CFTC POSITION LIMITS FOR DERIVATIVES DECEMBER 2016 REPROPOSAL

OVERVIEW

For questions please contact Kevin Batteh or Kwon Park at (202) 547-3035.

On December 5, 2016, the Commodity Futures Trading Commission (CFTC or Commission) voted unanimously to approve the Position Limits for Derivatives re-proposal, as well as the Aggregation of Positions final rule. The position limits re-proposal comes in response to comments received from the December 2013 proposal (2013 Proposal) and the June 2016 supplemental proposal (2016 Supplemental). The comment period concludes 60 days after the re-proposal is published in the Federal Register.

Please click here for the Fact Sheet, and see below for a rule summary prepared by Delta Strategy Group.

KEY TAKEAWAYS

- The Commission proposed to delay compliance with any final rule until no earlier than January 3, 2018
- The position limits levels (see table below) are federal limits on speculative positions in 25 core physical commodity futures contracts and their "economically equivalent" futures, options, and swaps (collectively, "referenced contracts or RCs")
- The Commission is deferring action on cash-settled CME Class III Milk, CME Feeder Cattle, and CME Lean Hog contracts - three contracts that were included in previous proposals as RCs
- Exchanges retain the ability to adopt lower exchange-set limit levels than federal position limit levels
- Spot-month limits are based on 25% of estimated deliverable supply (DS) or at lower levels as recommended by an exchange; non-spot month limits are based on the 10, 2.5% formula applied to open interest in futures and swaps (10% for the first 25,000 contracts, and 2.5% thereafter)
- The only conditional spot-month (SM) exemption applies to natural gas; market participants are allowed to exceed the position limit if positions do not exceed 10,000 contracts (5x the initial SP limit of 2,000) and the person does not hold or control positions in the SM natural gas physical-delivery RC
- The *bona fide* hedging (BFH) definition includes enumerated BFH positions, certain cross-commodity hedges, and certain positions associated with the offset position in a commodity trade option; exchanges may grant exemptions for non-enumerated *bona fide* hedging positions, and certain anticipatory hedge and spread positions
- Position limit exemptions require submission of series '04 reports; Forms 204 and 304 have been revised, and Forms 504, 604, and 704 have been introduced
- Recordkeeping requirements in the re-proposal remain substantially the same as originally proposed
- The prudential condition of the five-day rule only applies to certain positions (pass-through swap offsets, anticipatory, and cross-commodity hedges); exchanges may waive the five-day rule on a case-by-case basis
- "Cash and carry" positions are not enumerated as BFH positions, but exchanges may grant cash and carry spreads if certain conditions are met
- The Commission reiterates its view that to satisfy the economically appropriate test and the change in value requirement, the purpose of a BFH position must be to offset price risks incidental to a commercial enterprise's cash operations

INITIAL POSITION LIMIT LEVELS – 25 REFERENCED CONTRACTS

Contract[1]	Spot-Month		Single and All-Months	
	Federal	Exchange	Federal	Exchange
Legacy Agricultural				
CBOT Corn (C)	600 (600)	600	62,400 (53,500)	33,000
CBOT Oats (O)	600 (600)	600	5,000 (1,600)	2,000
CBOT Soybeans (S)	600 (600)	600	31,900 (26,900)	15,000
CBOT Soybean Meal (SM)	720 (720)	720	16,900 (9,000)	6,500
CBOT Soybean Oil (SO)	540 (540)	540	16,700 (11,900)	8,000
CBOT Wheat (W)	600 (600)	600	32,800 (16,200)	12,000
CBOT KC HRW Wheat (KW)	600 (600)	600	12,000 (6,500)	12,000
MGEX Hard Red Spring Wheat (MWE)	1,000 (600)	600	12,000 (3,300)	12,000
ICE Futures U.S. Cotton No. 2 (CT)	1,600 (300)	300	9,400 (8,800)	5,000
Other Agricultural				
CBOT Rough Rice (RR)	600 (600)	600	5,000 (2,200)	1,800
ICE Futures U.S. Cocoa (CC)	5,500 (1,000)	1,000	10,200 (7,100)	6,000*
ICE Futures U.S. Coffee C (KC)	2,400 (500)	500	8,800 (7,100)	5,000*
ICE Futures U.S. FCOJ-A (OJ)	2,800 (300)	300	5,000 (2,900)	3,200*
ICE Futures U.S. Sugar No. 11 (SB)	23,300 (5,000)	5,000	38,400 (23,500)	15,000*
ICE Futures U.S. Sugar No. 16 (SF)	7,000 (1,000)	1,000	7,000 (1,200)	1,000
CME Live Cattle (LC)	450 (450)	450	12,200 (12,900)	N/A
Energy				
NYMEX Henry Hub Natural Gas (NG)	2,000 (1,000)	1,000	200,900 (149,600)	12,000*
NYMEX Light Sweet Crude Oil (CL)	10,400 (3,000)	3,000	148,800 (109,200)	20,000*
NYMEX NY Harbor ULSD (HO)	2,900 (1,000)	1,000	21,300 (16,100)	7,000*
NYMEX RBOB Gasoline (RB)	6,800 (1,000)	1,000	15,300 (11,800)	7,000*
Metals				
COMEX Gold (GC)	6,000 (3,000)	3,000	19,500 (21,500)	6,000*
COMEX Silver (SI)	3,000 (1,500)	1,500	7,600 (6,400)	6,000*
COMEX Copper (HG)	1,000 (1,200)	1,000	7,800 (5,600)	5,000*
NYMEX Platinum (PL)	500 (500)	500	5,000 (5,000)	1,000*
NYMEX Palladium (PA)	100 (650)	100	5,000 (5,000)	500*

SUMMARY

Proposed Compliance Date (PG 81-83)

Compliance with any final rule will be, at the earliest, January 3, 2018. Further delay in a compliance date may be mitigated by the following grandfathering provisions:

- Exclusion from position limits "pre-enactment swaps" (PES) and "transition period swaps" (TPS)
- Exemption of certain pre-existing positions from position limits (PLs)

Definitions – 150.1 (PG 83-178)

[1] The position limit levels included in the parenthesis reflect previously proposed federal position limit levels. * represents exchange position accountability levels for the relevant contracts.

