

LATEST CFTC POSITION LIMITS PROPOSAL: IF AT FIRST YOU DON'T SUCCEED, TRY, TRY AGAIN

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LATEST CFTC POSITION LIMITS PROPOSAL: IF AT FIRST YOU DON'T SUCCEED, TRY, TRY AGAIN

After a decade of rulemaking efforts, the Commodity Futures Trading Commission (Commission or CFTC) is proposing revisions to its regulations concerning federal speculative position limits (the Proposal)¹ to conform to the Wall Street Transparency and Accountability Act of 2010 (Dodd-Frank Act) amendments to the Commodity Exchange Act (CEA or Act).

The Proposal covers spot month and non-spot month position limits, bona fide hedging exemptions and other exemptions, and the Commission's change in position on whether a "necessity finding" is required to impose position limits.

A DECADE OF RULEMAKING EFFORTS

The Proposal is the latest in a series of proposed rulemakings that the Commission has issued related to the imposition of federal position limits on commodity derivatives. The first notice of proposed rulemaking was issued in 2010 and was subsequently withdrawn.² The second notice was issued, and the rules adopted, in 2011, but ultimately the rules were vacated by the US District Court for the District of Columbia because the court found that there were at least two plausible readings of the Act and, therefore, the court did not uphold the CFTC's interpretation of the statutory requirements regarding the imposition of position limits.³

In 2013, the Commission issued a third notice, relating to aggregation of positions, and a fourth notice, relating to repropoed position limits.⁴ The Commission then issued a revised reproposal pertaining to aggregation of positions and federal position limits,⁵ and adopted final rules on aggregation of positions.⁶

In 2016, the Commission issued a supplemental rulemaking and another revised reproposal of its position limits regime.⁷ The Proposal formally withdraws the 2013 and two 2016 notices.

¹ The Proposal follows the proposal and adoption of final rules in 2011, which were vacated by the US District Court for the District of Columbia in 2012; proposed rules in 2013; a supplemental proposal in June 2016; and a reproposal in December 2016 (the 2016 reproposal). The Commission is withdrawing from further consideration the 2013 proposal, the 2016 supplemental proposal, and the 2016 reproposal.

² Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4,144 (proposed Jan. 26, 2010), *withdrawn* 75 Fed. Reg. 50,950 (Aug. 18, 2010).

³ Position Limits for Derivatives, 76 Fed. Reg. 4,752 (proposed Jan. 26, 2011); Position Limits for Futures and Swaps, 76 Fed. Reg. 71,626 (adopted Nov. 18, 2011); *vacated by International Swaps & Derivatives Ass'n v. US Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. 2012).

⁴ Aggregation of Positions, 78 Fed. Reg. 68,946 (proposed Nov. 15, 2013); Position Limits for Derivatives, 78 Fed. Reg. 75,680 (proposed Dec. 12, 2013) (withdrawn by the Proposal).

⁵ Position Limits for Derivatives and Aggregation of Positions, 80 Fed. Reg. 10,022 (proposed Feb. 25, 2015).

⁶ Aggregation of Positions, 81 Fed. Reg. 91,454 (Dec. 16, 2016).

⁷ Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38,458 (June 13, 2016) (withdrawn by the Proposal); Position Limits for Derivatives, 81 Fed. Reg. 96,704 (proposed Dec. 30, 2016) (withdrawn by the Proposal).

POSITION LIMITS

Currently, federal position limits apply only to futures and options on futures on nine agricultural commodities (and exchanges are required to establish their own position limits for all physically settled commodities and position limits or accountability levels for all other commodities). The Proposal would expand the coverage of federal position limits by establishing or amending federal position limits applicable to traders that hold or control positions in “referenced contracts,” which include the following:

- **Core referenced futures contracts**, which are 25 physically settled agricultural, metals, and energy futures and options on futures contracts.⁸
- **Linked contracts**, which include futures and options on futures contracts that are directly or indirectly linked to the price of a core referenced futures contract, or to the same commodity underlying a core referenced futures contract for delivery at the same location as specified in that core referenced futures contract.

