



Commodity Futures Trading Commission

Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

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Fact Sheet – Notice of Proposed Rulemaking on Position Limits for Derivatives

The Commodity Futures Trading Commission (“CFTC” or the “Commission”) is proposing new and amended regulations concerning speculative position limits to conform to the Wall Street Transparency and Accountability Act of 2010 (“Dodd-Frank Act”) amendments to the Commodity Exchange Act (“CEA” or “Act”).

Among other amendments, the Commission proposes new and/or amended federal limits for 25 physically-settled commodity derivatives and their linked cash-settled futures, options on futures, and economically equivalent swaps. The proposal includes certain exemptions from position limits, such as a revised definition of “bona fide hedging transactions or positions,” and an expanded list of enumerated bona fide hedges to cover additional hedging practices.

In addition, the proposal sets forth a new process that would streamline requests for non-enumerated bona fide hedge exemptions from federal position limit requirements. The proposal would also eliminate the requirement to submit monthly cash-market reporting on Form 204.

New Proposed Rule

The Commission is issuing a new rule proposal on Position Limits for Derivatives (the “2020 Proposal”). As detailed below, the Commission is withdrawing from further consideration the previously-proposed position limits regulations.

In 2011, the Commission issued proposed and final (“2011 Final Rulemaking”) rules on Position Limits for Derivatives. In 2012, the 2011 Final Rulemaking was vacated with the exception of the amendments to 17 CFR 150.2. Subsequently, the Commission proposed position limits regulations in 2013 (“2013 Proposal”), June of 2016 (“2016 Supplemental Proposal”), and again in December of 2016 (“2016 Reproposal”). To date, the Commission has not issued any final rulemaking based on the 2013 Proposal, 2016 Supplemental Proposal, or 2016 Reproposal.

Separately, in 2016 the CFTC also proposed in a companion proposed rulemaking, and later adopted the same year, amendments to rules governing aggregation of positions for purposes of compliance with federal position limits. These aggregation rules currently apply only to the nine agricultural contracts subject to existing federal limits, and going forward would apply to the commodities that would be subject to federal limits under the 2020 Proposal.

The 2020 Proposal is intended to (1) recognize differences across commodities and contracts, including differences in commercial hedging and cash-market reporting practices; (2) focus on derivatives contracts that are critical to price discovery and distribution of the underlying commodity, such that the burden of excessive speculation in the derivatives contract may have a particularly

acute impact on interstate commerce for that commodity; and (3) reduce duplication and inefficiency by leveraging existing expertise and processes at Designated Contract Markets (“DCMs”).

Contracts Subject to Proposed Federal Speculative Position Limits

The 2020 Proposal applies federal position limits to a universe of 25 physically-settled futures contracts (the “Core Referenced Futures Contracts” or “CRFC”) and their linked cash-settled futures, options on futures, and “economically equivalent” swaps (collectively, “Referenced Contracts”).

Nine of the 25 CRFCs are currently subject to federal position limits (the “Legacy Contracts”). The other 16 CRFCs would be newly subject to federal position limits and include seven additional agricultural contracts; four energy contracts; and five metals contracts. All 25 CRFCs are listed in the table below.

Proposed Core Referenced Futures Contracts Subject to Position Limits			
Legacy Agricultural¹ (Spot and non-spot month)	Agricultural Non-Legacy (Spot month only) ²	Metals (Spot month only)	Energy (Spot month only)
CBOT Corn (C)	CBOT Rough Rice (RR)	COMEX Gold (GC)	NYMEX Henry Hub Natural Gas (NG)
CBOT Oats (O)	ICE Cocoa (CC)	COMEX Silver (SI)	NYMEX Light Sweet Crude Oil (CL)
CBOT Soybeans (S)	ICE Coffee C (KC)	COMEX Copper (HG)	NYMEX New York Harbor ULSD Heating Oil (HO)
CBOT Wheat (W)	ICE FCOJ-A (OJ)	NYMEX Platinum (PL)	NYMEX New York Harbor RBOB Gasoline (RB)
CBOT Soybean Oil (SO)	ICE U.S. Sugar No. 11 (SB)	NYMEX Palladium (PA)	
CBOT Soybean Meal (SM)	ICE U.S. Sugar No. 16 (SF)		
MGEX Hard Red Spring Wheat (MWE)	CME Live Cattle (LC)		
ICE Cotton No. 2 (CT)			
CBOT KC Hard Red Winter Wheat (KW)			