Various Definitions Found in 150.1

Basis Contract (BC) (PG 85-90)

- Re-propose as proposed, but the definition "basis contract" changed to "location basis contract"
- Appendix B is re-proposed as originally proposed, as the Commission is not persuaded by suggestions for expanding the current list of commodities considered "substantially the same"
- Market participants may request for identification of additional commodities as substantially the same through i) exemptive, no-action, or interpretative letters; and/or ii) petition for changes

Commodity Derivative Contract (CDC) (PG 90); Core Referenced Futures Contract (RFC) (PG 93); Entity (PG 96); Excluded Commodity (PG 96-97); PC (PC) (PG 105-106); Pre-enactment Swap and Pre-existing Position (PG 106); Speculative Position Limit (PG 123-124); Swap and Swap Dealer (PG 132-133)

- Re-propose as proposed

Commodity Index Contract, Spread Contract, Calendar Spread Contract, and Intercommodity Spread Contract (PG 90-93)

- Re-propose as proposed, except "basis contract" is replaced with the term "location basis contract"

Eligible Affiliate (PG 93-96)

- Re-propose as proposed - no need to conform the "eligible affiliate" definition to "eligible affiliate counterparty" in order to accommodate sister affiliates

First Delivery Month of the Crop Year (PG 97)

- Re-propose the deletion of the term "first delivery month of the crop year" as originally proposed

Futures Equivalent (PG 98-103)

- Re-propose as proposed in the 2016 Supplemental, with the exception to adopt current exchange practices with regard to option assignments
- Should a market participant believe its risk (delta) model produces an economically reasonable and analytically supported risk factor for a particular trading session differing significantly from an exchange result for that same time, it may describe the circumstances that result in a significant difference and request CFTC staff review for reasonableness

Intermarket Spread Position and Intramarket Spread Position (PG 103-104)

- Re-propose as proposed in the 2016 Supplemental

Long Position (PG 104-105)

- Re-propose an amended definition to clarify that a long position is "on a futures-equivalent basis, a long call option, a short put option, a long underlying futures contract, or a swap position that is equivalent to a long futures contract"

Referenced Contract (PG 107-122)

- Two substantive modifications:
  1. Exclude trade options (TOs): amend the definition of "referenced contract" to expressly exclude TOs that meet the requirements of 32.3
  2. Clarify the meaning of "indirectly linked"
     - A contract that settles to a price based on another derivative contract (DC) that, either directly or through linkage to another DC, has a settlement price based on the price of a core RFC or based

on the price of the same commodity underlying that particular core RFC for delivery at the same location specified in that particular core RFC
        - The CFTC Staff Workbook of CDCs Under the Regulations Regarding Position Limits for Derivatives will provide a non-exhaustive list of RCs

- Other clarifications:
    - Re-proposal does not make changes to broadly exempt cash-settled contracts from PL
    - For non-transferable repurchase rights in connection with a hedged commodity transaction, market participants may request clarification or exemptive relief to determine whether it is a swap
    - A bid, offer, or indication of interest for an OTC swap does not count toward PLs
    - Market participants may request an extension for previously issued Commission actions for a particular exemption order, interpretation, no-action letter, or other guidance
    - Re-proposal does not change the definition of RC to accommodate cross-commodity (CC) netting
    - Re-proposal does not amend the definition of RC to the request that nonfinancial commodity derivatives (NFCD) used by commercial end-users for hedging purposes be expressly excluded from the RC definition
- Moves four definitions embedded in the RC definition to their own definitions:
    1. Calendar spread contract
    2. Commodity index contract (CIC)
    3. Spread contract
    4. Intercommodity spread contract

Short Position (PG 122-123)

- Re-propose an amended definition to clarify that a short position is "on a futures-equivalent basis that is equivalent to a short futures contract"

Spot Month (PG 124-131)

- Definition of SM generally follows exchange practices[2]
- Additional correction: "preceding the first day on which delivery notices can be issued by the clearing organization of a contract market"

Spot-Month, Single-Month, and All-Months-Combined Position Limits (PG 131-132)

- Eliminates the definitions for "single month" and "all-months"

Bona Fide **Hedging Definition (PG 133-169)**

BFH Definition Generally (PG 137-138)

- For excluded commodities, exchanges granted discretion to recognize risk management exemptions
- For physical commodities, the Commission:

[2] Spot Month "means the period of time beginning at the earlier of the close of business on the trading day preceding the first day on which delivery notices can be issued by the clearing organization of a contract market, or the close of business on the trading day preceding the third-to-last trading day, until the contract expires for physical delivery core RFCs, except for the following: (a) ICE Futures U.S. Sugar No. 11 (SB) RC for which the spot month means the period of time beginning at the opening of trading on the second business day following the expiration of the regular option contract traded on the expiring futures contract; (b) ICE Futures U.S. Sugar No. 16 (SF) RC, for which the spot month means the period of time beginning on the third-to-last trading day of the contract month until the contract expires; and (c) CME Live Cattle (LC) RC, for which the spot month means the period of time beginning at the close of trading on the fifth business day of the contract month.

- Clarifies the scope of the general definition of BFH position;
    - Includes the recognition of positions that reduce risks attendant to a swap used as a hedge; and
    - Reorganizes additional requirements for enumerated hedges and a non-enumerated *bona fide* hedging (NEBFH) position, apart from the general definition

Incidental Test and Orderly Trading Requirement (PG 138-142)

- The incidental test and the orderly trading requirement are removed from the re-proposal

Excluded Commodities (ECs) (PG 142-144)

- The economically appropriate (EA) test is applied to enumerated exemptions, as proposed
- Amends the proposed BFH position definition for an excluded commodity, clarifying that an exchange may recognize risk management exemptions in an excluded commodity <u>without regard to the EA test</u>
- Removes the EA test from the guidance for exchange-recognized risk management exemptions in ECs
- Clarifies that exchanges have reasonable discretion as to whether to adopt the Commission definition of BFH position, including whether to grant risk management exemptions

Physical Commodities (PC) (PG 144-169)

- Temporary substitute test and risk management exemptions:
    - Retains the temporary substitute test as proposed
    - The statutory test narrows the standards for a BFH position, and retaining a risk management exemption for swap intermediaries without regard to the purpose of the counterparty's swap, would fly in the face of the statutory restrictions on pass-through swap (PTS) offsets
    - Risk management exemption grandfather provisions:
        - Clarifies that previously granted exemptions may apply to pre-existing financial instruments within the scope of existing 1.47 exemptions
        - Recognizes exchange-granted non-enumerated exemptions in non-legacy commodity derivatives outside of the SM
- Economically Appropriate Test
    - The Commission does <u>not broaden</u> the interpretation, and reiterates its view that to satisfy the EA test and the <u>change in value requirement</u>, the purpose of a BFH position must be to offset <u>price risks</u> incidental to a commercial enterprise's cash operations (PG 151)
        - Exchanges permitted to recognize NEBFH positions where price risk arises from other types of risk, but does not allow exchange to utilize unbound discretion in interpreting EA
        - Exchange determinations will be subject to the Commission's <u>*de novo* review</u>
    - Gross vs. Net Hedging
        - Retains the interpretation as proposed - in circumstances where net hedging does not measure all risk exposures, an enterprise may appropriately enter into, for example, a <u>calendar month spread</u> position as a gross hedge
        - Re-proposal requires ECs to be <u>*de minimis* or difficult to measure</u>, because a market participant should not be permitted to ignore material cash market positions and enter into derivative positions that increase risk while avoiding a PL restriction
    - Specific, Identifiable Risk
        - Declines to assess the *bona fides* of a position based solely on whether a commercial enterprise can identify any particular cash position within an aggregated person, the risks of which such derivative position offsets