To provide market participants with greater clarity as to which contracts may be included in the scope of linked contracts, CFTC staff will publish and periodically update a CFTC Staff Workbook that will provide a nonexclusive list of linked contracts. In this context, an example of “indirect linkage” would include cash-settled futures contracts or options on futures that settle to a referenced contract.

- **Economically equivalent swaps**, which are defined as swaps with identical material contractual specifications, terms and conditions to a referenced contract. The definition of economically equivalent swaps is narrower than the linked contracts definition.

For economically equivalent swaps, identical material contractual specifications, terms and conditions include a comparison of terms relating to the underlying commodity (commodity reference price and grade differentials) and the settlement method (physical vs. cash settlement), but disregard any differences between a swap and a referenced contract due to

- notional amount or lot size,
- post-trade risk management (e.g., cleared vs. not cleared, or margin terms), or
- for physically settled swaps, delivery dates diverging by less than one calendar date, except in the case of physically settled natural gas swaps, where delivery dates may diverge by less than two calendar days (which will capture penultimate natural gas swaps within the economically equivalent swap definition).

The Proposal says that this definition is generally consistent with the EU definition, with the exception that the CFTC definition refers to “identical *material* terms.”

⁸ The 25 core referenced futures contracts include (1) CBOT Corn, (2) CBOT Oats, (3) CBOT Soybeans, (4) CBOT Soybean Meal, (5) CBOT Soybean Oil, (6) CBOT Wheat, (7) CBOT KC Hard Red Winter Wheat, (8) MGEX Hard Red Spring Wheat, (9) ICE Cotton No. 2, (10) CME Live Cattle, (11) CBOT Rough Rice, (12) ICE Cocoa, (13) ICE Coffee C, (14) ICE FCOJ-A, (15) ICE US Sugar No. 11, (16) ICE Sugar No. 16, (17) COMEX Gold, (18) COMEX Silver, (19) COMEX Copper, (20) NYMEX Platinum, (21) NYMEX Palladium, (22) NYMEX Henry Hub Natural Gas, (23) NYMEX Light Sweet Crude Oil, (24) NYMEX New York Harbor ULSD Heating Oil, and (25) NYMEX New York Harbor RBOB Gasoline.

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Under the Proposal, referenced contracts would *not* include location basis contracts, commodity index contracts, swap guarantees, and trade options that meets the requirements of CFTC Regulation 32.3.

Spot Month Limits

The Proposal would establish aggregate spot month position limits for referenced contracts on each of the core referenced futures contracts (i.e., aggregating futures, options on futures, linked contracts, and economically equivalent swaps).⁹ Initially, the spot month position limits would be set at or below 25% of deliverable supply, as estimated by the exchange or designated contract market (DCM) listing the core referenced futures contract.¹⁰ While many of the proposed spot month limits, such as those for crude oil, natural gas, cotton, Minneapolis wheat, and several soft agricultural commodities, are significantly higher than current federal or exchange limits, the current limits apply only to futures and not to linked contracts or economically equivalent swaps, which now must be included against such limits.

Updating Deliverable Supply Estimates in the Future

The CFTC has not proposed to require DCMs to provide updated estimates of deliverable supply according to a preestablished timeframe. Instead, the CFTC may request such estimates from a DCM on an ad hoc basis. For example, the CFTC may request an updated estimate if a contract has problems with pricing convergence between the futures and the cash market, as it could be a symptom of a deliverable supply issue in the market. In such a situation the CFTC may request an updated deliverable supply estimate from the relevant DCM to help identify the possible cause of the pricing anomaly. In the event that a DCM wanted the CFTC to consider new deliverable supply information or adjust federal limit levels, the DCM could submit estimates of deliverable supply or its recommendation for a speculative position limit level. When submitting an estimate, a DCM would be required to provide a description of the methodology used to arrive at the estimate and statistical data supporting the estimate to enable the CFTC to verify that the estimate is reasonable.

The process that the CFTC will use in amending federal spot month limits is a notice and comment process, with the proposed limits published in the *Federal Register* prior to any changes to limits.