¹ Currently, only these nine agricultural contracts are subject to federal position limits.

² While the Commission is proposing federal non-spot month limits only for the nine legacy agricultural core referenced futures contracts, exchanges would be required to establish, consistent with Commission standards set forth in this proposal, exchange-set position limits and/or position accountability levels in the non-spot months for the non-legacy agricultural, metals, and energy core referenced futures contracts.

Swaps Subject to Proposed Federal Speculative Position Limits

The 2020 Proposal applies federal position limits on certain swaps. Specifically, swaps that meet the definition of an “economically equivalent swap” would be subject to federal limits as a referenced contract. The “economically equivalent swap” definition applies to swaps with “identical material” contractual specifications, terms, and conditions to a referenced contract, disregarding any differences due to (1) notional amount or lot size, (2) post-trade risk management arrangements, or (3) for physically-settled swaps, delivery dates diverging by less than one calendar day.

The proposed “economically equivalent swap” definition makes an exception for physically-settled natural gas swaps, providing that delivery dates may diverge by less than two calendar days, in order to take into account the existence of an active penultimate natural gas futures market.

Spot Month Limits

Federal spot month limits would apply to referenced contracts on all 25 core referenced futures contracts. The proposed spot month limit levels, summarized in the table below, are set at or below 25 percent of deliverable supply, as estimated using recent data provided by the DCM listing the core referenced futures contract, and verified by the Commission.

The proposed spot month limits would apply on a futures-equivalent basis based on the size of the unit of trading of the relevant core referenced futures contract, and would apply “separately” to physically-settled and cash-settled referenced contracts. Therefore, a market participant could net positions across physically-settled referenced contracts, and separately could net positions across cash-settled referenced contracts. However, a market participant would not be permitted to net cash-settled referenced contracts against physically-settled referenced contracts.

Core Referenced Futures Contract	2020 Proposed Spot Month Limit	Existing Federal Spot Month Limit	Existing Exchange-Set Spot Month Limit
Legacy Agricultural Contracts			
CBOT Corn (C)	1,200	600	600
CBOT Oats (O)	600	600	600
CBOT Soybeans (S)	1,200	600	600
CBOT Soybean Meal (SM)	1,500	720	720
CBOT Soybean Oil (SO)	1,100	540	540
CBOT Wheat (W)	1,200	600	600/500/400/300/220
CBOT KC Hard Red Winter Wheat (KW)	1,200	600	600
MGEX Hard Red Spring Wheat (MWE)	1,200	600	600
ICE Cotton No. 2	1,800	300	300

Core Referenced Futures Contract	2020 Proposed Spot Month Limit	Existing Federal Spot Month Limit	Existing Exchange-Set Spot Month Limit
(CT)			
Other Agricultural Contracts			
CME Live Cattle (LC)	600/300/200 ³	n/a	450/300/200
CBOT Rough Rice (RR)	800	n/a	600/200/250
ICE Cocoa (CC)	4,900	n/a	1,000
ICE Coffee C (KC)	1,700	n/a	500
ICE FCOJ-A (OJ)	2,200	n/a	300
ICE U.S. Sugar No. 11 (SB)	25,800	n/a	5,000
ICE U.S. Sugar No. 16 (SF)	6,400	n/a	n/a
Metals Contracts			
COMEX Gold (GC)	6,000	n/a	3,000
COMEX Silver (SI)	3,000	n/a	1,500
COMEX Copper (HG)	1,000	n/a	1,500
NYMEX Platinum (PL)	500	n/a	500
NYMEX Palladium (PA)	50	n/a	50
Energy Contracts			
NYMEX Henry Hub Natural Gas (NG)	2,000	n/a	1,000
NYMEX Light Sweet Crude Oil (CL)	6,000/5,000/4,000 ⁴	n/a	3,000