    - A derivative position increasing an enterprise's risk is contrary to the plain language of the CEA
  - Processing Hedges
    - Re-proposal <u>does not recognize</u> as a BFH position a derivative position that offsets either inputs or outputs in a processing operation, absent additional facts and circumstances (PG 157)
  - Economically Appropriate Anticipatory Hedges
    - Commission did not propose an enumerated exemption for binding, irrevocable bids or offers, as an analysis of facts and circumstances would be necessary prior to recognizing the exemption
    - Withdraws the view that a binding, irrevocable bid or offer fails to meet the EA test; exchanges are permitted to recognize as NEBFHs based on specific facts and circumstances
- <u>Change in Value Requirement</u>
  - Retains the requirement as proposed, but reflects that under the temporary substitute test - the hedging position should be a substitute for a position taken or to be taken in a physical marketing channel either by the market participant or its PTS counterparty
  - Anticipatory Merchandising or Storage (PG 161)
    - Exchanges permitted to recognize anticipated merchandising or purchase and storage as potential NEBFH positions based on facts and circumstances – i.e. market participant's activities in the physical marketing channel and arrangements for storage facilities
    - The re-proposal reads that the Commission will review exchange-granted NEBFH exemptions for storage with an open mind
  - Unfixed Price Commitments
    - Affirms that a <u>reduction in a price risk</u> is required under the EA test, and operational risk <u>does not</u> satisfy the test
    - Exchanges permitted to conduct a facts and circumstances, case-by-case review to determine whether a calendar month spread is appropriately recognized as a BFH position for <u>only</u> a cash commodity purchase or sales contract
    - For an unfixed price forward sales contract falling below the cost of production, the re-proposal enumerates a BFH exemption for unsold anticipated production
  - <u>Cash and Carry</u>: Re-proposal <u>does not</u> enumerate a cash and carry trade as a BFH position
- PTS Offsets and Offsets of Hedging Swaps
  - A market participant who reduced the risk of a swap, where such swap was a BFH position for that market participant (offset) will be recognized as a BFH position
  - The <u>five-day rule</u> restriction is imposed on the offset in a physical-delivery contract of a swap used as a BFH, but an exchange may recognize on a case-by-case basis as an NEBFH position
  - Clarify the *bona fides* of a PTS may be determined at the time of the transaction by the intermediary
- Additional Requirements for Enumeration or Other Recognition
  - Retains a proposed definition that recognizes as *bona fide,* in addition to enumerated positions, any position recognized as a NEBFH position by either a DCM, SEF, or the Commission

Enumerated Hedging Positions (PG 169-175)

Proposed Enumerated Hedges (PG 170-171)

- Retains the exemptions with two amendments – <u>Removal of</u>:
  - The <u>twelve month constraint</u> on hedging unfilled anticipated requirements for ag commodities
  - The condition that a utility be "required or encouraged to hedge by its public utility commission"
- Anticipated Requirement:

- May be filled by fixed-price purchase commitments, holdings of commodity inventory by the market participant, or unsold anticipated production of the market participant
- An unfixed price purchase commitment <u>does not</u> fill an anticipated requirement, in that the market participant's price risk to the input has not been fixed

Proposed Other Enumerated Hedges Subject to the Five-Day Rule (PG 171-173)

- Five-day Rule:
  - Retaining the prudential condition of the five-day rule in other enumerated hedging positions, but allows exchanges to remove the rule on a case-by-case basis
- Other Enumerated Exemptions:
  - The twelve-month limitation on unsold anticipated ag production and hedges of services for ag commodities is <u>removed</u>
- Cross-Commodity Hedges:
  - Retains the CC hedge provision as proposed, <u>without</u> inclusion of the safe harbor quantitative test
  - CC hedges will be reviewed based on facts and circumstances, and the five-day rule is retained (exchanges may review and grant as NEBFH)

Commodity Trade Options Deemed Cash Equivalents (PG 175-176)

Trade Option Exemptions

- Commodity TOs recognized as the basis for a BFH position, as available for other cash positions
- Non-exclusive guidance provided on making futures-equivalent adjustments to a commodity TO
- A TO should be deemed equivalent to a cash commodity purchase or sales contract only if adjusted on a futures-equivalent basis
- A market participant may not use a TO as a basis for a BFH position until a <u>fixed strike price</u> reasonably may be determined

App. C to Part 150 – Examples of BFH Positions for Physical Commodities (PG 176-177)

Position Limits (PG 178-242)

Setting Levels of Spot Month Limits (PG 178-179); Verification of Estimated DS (PG 179-181)

Single-Month and All-Months-Combined Limits (PG 181-198)

Non-Spot Month (NSM) Limits (PG 183); Data Editing (PG 183-198)

- Initial NSM PLs levels will be re-proposed based on the combination of adjusted part 20 swaps data and data on open interest in PC futures and options from relevant exchanges
- The Commission will use two 12-month periods of data covering a total of 24 months in re-proposing initial NSM PL levels

Setting Levels of Spot-Month (SM) Limits (PG 198-227)

Generally (PG 200)

- Re-propose federal limits below 25% of DS, where setting a limit level at less than 25% of DS does not appear to restrict unduly positions in the cash-settled RCs
- Exchanges retain the ability to adopt lower exchange-set limit levels than the initial speculative PLs levels

CME and MGEX Agricultural Contracts (PG 201-206)

- Initial speculative spot month position limit levels (ISSPL) for Corn (C), Oats (O), Rough Rice (RR), Soybeans (S), Soybean Meal (SM), Soybean Oil (SO), Wheat (W) and Hard Red Winter Wheat (KW) set at CME recommended levels, all of which are lower than 25% of estimated DS
- ISSPL for MWE re-proposed at 1,000 contracts[3]

Softs (PG 206-209)

- ISSPL for Cocoa (CC), Coffee "C" (KC), Cotton No. 2 (CT), FCOJ-A (OJ), Sugar No. 11 (SB), and Sugar No. 16 (SF) set at ICE recommended levels at 25% of estimated DS
- ISSPL for Live Cattle (LC) re-proposed at 450 contracts - CME did not provide DS estimates

Metals (PG 209-213)

- ISSPL for Gold (GC), Silver (SI), and Copper (HG) set at CME recommended levels, all of which are lower than 25% of estimated DS
- ISSPL for Platinum (PL), and Palladium (PA) re-proposed at 100 (PL) contracts and 500 (PA) contracts, as recommended by CME and a decrease from previously proposed levels

Energy (PG 214-217)

- ISSPL for Natural Gas (NG), Light Sweet Crude (CL), NY Harbor ULSD (HO), and RBOB Gasoline (RB) set at 25% of estimated DS
  - CL, HO, and RB set at higher levels than levels recommended by CME
  - For NG, the physical delivery limit is re-proposed at 25% of DS as recommended by CME, and a conditional SM limit exemption of 10,000 for cash-settled contracts in natural gas only[4] (PG 215-216)

Setting Levels of Single-Month and All-Months Combined Limits (PG 217-227)

Generally (PG 217-218)

- The Commission will use the futures PLs formula:
  - 10% of open interest for the first 25,000 contracts; and
  - 2.5% of open interest thereafter (after calculating 10% of the first 25,000 contracts)
- NSM speculative position limits (NSPL) for RCs re-proposed, subject to details and qualifications

CME and MGEX Agricultural Contracts (PG 218-221)

- NSPL re-proposed for C, O, RR, S, SM, SO, and W based on the 10, 2.5% open interest formula
- NSPL for KW and MWE core RFC contracts re-proposed at the current level of 12,000 contracts[5]

Softs (PG 222-223); Metals (PG 224-225); Energy (PG 225-227)

- NSPL re-proposed for CC, KC, CT, OJ, SB, SF, and LC (Softs); GC, SI, PL, PA, and HG (Metals); NG, CL, HO, and RB (Energy) based on the 10, 2.5% open interest formula

Subsequent Levels of Limits (PG 227-240)

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[3] SM position limit level for MWE at 1,000 contracts is the level requested by MGEX and slightly lower than 25% of estimated DS. This is an increase from the previously proposed level of 600 contracts, and greater than levels for W and KW.