Limitations on Netting

The spot month limits would be applied separately for physically delivered and cash-settled referenced contracts; in other words, a trader could hold up to the position limit in each of physically settled and cash-settled contracts, and could net positions across physically settled reference contracts, and separately could net positions across cash-settled referenced contracts. However, a trader could not net physically settled referenced contracts against cash-settled referenced contracts for purposes of spot month position limits. Nor could nonreferenced contracts on the same commodity be used to net down positions in referenced contracts.

⁹ The term "spot month" is defined as the period beginning the earlier of (1) the close of business on trading day preceding the first day on which the clearinghouse can issue delivery notices or (2) the close of business on the trading day preceding the third to last trading day until the contract expires. ICE Futures US Sugar No. 11, ICE Futures US Sugar No. 16, and CME Live Cattle are subject to special definitions based on variations in spot month conventions for these commodities.

¹⁰ See Appendix for spot month limit levels.

CONDITIONAL SPOT MONTH LIMIT FOR NATURAL GAS

The Proposal would establish a conditional spot month limit only for Henry Hub natural gas referenced contracts that will permit traders to acquire position levels in cash-settled contracts that are five times the spot month limit for such contract (2,000 contracts) per DCM (and in economically equivalent swaps) if such positions are exclusively in cash-settled contracts and provided that

- for cash-settled contracts in the spot month, the trader does not hold or control positions in cash-settled contracts in the spot month that exceed the conditional position limit (10,000 contracts net long or short per DCM *plus* 10,000 contracts in economically equivalent swaps); and
- the trader does not hold or control any positions in the physical delivery natural gas referenced contract in the spot month.

Non-Spot Month Limits

The Proposal adopts federal “single month” and “all months combined” non-spot month position limits (referred to as “non-spot month limits”) only for referenced contracts based on the nine legacy agricultural contracts that are currently subject to federal position limits.¹¹ All other referenced contracts subject to federal position limits will still be subject to non-spot month limits and/or position accountability levels established by the exchanges listing such contracts.

The federal single-month and all-months-combined limits will be the same. These non-spot month limits would permit netting of all positions in referenced contracts (regardless of whether such referenced contracts were physical delivery or cash settled) when calculating a trader's positions for purposes of the proposed non-spot month limits. The non-spot month limits would initially be set based on the sum of (1) 10% of the first estimated 25,000 contracts of open interest; and (2) 2.5% of open interest above 50,000 contracts (rather than the current 25,000 contracts). The minimum non-spot month limits, however, would be set at 5,000 contracts. Exchanges will be permitted to set exchange limits below these federal limits.

Updating Open Interest Figures in the Future

The Proposal provides no indication of when the CFTC will review new open interest numbers and revise non-spot month limits, although the CFTC provides guidance on exchange-set non-spot month limits in the Proposal's Appendix F. The process that the CFTC will use in amending federal non-spot month limits is a notice and comment process, with the proposed limits published in the *Federal Register* prior to any changes to limits.

Exemptions

The Proposal includes several exceptions and exemptions from position limits, including bona fide hedging exemptions described further below. However, the Proposal would eliminate the existing risk management exemption such that market participants would no longer be permitted to treat positions in physical commodities entered into for “risk management purposes” as a bona fide hedge unless the position qualifies for the pass-through swap exemption. With regard to nonphysical commodities, exchanges could make available a risk management exemption.

¹¹ See Appendix for non-spot month limits.