³ The proposed federal spot month limit for Live Cattle features a step-down limit similar to the CME's existing Live Cattle step-down exchange set limit. The proposed federal spot month step-down limit is: (1) 600 at the close of trading on the first business day following the first Friday of the contract month; (2) 300 at the close of trading on the business day prior to the last five trading days of the contract month; and (3) 200 at the close of trading on the business day prior to the last two trading days of the contract month.

⁴ The proposed federal spot month limit for Light Sweet Crude Oil features the following step-down limit: (1) 6,000 contracts as of the close of trading three business days prior to the last trading day of the contract; (2) 5,000 contracts as

Core Referenced Futures Contract	2020 Proposed Spot Month Limit	Existing Federal Spot Month Limit	Existing Exchange-Set Spot Month Limit
NYMEX New York Harbor ULSD Heating Oil (HO)	2,000	n/a	1,000
NYMEX New York Harbor RBOB Gasoline (RB)	2,000	n/a	1,000

Non-Spot Month Limits

The 2020 Proposal applies federal position limits outside of the spot month, the non-spot month, to referenced contracts based on the nine legacy agricultural commodities currently subject to federal position limits.

All other referenced contracts subject to federal position limits, however, would still be subject to exchange-set limits and/or position accountability levels outside of the spot month.

Exemptions from Federal Position Limits

The 2020 Proposal would generally include exemptions for (1) bona fide hedging transactions and positions, (2) spread positions, as that term is defined in the proposed “spread transactions definition;” (2) certain financial distress positions, (3) certain natural gas positions held during the spot month; and (4) pre-enactment and transition period swaps, also as those terms are defined in the proposal.

Definition of Bona Fide Hedging Position or Transaction

Federal position limits would not apply to hedges that satisfy all three elements of the “general” bona fide hedging position or transaction definition: (1) the hedge represents a substitute for transactions or positions made at a later time in a physical marketing channel (“temporary substitute test”); (2) the hedge is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise (“economically appropriate test”); and (3) the hedge arises from the potential change in value of actual or anticipated assets, liabilities, or services (“change in value requirement”).

The 2020 Proposal sets forth several changes to the evaluation of whether a position or transaction meets the definition of a “bona fide hedging position or transaction,” including:

- **Enumerated Hedges.** The current list of enumerated bona fide hedges would be expanded to include additional legitimate hedging practices, including anticipatory merchandising.⁵

of the close of trading two business days prior to the last trading day of the contract; and (3) 4,000 contracts as of the close of trading one business day prior to the last trading day of the contract.

⁵ The existing definition of “bona fide hedging transactions and positions” enumerates the following hedging transactions: (1) hedges of inventory and cash commodity fixed-price purchase contracts under 1.3(z)(2)(i)(A); (2) hedges of unsold anticipated production under 1.3(z)(2)(i)(B); (3) hedges of cash commodity fixed-price sales contracts under 1.3(z)(2)(ii)(A); (4) certain cross-commodity hedges under 1.3(z)(2)(ii)(B); (5) hedges of unfilled anticipated requirements under 1.3(z)(2)(ii)(C); and (6) hedges of offsetting unfixed price cash commodity sales and purchases under 1.3(z)(2)(iii). The following additional hedging practices are not enumerated in the existing regulation, but are included as enumerated

