required to be submitted to the Commission by such market participants. The requirement to submit Unfixed-Price Cotton "On Call" data to the Commission under CFTC Part 19 still exists.

9. **What is an allowable retroactive exemption?**

There are certain sudden or unforeseen circumstances in which a market participant may have to exceed the speculative limit or the level of a previously granted exemption prior to filing for exemptive relief with the Exchange. In those circumstances, the market participant may apply for a retroactive exemption within five (5) business days after it established such position. The applicant, must include, in its filing a detailed explanation of the circumstances warranting the sudden or unforeseen increases to its bona fide hedging needs.

For contracts subject to CFTC Regulation 150.2, such retroactive exemptions are not available for spread exemptions or inadvertent overages and may only be provided for unforeseen increases in bona fide hedging and, for risk management needs for positions up to, but not in excess of the federal position limit defined in CFTC Regulation 150.2. If the retroactive exemption is requested due to unforeseen bona fide hedging needs subject to CFTC Regulation 150.9, an approval by the Exchange will be subject to a 2-day review period by the CFTC before being considered approved for purposes of federal position limits.

However, for contracts **not** subject to federal limits, the Exchange will continue to recognize retroactive exemptions for bona fide hedge, spread positions or risk management strategies, provided the applicant applies within the prescribed period noted above and such exemption is ultimately approved by the Exchange.

10. **What if the retroactive exemption is denied by the Exchange?**

If MRD ultimately denies the request for a retroactive exemption, the applicant must bring its position under the speculative limit within a commercially reasonable time and in an orderly manner that does not cause disruption to the market. The Exchange, in its discretion and based on the facts and circumstances, may determine whether to impose a position limit violation for any retroactive exemption request for Exchange-set limits that the Exchange ultimately denies.

In accordance with CFTC Rule 150.9, the CFTC has a 2-day review process for a request for a retroactive exemption during which they can deny the request.

11. May a market participant request a spread exemption related to positions held pursuant to an arbitrage strategy?

Yes, an arbitrage strategy that is carried out and executed *simultaneously* or *contemporaneously* in two steps would be considered an allowable spread exemption. If the Exchange approves such requested exemption, it should be noted that the size of each “leg” of the arbitrage would have to be similar in size and must represent a correlated market.

For example, positions held as a result of the purchase (sale) of an ICE Henry Hub futures contract and the simultaneous sale (purchase) of a NYMEX Natural Gas futures contract would be deemed an allowable spread position.

12. For what markets may a market participant request a risk management exemption?

The Exchange will recognize risk management exemptions for all futures or options contracts until January 1, 2023. After that date, the Exchange will not recognize risk management exemptions *above* the federal position limit levels prescribed in CFTC Regulation 150.2 for contracts subject to federal limits. A market participant could, if applicable, request a pass-through swap exemption from the Exchange, provided it complies with CFTC Regulations.

For futures or options contracts that are **not** subject to federal position limits, the Exchange will continue to recognize risk management exemptions. A market participant must file an application and receive approval from MRD on at least a yearly basis.

13. What documentation is required for a pass-through swap to qualify as a bona fide hedge?

The pass-through swap counterparty must receive from the bona fide hedging swap counterparty a “written representation” that the pass-through swap qualifies as a bona fide hedging transaction as defined in CFTC Regulation 150.1. The pass-through swap counterparty may rely in good faith on such written representation, unless the pass-through swap counterparty has information that would cause a reasonable person to question the accuracy of the representation. This written representation must be accessible and maintained in accordance with CFTC recordkeeping requirements.

Although the Exchange does not require a prescribed form or manner by which the pass-through swap counterparty obtains the written representation, the pass-through swap counterparty may not rely solely upon the fact that the counterparty is a commercial end user.

14. May a market participant request an exemption related to positions held pursuant to a non-enumerated bona fide hedge?