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- *Pass-Through Swaps.* A bona fide hedging transaction for one counterparty (the bona fide hedging swap counterparty) passes through to the other counterparty (the pass-through swap counterparty, including, for example, a swap dealer that provides liquidity to the bona fide hedging counterparty). The pass-through swap counterparty may recognize as a bona fide hedging transaction the swap and any futures, options on futures, or swaps entered into by such counterparty to offset the pass-through swap. Any further offsets are ineligible for the pass-through exemption unless these transactions themselves satisfy the bona fide hedging definition.
- *Swap Offsets.* A bona fide hedging swap counterparty that seeks to offset that bona fide hedging swap position using futures, options on futures, or swaps in excess of limits at a future point in time may do so even though the offsetting position itself does not qualify as a bona fide hedge position.
- *Spread Exemptions.* Positions that qualify as spread transactions may exceed federal speculative position limits. Spread transactions include calendar spreads, inter-commodity spreads, quality differential spreads, processing spreads (“crack” or “crush” spreads), product or byproduct differential spreads, or futures option spreads. Spread exemptions would be self-effectuating for federal limits provided the trader applies to the applicable exchange for a spread exemption. Traders may also apply to the CFTC (and must apply separately to the applicable exchange) for a spread exemption for transactions that do not fall within the spread transaction definition.
- *Exception for Preexisting Positions.* The Proposal provides an exception for preexisting positions. In and outside of the spot month, pre-Dodd Frank enactment (swaps entered into before July 21, 2010) and transition period swaps (swaps entered into after July 22, 2010, until 60 days after publication of the final position limit rules) are exempted. For non-spot months, preexisting positions in commodity derivative contracts acquired by a trader in good faith before the effective date of the limits are exempted, so long as the trader does not increase its position in that referenced contract after the effective date of the position limit rules.
- *Financial Distress Exemption.* The Proposal provides for an exemption from position limits for situations involving the resolution of a market participant experiencing financial stress, such as scenarios involving a potential bankruptcy or a customer default at a futures commission merchant, to permit another party to take on the distressed party’s positions.
- *FBOT Transactions.* The Proposal provides that the aggregate position limits would apply to a trader’s positions in referenced contracts executed on or subject to the rules of a foreign board of trade (FBOT) if the positions are held in referenced contracts that settle to (are “linked to”) a referenced contract on a DCM, and the FBOT allows direct access to its trading system for participants located in the United States. The FBOT would not be permitted to provide direct access in the United States for such contracts unless the Commission determined that the FBOT or its foreign regulator imposes position limits “comparable” to the limits (not necessarily the same limits) adopted by the DCM or swap execution facility against which the FBOT contract settles.

BONA FIDE HEDGING EXEMPTION

Bona fide hedge positions have long been exempted from speculative position limits. However, the bona fide hedging definition was written long ago in a different commercial environment and was never updated for current commercial practices. The Proposal adopts a new “general” definition of bona fide hedging transactions and position for a referenced contracts hedge position that

- represents a substitute for cash market transactions made or to be made, or positions taken or to be taken, at a later time in a physical marketing channel (“temporary substitute test”);

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- is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise (“economically appropriate test”); and
- arises from the potential change in the value of actual or anticipated assets, liabilities, or services (“change in value requirement”). A transaction that satisfies the general definition would also need to be an enumerated bona fide hedging transaction, or be approved as a non-enumerated transaction, both of which are discussed below.

Enumerated Bona Fide Hedging Transactions

Traders that hold or control a bona fide hedging transaction or position in referenced contracts based on one of the core referenced contracts, and whose hedging practice is included in one of the enumerated hedges to be listed in new Appendix A of Part 150, would not be required to request prior approval from the CFTC to hold such bona fide hedge position. The enumerated exemptions (expanded from the existing definition of bona fide hedging) would be self-effectuating for purposes of federal position limits, but such trader would be required to request a bona fide hedge exemption from the relevant exchange for purposes of limits established by the exchange.

The Proposal would no longer require traders to file Form 204 with the CFTC on a monthly basis to demonstrate cash market positions justifying hedge positions that exceed speculative limits. Rather, the CFTC would have access to cash market information submitted by traders to exchanges in connection with their application for hedge exemptions from exchange limits.