[4] The exemption for up to 10,000 contracts would be five times the SM limit of 2,000 contracts, consistent with the 2013 proposal. Neither the NYMEX and ICE penultimate contracts, which settle to the daily settlement price on the next to last trading day of the physical delivery contract, nor OTC swaps, are currently subject to any SM position limit.

[5] Maintaining the status quo for the NSPL for KW and MWE core RFC means there will be partial wheat parity.

General Procedure for Re-Setting Levels of Limits

- Re-propose as proposed - the Commission will fix subsequent levels no less frequently than <u>every two calendar years</u>

Re-Setting Levels of Spot-Month Limits

- Each SM limit reset, either:
  - Based on 25% of DS as estimated by an exchange;
  - To the existing SM PL level (no change); or
  - To the recommended level of the exchange listing the core RFC (no greater than 25% of DS)
- Should the Commission rely on its own DS estimates, it will first publish the estimates for comment
- An exchange need not submit DS estimates if the Commission is provided notice not less than two calendar months before the submission due date, that it is recommending no change to the SM limit
- Exchanges are permitted to set limits at a level lower than 25% of estimated DS – this allows easy alteration of exchange-set limits based on changing market conditions

Re-Setting Levels of Non-Spot-Month Limits (NSML) (PG 233-240)

- General Procedure for Re-Setting Levels of NSMLs:
  - The 10, 2.5% formula is re-proposed as proposed
  - On <u>wheat parity</u>, the Commission provides that it may determine not to change the level of a NSML, permitting it to continue to retain a level of 12,000 contracts on KW and MWE contracts even if average open interest does not exceed 405,000 contracts
- Time Periods, Data Sources, Publication, and Minimum Levels for Re-Setting Levels of NSML:
  - Estimate average open interest in RCs using data reported for each of the last <u>two calendar years</u> pursuant to parts 16, 20, and/or 45
  - Publish on the Commission website estimates of average open interest in RCs on a <u>monthly basis</u> to make it easier for market participants to estimate change in PL levels
  - Removes the distinction between ag and exempt commodities, establishing a minimum NSML of 5,000 contracts in either ag or exempt commodities

Deferral of Limits on Cash-Settled Core Referenced Futures Contracts (PG 240-242)

CME Class III Milk, CME Feeder Cattle, and CME Lean Hogs

- Deferring action for a later date to:
  - Clarify the application of limits to cash-settled core RFCs; and
  - Consider which method to use to determine a level for a SM limit for a cash-settled core RFC

Exemptions (PG 242-274)

Current 150.3 (PG 242-244) and Proposed 150.3 (PG 244-274)

Proposed Amendments to Existing Exemptions (PG 244-246)

- Re-proposing amendments as previously proposed in the 2013 proposal:
  - Update references to the *BFH* definition to 150.1 from 1.3(z)
  - Require filings for exemptive relief to meet reporting requirements in part 19
  - Add a cross-reference to aggregation provisions in proposed 150.4
  - Move the existing IAC exemption to 150.4, deleting the current exemption in 150.3(a)(4)
  - Delete the spread exemption in current 150.3

Positions Which May Exceed Limits – 150.3(a) (PG 246-247)

- Re-propose 150.3(a) as previously proposed in the 2013 proposal, with conforming changes:
  - Positions recognized by a DCM, SEF, or the Commission
  - Process for spread positions recognized by a DCM, SEF, or the Commission

Proposed Additional Exemptions from Position Limits (PG 247-274)

- Financial Distress Exemption - 150.3(b)
  - Clarifies that circumstances in which a financial distress exemption may be claimed include, "but are not limited to," the specific scenarios provided in the definition
- Pre-Enactment Swaps and Transition Period Swaps Exemption – 150.3(d)
  - Re-proposing 150.3(d) as proposed in the 2013 proposal
  - Increasing and rolling of pre-existing positions are not allowed
  - Permits netting of pre- and post-effective date positions, allowing a market participant to offset risk of the position provided that the offsetting position is not held into the SM
- Previously Granted Exemptions – 150.3(f)
  - Proposes to expand relief by:
    - Clarifying that previously granted exemptions may apply to pre-existing financial instruments within the scope of existing 1.47 exemptions, rather than only to pre-existing swaps; and
    - Recognizing exchange-granted non-enumerated exemptions in non-legacy CDs outside the SM – provided exemptions are granted prior to the final rule's compliance date and apply only to pre-existing financial instruments as of the final rule's effective date
- Non-Enumerated Hedging Positions – 150.3(e)
  - 150.3(e) re-proposed as previously proposed in the 2013 proposal
- Proposed Conditional Spot Month Limit Exemption – 150.3(c)
  - The conditional SM limit exemption is re-proposed in natural gas markets only[6]
  - The Commission encourages exchanges and/or market participants to file a rule petition if they believe conditional SM limit exemption should be extended to additional commodities
- Proposed Recordkeeping and Special Call Requirements – 150.3(g) and 150.3(h)
  - Re-propose as proposed in the 2013 proposal
  - Clarifies 150.3(g)(2), that the *bona fides* of the PTS counterparty may be determined at the time of the transaction or at a later time when the counterparty can show the swap position to be a *BFH* position

Exchange-Set Speculative Position Limits and Parts 37 and 38 (PG 274-338)

Background (PG 274-276); Summary (PG 276-281); and Discussion (PG 281-338)

Generally

- Re-propose 150.5 largely as proposed in the 2013 proposal and as revised in the 2016 supplemental
- Re-propose previously proposed amendments to 37.601 and 38.301

Treatment of Swaps on SEFs and DCMs (PG 282-291)

- Re-propose the treatment of swaps and SEFs as proposed in the 2016 supplemental

[6] Market participants may exceed the position limit provided that positions do not exceed 10,000 contracts and the person holding or controlling the positions do not hold or control positions in the SM natural gas physical-delivery RC (NYMEX NG).

