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September 24, 2013

Chairman Gary Gensler  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, D.C. 20581

**Re: Position Limits Rule - Anticipatory Hedging**

CMC appreciates the opportunity to submit this letter as part of the CFTC's record with respect to further rulemaking on position limits. In particular, CMC is providing comment on the issue of anticipatory hedging, to help further inform the Commission as it continues work on a revised position limits rule.

CMC is a trade association that brings together producers, processors, merchants and commercial users of commodities, and commodity exchanges. CMC members include the complete spectrum of commercial end-users of all futures markets including energy and agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange and the New York Mercantile Exchange. CMC is well-positioned to provide the consensus views of commercial end-users of derivatives.

On the specific issue of anticipatory hedging, the goal of CMC is to ensure that its members are able to use derivatives markets to hedge economically-appropriate risks incurred in connection with their commercial operations. All CMC member firms depend upon the efficient and competitive functioning of the risk management products traded on U.S. exchanges and over-the-counter markets. CMC and its members support well-regulated markets, and while the financial crisis of 2008 had nothing to do with commodity markets, we recognize the need for the Dodd-Frank Act and support its goals.

Section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank") amended the Commodity Exchange Act (CEA) by, among other things, adding new a section (4a)(c)(2), which provided specific direction to the Commission to explicitly broaden the definition of *bona fide* hedging. Importantly, this statutory change not only essentially codified in substantial part the Commission's existing regulations with respect to *bona fide* hedging, but also expressly authorized incorporating anticipatory hedging by including the following language in appropriate places: ". . . or anticipates owning, producing, manufacturing, processing, or merchandising; . . ." to make it broader than the CEA's original 1.3(z). It also specifically adds the term "merchandising", a term absent from the CFTC's previous rule. CMC urges the Commission to ensure that commercial end-users are able to effectively and economically utilize derivatives markets to hedge risk, including anticipatory hedging.

The CFTC's November 18, 2011, final/interim rulemaking on Position Limits for Futures and Swaps (77 FR 71626), would have created an additional enumerated regulatory hedge exemption specifically for anticipated hedging activity. Though CMC believes that revisions and additions to the conditions for anticipatory hedging set forth in the vacated rule were necessary, CMC was - and is - supportive of the inclusion of an enumerated regulatory hedge exemption specifically for *bona fide* anticipatory hedging activity. Such an enumerated regulatory hedge exemption serves to meet the Commission's Congressionally-mandated policy goals of allowing *bona fide* hedging of risks incurred in connection with the operations of a physical commodity business. Not only does this type of regulation implement

the Congressionally-mandated changes to the concept of *bona fide* hedging; it would also expressly give regulatory certainty to commercial end-users to be able to access derivatives markets to hedge both actual and anticipated risks related to physical market activity.

CMC appreciates the Commission's consideration of this letter. Should you have questions regarding this topic, please contact CMC's President, Gregg Doud, at [Gregg.Doud@CommodityMkts.Org](mailto:Gregg.Doud@CommodityMkts.Org) or (202) 842-0400 ext. 101.

Sincerely,

A handwritten signature in black ink, appearing to read 'C.P. Carey', with a long, sweeping underline that extends to the right.

Charles P. Carey  
Chairman  
Commodity Markets Council

Cc: Commissioner Bart Chilton  
Commissioner Scott O'Malia  
Commissioner Mark Wetjen  
Eric Juzenas, Counsel to the Chairman  
Stephen Sherrod, Senior Economist, DMO