

EEMAC

JULY 29, 2015

CORNERSTONE POINTS

- List of enumerated hedges (proposed: Fixed Purchases/Sales, Inventory, Anticipatory Processing, Cross Hedge) should be expanded to include the examples of hedging activity described in comment letters and petitions. This is an essential top priority.
- The Commission should authorize through the passage of rule(s), the authority for DCMs/SEFs to determine what constitutes permissible Non-Enumerated hedging exempt from federal and DCM/SEF speculative position limits.
- The Commission may alter or reverse any DCM/SEF exercise of such granted authority through an interpretive action process initiated by staff which provides DCMs/SEFs the ability to respond ahead of any final action by the Commission. Any alteration or reversal by the Commission would be prospective only.

CURRENT EXCHANGE EXEMPTION PROCESS

Application Filed Before Exceeding Exchange Limits

- Market participant requests exemption limit for certain strategy(s)
- Applicant must provide documentation to support underlying exposure
- Applicant provides existing risk management policies and compliance procedures

Exchange Review Process

- Market Surveillance will review the justification and supporting documentation
- Review applicant internal procedures

Exchange Determination

- May approve, deny or conditionally approve the exemption
- Will determine the appropriate exemption level, which may be less than requested level
- Provide applicant with written determination

Ongoing Surveillance

- Per surveillance procedures, there will be continued oversight of positions even though they are subject to an exemption

CONCEPTUAL EXTENSION OF PROCESS FOR NON-ENUMERATED EXEMPTIONS

- An application will be filed with each DCM/SEF on which the hedger transacts and/or maintains positions. The application to exceed the DCM/SEF limit would be filled in advance of assuming non-enumerated exemptions positions in excess of the limits, pursuant to the rules of the DCM/SEF.
- The DCM/SEF would approve, deny or conditionally approve the exemption request and assign a numerical limit to the exemption for positions on its market.
- Any hedger granted an exemption from DCM/SEF speculative position limits for a non-enumerated hedge who transacts and/or maintains positions on the DCM/SEF, shall also be permitted by Commission rule, to effect exemption from federal speculative position limits for OTC transactions with respect to the strategy underlying the transactions/positions.
- Based on the analysis conduct by the DCM/SEF, the determined overall exposure for a particular strategy (which is embodied in the DCM/SEF approval letter, which is passed on to the CFTC) shall act as a boundary for the hedger which the CFTC can rely upon in monitoring the hedger's OTC positions or their impact on the hedger's compliance with federal speculative position limits.

CONCEPTUAL PROCESS FOR NON-ENUMERATED EXEMPTIONS (CONTINUED)

- If a denial was based upon the DCM/SEF's determination that the transactions/positions did not qualify for hedge treatment under the Commodity Exchange Act (CEA), the denial letter would specify so.
- All approvals and denials would be forwarded to the Commission.
- DCMs and SEFs with pending exemption requests would conduct regular meetings for the purpose of harmonizing handling.
- DCMs/SEFs would publish on their website a summary of the type of Non-Enumerated exemptions they have approved and coordinate to offer similar characterization, where possible, regarding description.
- The Commission, through the rule enforcement review process or any other time as it deems necessary, may request from a DCM/SEF all materials and documentation supporting any exemption that it approved or denied.
- Provided that the DCM/SEF and the hedger did not act in bad faith, the CFTC would not bring any enforcement action against any DCM/SEF granting an exemption or trader relying on such exemption.