- The Commission may consider granting DCMs/SEFs access to part 20 data or SDR data at a later time
- Proposes to adopt a phased approach to updating its PLs regime, and at this time, should limit implementation of PLs for swaps to RCs

Requirements and Acceptable Practices for CDCs Subject to Federal Position Limits – 150.5(a) (PG 291-303)

- Re-propose 150.5(a) as proposed in the 2016 supplemental with the following changes/clarifications:
    - Exchanges granted flexibility to set more restrictive limits
    - Exchanges not required to impose limits on any basis contract independently of the federal limit for the commodity in question, but a position in a basis contract with an independent exchange-set limit does not count toward the federal limit
    - Re-propose 150.5(a)(2)(i) grant of exemption provision with modifications:
        - Any exchange <u>may grant</u> exemptions from any speculative PLs set under 150.5(a)(1) if the exemptions conform to 150.3 requirements, or if not conforming to 150.3, are capped at the applicable federal limit level in 150.2
    - Exchanges can choose to <u>adopt</u> a limit lower than the federal limit, and the Commission would permit the exchange to grant an exemption to the exchange's lower limit where the exemption does not conform to 150.3, if capped at the applicable federal limit level
    - Re-proposal does not apply the prudential condition of the five-day rule to non-enumerated hedging positions - the five-day rule would only apply to certain positions (PTS offsets, anticipatory, and CC hedges), but the Commission allows exchanges to waive the five-day rule on a case-by-case basis under 150.9, 150.10, and 150.11
    - Amend 150.5(a)(2)(ii) application for exemption provision to:
        - Permit exchanges to adopt rules allowing a trader to file an application for an enumerated *BFH* exemption within <u>five business days</u> after the trader assumed the position exceeding a PL;
        - Exchanges should consider whether to adopt <u>two safeguards</u>:
            - Requiring market participants making use of the retroactive application to demonstrate that the hedge was required to address a sudden and unforeseen hedging need; and
            - Providing that if the emergency hedge recognition was not granted, exchange rules would continue to require the applicant to unwind its position in an orderly manner and deem them in violation for any period the position exceeded applicable limits

Requirements and Acceptable Practices for CDCs Not Subject to Federal Position Limits – 150.5(b) (PG 303-338)

- Commission Determination Regarding 150.5(b)
    - To provide clarity regarding which provisions concern ECs, all provisions applying to ECs are moved from 150.5(b) into 150.5(c) - substantive revisions will be made to previously issued 105.5(b)
    - Limit Levels for CDCs in a PC Not Subject to Federal Limits (PG 321-325)
        - Guidance for calculating DS can be found in Appendix C to part 38
        - Revise 150.5(b)(2)(ii) to allow exchanges to set NSM limit levels at the maximum of the SM limit level derived from the 10/2.5% formula, or 5,000 contracts
        - Revise 150.5(b)(1)(ii)(A)-(B) to remove the distinction between ag and exempt commodities
        - Under the guidance, an initial NSM limit level of no more than 5,000 is suitable
        - Position accountability may be permitted for certain physical CDCs – re-proposed 150.5(b)(3) provides guidance and acceptable practices on exchange adoption of position accountability outside the SM for contracts with an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 or more contracts during the most recent calendar year and a

liquid cash market

    - Re-propose 150.5(b)(1)(iii) with a modification, to provide that the limit levels should be "comparable"
    - Revise 150.5(b)(4)(B) regarding calculation of open interest for use in setting exchange-set PLs to provide that a DCM/SEF that is a trading facility would include swaps in their open interest calculation only if such entities are required to administer PLs on swap contracts of their facilities
- Exchange Administered Exemptions for CDCs in a PC Not Subject to Federal Limits (PG 325-327)
    - Re-propose 150.5(b)(5)(i) - to clarify that it is guidance rather than a regulatory requirement
    - Under exchanges rules allowing a trader to file an application for an enumerated *BFH* exemption, the application should be filed no later than <u>five business days</u> after the trader assumed the position that exceeded a PL
    - The Commission expects exchanges to carefully consider whether allowing retroactive recognition of an enumerated *BFH* exemption would diminish the integrity of the process, and should consider <u>two safeguards</u> (i.e. addresses a hedging need; unwind positions if in violation)
    - Re-propose 150.5(b)(5)(i) with modifications to clarify that exchanges have reasonable discretion as to whether they apply their exemption process from exchange-set speculative PLs, a virtually identical process as provided for recognizing NEBFH positions under CFTC Regulation 150.9(a)
    - Propose a phased approach with respect to the definition of a *BFH* position applicable to physical commodities; to deal with the implementation issue, proposes to limit the mandatory scope of the new *BFH* position definition to contracts that are subject to a federal PL
    - Propose that for enumerated *BFH* positions, exchange rules may allow traders to file an application for an enumerated *BFH* exemption within <u>five business days</u> after the trader assumed the position exceeding a PL
    - Re-propose 150.5(b)(5)(ii) other exemptions and financial distress exemption provisions
- Conditional SM Limit Exemption for CDCs in a PC Not Subject to Federal Limits (PG 327-329)
    - Re-propose 150.5(b)(5)(ii)(B) with a modification, recommending that conditional exemptions should <u>not exceed two times</u> the level of the SM limit specified by the exchange that lists the applicable physical-delivery contract
    - Where an exchange may not have access to data regarding a market participant's cash-settled positions away from the particular exchange, it should require for any conditional SM limit exemptions it grants, that a trader report promptly to the exchange its aggregate positions in cash-settled contracts, physical-delivery contracts, and cash market positions
    - Under 150.5(b)(5)(ii)(B), exchanges can choose whether or not to adopt a conditional SM PL exemption for cash-settled contracts not subject to PLs
- Treatment of Spread and Anticipatory Hedge Exemptions for CDCs in a PC Not Subject to Federal Limits (PG 329-330)
    - Re-proposed 150.5(b)(5)(ii)(C) applies only to physical CDCs and not to any DC in an excluded commodity – provides guidance rather than rigid requirements
- Five-Day Rule for CDCs in a PC Not Subject to Federal Limits (PG 330-331)
    - Clarifies that the five-day rule only applies to certain enumerated positions (PTS offsets, anticipatory, and CC hedges)
    - Under 150.9, 150.10, and 150.11 exchange processes, exchanges have discretion to waiver the five-day rule on a case-by-case basis
- Reporting for CDCs in a PC Not Subject to Federal Limits (PG 331-333)
    - Reiterates that under CEA section 4a(e), the Commission's authority to enforce violations of

exchange-set speculative PLs, whether certified or Commission-approved – exchanges have a continuing responsibility in this matter under the CEA

- Commission Determination Regarding 150.5(c) (PG 333-338)
  - Limit Levels for Excluded Commodities (PG 334-335)
    - Re-propose 150.5(c)(1) - regarding levels of limits for ECs as modified to reference ECs and to remove provisions solely addressed to ag commodities
    - Re-propose provisions under 150.5(c)(2) - adjustment of limit levels for excluded CDCs modified to reference only ECs and to remove provisions solely addressed to ag commodities
    - Re-propose 150.5(c)(3) on exchange adoption of position accountability levels as previously proposed in 150.5(b)(3), but modified to remove provisions solely addressed to physical CDCs and to reference ECs
    - Re-propose 150.5(c)(4) for calculation of open interest for use in setting exchange-set speculative PLs for ECs, providing that a DCM/SEF that is a trading facility would include swaps in its open interest calculation only if required to administer PLs on swap contracts of its facility
  - Exchange Administered Exemptions for ECs (PG 335-338)
    - Re-propose new 150.5(c)(5)(i) for EC contracts that eliminates the guidance that exchange may provide for recognition of a NEBFH in a manner consistent with the process in 150.9(a)
    - Clarifies that an exchange may recognize as *bona fide* any position in a CDC in an EC pursuant to exchange rules
    - Re-propose 150.5(b)(5)(ii) as proposed in the 2016 supplemental to afford greater flexibility for exchanges when granting exemptions for ECs
    - Modify the provisions addressing application for exemptions for positions in ECs to permit an exchange to allow a person to file an exemption application for ECs after the person assumes the position exceeding a PL
    - Re-propose 150.5(c)(8) on aggregation, providing guidance that exchanges should have aggregation rules for excluded CDCs that conform to 150.4