Yes, provided that the positions meet the definition of bona fide hedge in CFTC Regulation 150.1 and, for those contracts subject to federal position limits under CFTC Regulation 150.2, are requested in accordance with CFTC Regulation 150.9 and Exchange rules. Regulation 150.9 was intended to streamline the process by which non-enumerated bona fide hedge exemption applications are addressed. Once the Exchange receives a request for exemptive relief in accordance with CFTC Regulation 150.9, it will internally review the application, request additional information if needed and then determine whether to recognize and approve, partially-approve, or deny the non-enumerated bona fide hedging strategy.

For those contracts **not** subject to federal position limits, a market participant may request a non-enumerated bona fide hedge exemption from the Exchange, in accordance with Exchange Rule 6.29.

15. What information does the Exchange require in an application for a non-enumerated bona fide hedge exemption?

The requirements include, but are not limited to the following:

i. A description of the position in the commodity derivative contract for which the application is submitted (which would include the name of the underlying commodity and the position size);
ii. Information to demonstrate why the position satisfies CEA section 4a(c)(2) and the definition of bona fide hedging transaction or position in CFTC Regulation 150.1, and information to demonstrate why the position satisfies such requirements and definition;
iii. A statement concerning the maximum size of all gross positions in derivative contracts for which the application is submitted (in order to provide a view of the true footprint of the position in the market);
iv. Information regarding the applicant's activity in the cash markets for the commodity underlying the position for which the application is submitted; and
v. Any other information the Exchange requires, in its discretion, to enable the Exchange or the Commission to determine whether such position should be recognized as a bona fide hedge.

16. What's the Exchange's process once it approves a non-enumerated bona fide exemption?

For those contracts subject to federal position limits under CFTC Regulation 150.2, the Exchange will, in parallel, send the approval letter to both the market participant and the CFTC. At which point, the CFTC will have 10 business days (or 2 business days, if deemed a retroactive exemption associated with sudden or unforeseen increases in its bona fide hedging needs) to review the exemption.

For those contracts **not** subject to federal position limits, the exemption is effective at the time of approval by the Exchange.

17. Can a market participant exceed the speculative position limit once the Exchange approves an application for a non-enumerated bona fide hedge exemption, but before the 10-day (2-day) review period has lapsed?

The applicant may elect, at their own risk, to exceed the speculative limit(s) only *after* MRD notifies the applicant and Commission of MRD's approval of the application for purposes of Exchange-set speculative limits.

18. After the 10-day (2-day retroactive) review period has passed is the non-enumerated bona fide hedge exemption in effect?

Yes, provided the Commission does not notify the Exchange or applicant that the Commission has determined to deny, amend or "stay" the application during the review period.

19. **If an application for a non-enumerated bona fide exemption is denied by the Commission during the review period, will the applicant be in violation of Exchange position limit rules?**

    Any applicant that exceeds the speculative position limit before the Commission's 10-day review period ends, bears market risk for that position. As such, if the Commission denies the application, the applicant will be required to bring its position back into compliance with the position limits within a commercially reasonable amount of time, as determined by the Commission in consultation with MRD and the applicant.

    Although certain facts and circumstances may apply, MRD will generally not pursue an enforcement action against the applicant so long as the application was filed in good faith and the applicant brings its position into compliance within a commercially reasonable amount of time and in orderly manner that does not cause disruption to the market.

20. **Will applications for non-enumerated bona fide hedge exemptions have to go through the 10-day (2-day) review process each time the applicant files for relief?**

    The Commission's review and determination conducted under CFTC Regulation 150.9(e) is required only for **initial** applications for non-enumerated bona fide hedge exemptions, provided that the facts and circumstances underlying the original application approved by the Commission remain effective and there were no other material changes.

    Additionally, like any exemption, the applicant must submit and receive approval by MRD at least on an annual basis for the applicant to continue relying on such recognition for purposes of the non-enumerated bona fide exemption.

FOR MORE INFORMATION

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