- **Measuring Risk.** The 2020 Proposal includes guidance on whether and when market participants may measure risk on a gross basis rather than a net basis. Generally, the proposed guidance provides, subject to certain conditions, measuring risk on a gross basis if it would be consistent with the trader’s historical practice and is not intended to evade applicable limits.
- **Temporary Substitute Test.** The proposal modifies the “temporary substitute test” to require that a bona fide hedging transaction or position in a physical commodity must *always*, and not just *normally*, be connected to the production, sale, or use of a physical cash-market commodity. Therefore, a market participant would generally no longer be permitted to treat a position entered into for “risk management purposes”⁶ as a bona fide hedge, unless the position qualifies as either (i) an offset of a pass-through swap, where the offset reduces price risk attendant to a pass-through swap executed opposite a counterparty for whom the swap qualifies as a bona fide hedge; or (ii) a “swap offset,” where the offset is used by a counterparty to reduce price risk attendant to a swap that qualifies as a bona fide hedge and that was previously entered into by that counterparty.

The Commission’s proposed list of enumerated hedges is set forth in Appendix A to Part 150. Persons who hold an enumerated bona fide hedge would not be required to submit an application requesting an exemption from the Commission, but would continue to be required to request an exemption from exchange-set limits.

Among other changes, market participants would also no longer be required to file Form 204 with the Commission on a monthly basis to demonstrate cash-market positions justifying position limit overages. Instead, the Commission would have access to cash-market information submitted by market participants in connection with their applications to exchanges for exemptions from exchanges-set limits, typically filed on an annual basis.

New Streamlined Process for Recognizing Non-Enumerated Bona Fide Hedges

The Commission is proposing to establish a streamlined process for addressing requests for non-enumerated bona fide hedging positions. The new proposed process leverages existing exchange processes as well as exchange expertise and resources while affording the Commission the opportunity to object as needed.

Under the proposed rule, market participants could provide one application to an exchange to request a non-enumerated bona fide hedge, and receive approval of such request for the purposes of both exchange-set limits and federal limits, so long as the Commission does not object within a ten business day review period (or two business days in the case of sudden or unforeseen bona fide hedging needs) following the exchange approval of the bona fide hedge for purposes of the exchange-set limits.

After the ten (or two) business days period expires without Commission objection, the bona fide hedge exemption would be valid both for the purposes of both federal and exchange position limits, and the market participant would be able to take on a position that exceeds federal position limits.

hedges in the 2020 Proposal: (1) hedges by agents; (2) hedges of anticipated royalties; (3) hedges of services; (4) offsets of commodity trade options; and (5) hedges of anticipated merchandising.

⁶ “Risk management” refers to derivatives positions, typically held by a swap dealer, used to offset a swap position, such as a commodity index swap, with another entity for which that swap is not a bona fide hedge.

This process would apply only to bona fide hedging transactions or positions that are not enumerated. All enumerated hedges would be self-effectuating and require no Commission action.

Compliance Date and Limits on “Pre-Existing Positions”

The 2020 Proposal requires market participants and exchanges to comply with the requirements set forth in the final rulemaking no later than 365 days after publication of the final rule in the Federal Register.

Certain “Pre-Existing Positions” entered into prior to the effective date of final position limits rules would not be subject to federal position limits. Both “Pre-Enactment Swaps,” which are swaps entered into prior to the Dodd-Frank Act whose terms have not expired, and “Transition Period Swaps,” which are swaps entered into between July 22, 2010 and 60 days after the publication of final position limits rules, would not be subject to federal limits. All other “Pre-Existing Positions” acquired in good faith prior to the effective date of final position limits rules would be subject to federal limits during, but not outside, the spot month.

Request for Comment on Proposed Rule

The Commission invites comments on all aspects of the proposed rule and outlines specific questions for comment.

Comments must be received on or before 90 days from the Commission’s Open Meeting on January 30, 2020 issuing the 2020 Proposal.

You may submit comments, identified by “Position Limits for Derivatives” and RIN 3038-AD99, by any of the following methods:

CFTC Comments Portal: <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Hand Delivery/Courier: Follow the same instructions as for Mail, above.