Reports by Persons Holding *Bona Fide* Hedging Positions – Part 19 (PG 338-377)

Current Part 19 (PG 338-339) and Amendments to Part 19 (PG 339-377)

- Generally (PG 342-345)
  - Proposes to move reporting to an entirely electronic filing system
  - Declines to eliminate series ’04 reporting as the data provided is critical to the Commission’s surveillance program
  - Instructions on series ’04 reporting forms added regarding:
    - How to fill out the trader identification section;
    - Reorganized information relating to individual fields;
    - Edited examples of each form to reduce confusion and match changes as required; and
    - Clarified authority for certifications made to the signature/authorization page
  - Amend the certification language found at the end of each form to clarify that certification requires nothing more than already required in CEA section 6(c)(2)
  - Add the phrase “to the best of my knowledge” regarding the certification standard
- Amended Cross References (PG 345-346)
  - Re-propose the amended cross-references in part 19 as originally proposed
- Persons Required to Report – 19.00(a) (PG 346-348)

- Re-propose the expansion of 19.00(a) to extend the reach of part 19 by requiring all persons availing themselves of any exemption from federal limits to file applicable series '04 reports
    - Three new series '04 reporting forms added:
        - Form 504 for persons claiming the conditional SM limit exemption
        - Form 604 for persons claiming a *BFH* exemption for two specific PTS position types
        - Form 704 for persons claiming a *BFH* exemption for certain anticipatory BFH positions
- Manner of Reporting – 19.00(b) (PG 348-352)
    - Excluding certain source commodities, products or byproducts of the cash commodity hedged
        - Re-propose 19.00(b)(1) as originally proposed - the Commission is concerned about market participants' "cherry-picking" a cash market position in an attempt to justify a speculative position as a hedge[7]
    - Cross-Commodity Hedges, Standards and Conversion Factors – 19.00(b)(2)-(3)
        - Re-propose 19.00(b)(2)-(3) as originally proposed
- Information Required – 19.01(a) (PG 352-372)
    - *Bona Fide* Hedgers Reporting on Form 204 – 19.01(a)(3)
        - Clarify that Form 204 allows filers to identify multiple RCs used for hedging a particular commodity cash position in the same line of Form 204
        - Form 204 may be required for purposes other than *BFH* so title of column three should include both "Commodity Derivative Contract" and "Referenced Contract"
        - Delete column two, the requirement to identify which paragraphs of the *BFH* definitions are represented by the hedged position
        - Clarify that Section C is only required of entities holding positions in cotton markets that must be reported on Form 204[8]
        - Require firms to report both the cash market unit of measurement and the futures equivalent measurement for a position
        - Re-proposed without modifications, requiring reporting of aggregated quantity of cash positions underlying *BFH* positions in equivalent core RC units, excluding a *de minimis* portion of the commodity, products, and byproducts that it excludes in its regular business practice
        - Requires cross-hedgers to report the aggregated quantity of *BFH* positions it is cross hedging in terms of actual commodity as well as the futures market
        - Require market participants to report all cash market positions in any commodity in which they have exceeded a SM or NSM PL
    - Cotton Merchants and Dealers Reporting on Form 304 – 19.02
        - Re-propose Form 304 as originally proposed
    - Conditional SM Limit Exemption Reporting on Form 504 – 19.01(a)(1)
        - Tentatively determined under 19.03 to designate Henry Hub Natural Gas RCs for reporting of a

[7] In the 2013 proposal, the Commission stated that ". . . it would not be economically appropriate behavior for a person who is, for example, long derivative contracts to exclude inventory when calculating unfilled anticipated requirements. Such behavior would call into question whether an offset to unfilled anticipatory requirements is, in fact, a *bona fide* hedging position, since such inventory would fill the requirement. As such, a trader can only underreport cash market activities on the opposite side of the market from her hedging position as a regular business practice, unless the reported inventory is *de minimis* or impracticable to account for."

[8] In order for the Commission to effectively evaluate the legitimacy of a claimed *bona fide* hedging position, filers of Section C of Form 204 will be required to differentiate between equity stock held in their capacities as merchants, producers, and/or agents in cotton (PG 359).

conditional SM limit exemption under 19.01(a)(1)(i), and clarify that Form 504 only required from participants in NG markets availing themselves of the conditional SM limit exemption
        - Form 504 required of speculators relying on the conditional SM limit exemption, and Form 204 for hedgers exceeding PLs – to the extent a firm is hedging, no requirement to file Form 504
    - Pass-Through Swap Exemption Reporting on Form 604 – 19.01(a)(2)
        - Re-propose Form 604 as originally proposed
        - Futures-equivalent position information is necessary to allow staff to match the offset futures position with the non-referenced contract swap position underlying the hedge because such positions are not subject to part 20 reporting
            - Require identification of a particular swap position and the offsetting RC position to alleviate concerns about disruption of price discovery
        - PTS offsets that last into the SM would be filed daily during the spot period, not as of the last Friday of the month
            - PTS offset positions outside the SM required to be filed as of the last Friday of the month
        - Clarifies that neither Sections A nor B requires the filer to report cash market activity
- Time and Place of Filing Reports – 19.01(b) (PG 372-377)
    - Re-propose 19.01(b)(1) as originally proposed with minor clarifications:
        - Form 204 provides a monthly snapshot of cash market positions of traders with positions in excess of SM or NSM PLs – retaining the last Friday of the month as the required reporting date
    - Re-propose 19.01(b)(2) to require next-day, daily filing of Forms 504 and 604 in the SM
        - Form 504 is required only for the Natural Gas commodity, which has a 30 day spot period
        - Form 604 is collected during the SM only under particular circumstances – for an offsetting position in physical delivery RCs during the SM
    - Re-propose 19.01(b)(1)-(2) as originally proposed with minor clarifications
    - Re-propose the electronic filing requirement as originally proposed

Reporting Requirements for Anticipatory Hedging Positions – 150.7 (PG 377-386)

Reporting Requirements for Anticipatory Hedging Positions and New Form 704 (PG 377-385)

- Re-proposing the requirement to file Form 704 for anticipatory hedges, with several changes:
    - Initial statement and annual update required; supplemental filing proposed in 150.7(e) eliminated
    - Combine the list of required information on Form 704 into one section
    - Sample Form 704 in Appendix A to part 19 updated to reflect changes
    - Market participants will need to provide a detailed description of anticipated activity, but no requirement to analyze individual transactions or submit a memorandum
    - Delete the condition that requires that the specified operating period may not exceed one year for ag commodities
    - The Commission may permit a reasonable, supported estimate of anticipated production for less than three years of annual production data if the entity does not have three years of data

Delegation (PG 385-386) - Re-propose 150.7(i) as originally proposed

Process for Recognition of Positions as NEBFH Positions (PG 386-444)

Overview of Proposed Rules (PG 386-389) and Proposed 150.9 – General (PG 389-399)

- Exchange Authority Under 150.9
    - The Commission has the authority to provide exchanges with the ability to grant BFH positions

pursuant to reasonably fixed statutory standards and subject to CFTC *de novo* review
    - Exchanges can petition the Commission under 13.2 for recognition of a typical position as an enumerated BFH position if the exchange believes there is a fact pattern so certain as to not require a facts and circumstances review
    - Re-proposing a consistent approach in 150.9, subject to amendments, for processing recognitions of BFH positions for federal PLs
    - Clarifies that exchanges can recognize strategies as NEBFH positions for purposes of federal PLs if the facts and circumstances review leads the exchange to believe it meets the BFH definition
    - The Commission will implement a delayed compliance date after publication of a final rule

Proposed 150.9(a) – Requirements for a DCM or SEF to Recognize NEBFH Positions (PG 399-429)

- 150.9(a)(1) re-proposed as originally proposed, subject to the following amendments:
    - Requirement that Exchanges Recognize NEBFH Positions Consistent with the BFH Definition:
        - Exchanges should make a facts and circumstances determination as to whether to recognize an anticipatory hedge as a NEBFH position
        - Clarify that including risk management exemptions to the BFH position recognition process is contrary to Congressional intent
        - Clarify that a single application to an exchange can specify and apply to multiple hedging strategies and needs
        - Clarify that 150.9(a) addresses processes for recognition of BFH positions for federal limits; not exemption processes that exchanges currently implement for any exchange-set limits
    - Request for Recognition of NEBFH Positions in the Spot Month:
        - Re-proposal does not apply the prudential condition of the five-day rule to non-enumerated hedging positions other than to PTS offsets – the five-day rule applies only to certain positions (PTS offsets, anticipatory and CC hedges)
        - Exchanges allowed to waive the five-day rule on a case-by-case basis
        - Exchanges should consider two safeguards in retroactive recognition of positions as a NEBFH:
            - The applied-for hedge was required to address a sudden and unforeseen hedging need; and
            - If the emergency hedge was not granted, exchanges rules require the applicant to unwind its position in an orderly manner and deem them in violation of applicable limits
    - Standards Exchanges Must Meet to Provide Recognitions:
        - Amend 150.9(a)(1)(v) to clarify that the active one-year of experience requirement can be met by any contract listed in the particular RC
        - Clarify that an exchange can petition the Commission for a waiver of the one-year experience requirement if the exchange believes their experience and interests are aligned with the Commission's interests
    - Previously Granted Hedge Exemptions:
        - Clarify and expand relief in 150.3(f) to grandfather previously granted risk-management strategies applicable to previously established derivative positions in commodity index contracts
        - Under 150.5, exchanges may issue recognition determinations for one year only
        - Exchanges cannot provide an unlimited recognition of positions as NEBFH
        - Exchanges are not required to provide further notice to market participants prior to expiration of previous determinations
    - Recognition of OTC Positions as BFH Positions
        - Clarify that exchanges have no obligation to monitor for compliance with OTC-only positions

- 150.9(a)(2); 150.9(a)(3); and 150.9(a)(4) – Application Process
  - Re-propose as originally proposed, with revisions in the regulatory text to:
    - Clarify what the statement must address under 150.9(a)(3)(iii) and 150.9(a)(3)(iv); and
    - Require only one year of history rather than three years in 150.9(a)(3)(iv)
  - Clarify that exchanges are authorized, but not required to have a different application process for novel and non-novel hedge applications
  - 150.9 provides parameters for a basic application, and allows exchanges flexibility to require more information
  - Clarify that the regulation does not require applicants to obtain a legal opinion or analysis, but it is the exchange's duty to make a determination of whether a contracts meets requirements
  - Clarify that 150.9(a)(3)(iii) requires only information related to the contract for which the application is submitted – based on a good faith estimate
  - Does not apply the prudential condition of the five-day rule to NEBFH positions other than to PTS offsets – the five-day rule applies only to certain positions (PTS offsets, anticipatory and CC hedges)
  - 150.9(a)(5) requires an applicant to receive exchange recognition in advance of the date that a position would otherwise be in excess of a PL – <u>no retroactive recognition of NEBFH</u>
- 150.9(a)(5) and Commission Re-proposal
  - Re-propose as originally proposed – process through which the exchange's recognition of NEBFH positions would be subject to Commission review
- 150.9(a)(6)
  - Amend and clarify that 150.9(a)(6) does not require additional filings - discretion on exchanges' to determine the reporting requirement for NEBFH positions
- 150.9(a)(7) – Transparency to Market Participants (Published Summaries)
  - Clarify that any data published pursuant to 150.9(a)(7) should not disclose the identity of, or confidential information about the applicant
- 150.9(a)(8) and Commission Re-proposal – re-propose as originally proposed

150.9(b) – Recordkeeping Requirements (PG 429-431) - Re-propose as originally proposed

150.9(c) – Exchange Reporting (PG 431-436)

- Re-propose, largely as originally proposed with certain revisions for clarification:
  - Clarify that reports under (c)(1)(i) are for each commodity derivatives position recognized that week and for any revocation or modification of a previously granted recognition
  - Clarify that exchanges are authorized, but not required to determine whether to incorporate additional reporting in its recognition of NEBFH positions
  - If an exchange requires additional reporting, they must submit reports <u>no less frequently than monthly</u> – weekly reporting requires only the most essential information on exchange exemptions

150.9(d) – Review of Applications by the Commission (PG 436-441)

- Re-propose as originally proposed
- The Commission <u>must maintain *de novo* review</u> on a case-by-case basis, otherwise, the exchange exemption process may be considered an illegal delegation of authority to exchanges
- Regarding the recommendation that the Commission limit its available time to review exchange-granted

exemptions, this limitation appears inconsistent with case law[9]

- On whether the Commission would expose exchanges to regulatory penalties or uncertainty for exemptions it overturns, the Commission declines to speculate on any actions that it may take, beyond the notice to the applicant
- "Commercially reasonable" time for an entity to unwind their positions depends on the facts and circumstances – the Commission has not proposed a fixed time period
- *De novo* review means no deference will be provided to a prior exchange granted exemption
- The Commission has not proposed to delegate authority to staff to overturn an exchange determination

150.9(e) – Review of Summaries by the Commission (PG 441-442) - Re-propose as originally proposed

150.9(f) – Delegation of Authority (PG 442-444)

- Re-propose as originally proposed – clarify that the Commission retains the authority to make the final determination to grant or deny hedge exemption applications submitted

Process for DCM or SEF Exemption from Position Limits for Certain Spread Positions (PG 444-476)

Background 150.10 (PG 444-448) and Discussion (PG 448-488)

- Proposed 150.10(a)(1) - Re-propose as originally proposed with one clarification:
  - Exchanges have authority to determine whether or not to apply 150.10(a)(1) process to spread exemptions from exchange-set limits that are lower than federal limits
  - Clarify that the one-year experience and active trading requirement can be met by any RC in the particular commodity, allowing a broader number of exchanges to grant spread exemptions
  - Clarify that an exchange can petition the Commission for a waiver of the one-year experience requirement if their experience and interests are aligned with the Commission's interests
- Proposed 150.10(a)(2)
  - Re-propose as originally proposed, and clarifying that the five-day rule does not apply to spreads
    - Exchanges have discretion to recognize spread positions without regard to the five-day rule
  - Exchanges not permitted to recognize spreads between a CICs and one or more RCs
  - Electricity contracts are not RCs that will be subject to federal limits at this time – exchanges may elect to process spread exemptions for exchange-set PLs for non-RCs
  - Clarify that exchanges' have discretion to determine whether additional reporting requirements are required for a spread exemption
  - The list of spreads in 150.10(a)(2) is not an exhaustive list and exchanges may grant other spread exemptions meeting regulatory requirements
  - Exchanges may grant "cash and carry" spread exemptions to exchange and federal limits so long as an exchange has suitable safeguards in place to require a market participant relying on the exemption to reduce their position below the speculative limit in a timely manner once market prices no longer permit entry into a full carry transaction
- Proposed 150.10(a)(3) - Re-propose largely as originally proposed with one clarifying amendment:
  - Exchanges electing to grant spread exemptions to federal PLs should use the guidance in CEA section 4a(a)(3)(B) as the Commission would do during *de novo* review

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[9] The Commission notes that time limitations may appear inconsistent with case law regarding authorizations for self-regulatory organizations to make determinations, subject to *de novo* agency review.

- “Such information as the relevant exchange deems necessary to determine if the requested exemption is consistent with the purposes of hedging” sets a minimum amount of information required, and exchanges have discretion to require additional information
    - Clarify that 150.10 would not apply if an exchange grants exemptions from exchange-set limits
    - Clarify that “maximum size of all gross positions” means the applicant reports only its maximum size of all gross positions in the commodity related to the exemption application
- Proposed 150.10(a)(5)
    - Re-propose as originally proposed; Exchanges allowed to use its own expertise to decide what exemptions and limit levels to employ for their venue
- Proposed 150.10(a)(6)
    - Re-propose with one modification to clarify that exchange are authorized, but not required, to determine whether to require reporting by the spread exemption applicant
- Proposed 150.10(a)(7)
    - Re-propose as originally proposed
    - Reiterate that each summary is to provide transparency to market participants by providing fair and open access to information regarding which positions might be recognized as spreads
    - The summary would be an executive summary with a general description of what the position is and why it qualifies for a spread exemption
- Proposed 150.10(a)(4) – Timing Requirements on Spread Applications ; Proposed 150.10(a)(8); Proposed 150.10(b) – Recordkeeping Requirements; Proposed 150.10(d) – Review of Applications by the Commission; Proposed 150.10(e) - Review of Summaries by the Commission; Proposed 150.10(g) - Delegation of Authority
    - Re-propose as originally proposed
- Proposed 150.10(c) – Exchange Reporting
    - Re-propose largely as originally proposed
    - Clarify that exchange have discretion to determine whether to incorporate additional reporting requirements for spread exemption applicants
    - Unless otherwise instructed by the Commission, an exchange processing spread exemptions will submit to the Commission, no less frequently than monthly, “any reports the DCM/SEF requires to be submitted by an applicant. . .”

Process for Recognition of Positions as Anticipatory *BFH* Positions (PG 476-488)

Overview of the Enumerated Anticipatory BFH Position Exemption Proposal (PG 476-479)

Proposed 150.11(a) (PG 479-484) - Re-propose as originally proposed:

- The Commission is willing to explore further additions to the enumerated list at a later date, but reiterates that an exchange can petition for recognition of a general fact pattern as an enumerated BFH position
- An exchange can petition the Commission for a waiver of the one-year experience requirement if the exchange believes their experience and interests are aligned with the Commission’s interests
- The five-day rule should be applied to anticipatory BFH positions, and if a market participant wishes to secure an exemption, it should file an exemption request under the 150.9 NEBFH process
- Clarify that Commission staff could determine whether an estimate is reasonable and be accepted – if a market participant does not have three years of anticipated production data

Proposed 150.11(b) – Recordkeeping (PG 484) - Re-propose as originally proposed

Proposed 150.11(c) – Exchange Reporting (PG 484-485) - Re-propose as originally proposed

Proposed 150.11(d) – Review of Applications by the Commission (PG 485-486)

- Re-propose as originally proposed; *De novo* review of exchange-granted anticipatory BFH position exemptions is adequate to maintain proper exchange oversight

Proposed 150.11(e) – Delegation of Authority (PG 486-488)

- Re-propose as originally proposed with clarification that the Commission retains the authority to make the final determination to grant or deny hedge exemption applications

Miscellaneous Regulatory Amendments (PG 488-493)

Part 150.6 – Ongoing Application of the Act and Commission Regulations (PG 488-489)

- Re-propose with an amendment to clarify the application of part 150 to other provisions
- Clarify that recordkeeping and reporting regulations associated with speculative positions limits are affected by part 150
- Clarify that regulations incorporated by reference to part 150 are also affected by the regulations promulgated under part 150
- 150.6 applies regarding delayed implementation of exchange-set limits for swaps on exchanges without sufficient swaps position information

Part 150.8 – Severability (PG 489-490) - Re-propose the severability clause

Part 15 – Reports (PG 490-491)

- Re-propose amendments to part 15 as originally proposed to update and clarify the definition of "reportable position," add references to swaps positions, and the list of reporting forms

Part 17 – Reports by Reporting Markets, FCMs, Clearing Members, and Foreign Brokers (PG 491)

- Re-propose amendments to part 17 as originally proposed, to delete duplicative aggregation provisions and delegate to DMO authority to instruct persons pursuant to 17.03

Removal of Commission Regulations 1.47 and 1.48, and Part 151 (PG 492-493)

- Re-propose to remove and reserve 1.47, 1.48, and part 151

Related Matters (PG 493-675)

Cost-Benefit Considerations (PG 493-646); Paperwork Reduction Act (PG 646-673); Regulatory Flexibility Act (PG 673-675)

Appendices (PG 675-784)

Appendix A – Review of Economic Studies (PG 675-780)

Over 100 pages of the rule proposal text are devoted to a review and evaluation of 244 academic studies that address some aspect of speculation or PLs. These studies include the 133 studies cited in the 2013 proposal; over 100 additional studies or articles mentioned in a list submitted by commenter Markus Henni; and ten additional studies submitted by other commenters. The release categorizes the 244 papers by statistical methodology:

- 36 Granger causality analyses;

- 25 co-movement or co-integration analyses;
- 46 studies creating models of fundamental supply and demand;
- 8 switching regressions or similar analyses;
- 3 studies using eigenvalue stability analysis;
- 26 papers presenting theoretical models; and
- 73 papers that were primarily surveys of the economic literature, perhaps with some aspect of empirical testing or analysis.

The evaluation discusses the strengths and weaknesses of different approaches to addressing issues related to the PLs rule.

Conclusion: this analysis concludes that the academic debate amongst economists about the effects of outsized market positions has reputable and legitimate standard-bearers for opposing positions.

Appendix B – Redlined Version of CEA Section 4a(a) (Not Actually Included in the Re-proposal)

Appendix C – List of Comment Letters Cited in This Rulemaking (PG 781-784)

Rule Text (PG 785-904)

Rule Text (PG 785-904); Form 204 (PG 795-804); Form 304 (PG 805-811); Form 504 (PG 812-818); Form 604 (PG 819-828); Form 704 (PG 829-835); Continuation of Rule Text (PG 836-904)