The enumerated bona fide hedging exemptions include the following:

1. **Hedges of unsold anticipated production (existing):** Short positions in commodity derivative contracts that do not exceed in quantity the person’s unsold anticipated production of the contract’s underlying cash commodity.
2. **Hedges of offsetting unfixed-price cash commodity sales and purchases (existing):** Both short and long positions in commodity derivative contracts that do not exceed in quantity the amount of the contract’s underlying cash commodity that has been both bought and sold by the same person at unfixed prices: (1) basis different delivery months in the same commodity derivative contract, or (2) basis different commodity derivative contracts in the same commodity, regardless of whether the commodity derivative contracts are in the same calendar month.
3. **Hedges of anticipated mineral royalties (new):** Short positions in a person’s commodity derivative contracts offset by the anticipated change in value of mineral royalty rights that are owned by that person, provided that the royalty rights arise out of the production of the commodity underlying the commodity derivative contract.
4. **Hedges of anticipated services (new):** Short or long positions in a person’s commodity derivative contracts offset by the anticipated change in value of receipts or payments due or expected to be due under an executed contract for services held by that person, provided that the contract for services arises out of the production, manufacturing, processing, use, or transportation of the commodity underlying the commodity derivative contract.
5. **Cross-commodity hedges (existing):** Certain positions in commodity derivative contracts may be used to offset the risks arising from a commodity other than the cash commodity underlying a commodity derivative contract, provided that the fluctuations in value of the position in the commodity derivative contract, or the commodity underlying the commodity derivative contract, shall be substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through swap.
6. **Hedges of inventory and cash commodity fixed-price purchase contracts (existing):** Short positions in commodity derivative contracts that do not exceed in quantity the sum of the person’s ownership of inventory and fixed-price purchase contracts in the contract’s underlying cash commodity.

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7. **Hedges of cash commodity fixed-price sales contracts (existing):** Long positions in commodity derivative contracts that do not exceed in quantity the sum of the person's fixed-price sales contracts in the contract's underlying cash commodity and the quantity equivalent of fixed-price sales contracts of the cash products and byproducts of such commodity.
8. **Hedges by agents (currently used as an example of a non-enumerated bona fide hedge):** Long or short positions in commodity derivative contracts by an agent that does not own or has not contracted to sell or purchase the commodity derivative contract's underlying cash commodity at a fixed price, provided that the agent is responsible for merchandising the cash positions that are being offset in commodity derivative contracts and the agent has a contractual arrangement with the person who owns the commodity or holds the cash market commitment being offset.
9. **Offsets of commodity trade options (new):** Long or short positions in commodity derivative contracts that do not exceed in quantity, on a futures-equivalent basis, a position in a commodity trade option that meets the requirements of CFTC Regulation 32.3. Such commodity trade option transaction may be deemed a cash commodity purchase or sales contract as set forth in paragraphs 6 or 7 above, as applicable.
10. **Hedges of unfilled anticipated requirements (existing):** Long positions in commodity derivative contracts that do not exceed in quantity the person's unfilled anticipated requirements for the contract's underlying cash commodity, for processing, manufacturing, or use by that person, or for resale by a utility as it pertains to the utility's obligations to meet the unfilled anticipated demand of its customers for the customer's use.
11. **Hedges of anticipated merchandising (new):** Long or short positions in commodity derivative contracts that offset the anticipated change in value of the underlying commodity that a person anticipates purchasing or selling, provided that
 - the position in the commodity derivative contract does not exceed in quantity 12 months of current or anticipated purchase or sale requirements of the same cash commodity that is anticipated to be purchased or sold; and
 - the person is a merchant handling the underlying commodity that is subject to the anticipatory merchandising hedge, and such merchant is entering into the position solely for purposes related to its merchandising business and has a demonstrated history of buying and selling the underlying commodity for its merchandising business.

Non-Enumerated Bona Fide Hedging Transactions

The Proposal would also permit market participants whose hedge positions or transactions do not fall within one of the list of enumerated hedges to request an exemption for non-enumerated bona fide hedging positions.

The Proposal would establish a new "streamlined" process for requesting non-enumerated bona fide hedging exemptions that relies on the expertise of exchanges in evaluating such applications, but also reserves ultimate approval authority at the CFTC. Under the Proposal, traders could apply to an exchange for a non-enumerated bona fide hedge. If the exchange approves the application, such approval would apply to both exchange and federal limits, so long as the Commission (not staff) does not object to the exchange's determination within 10 business days (or two business days in the case of "sudden or unforeseen" bona fide hedging needs). After the 10-day (or, as applicable, two-day) non-objection period, the non-enumerated bona fide hedging exemption would be valid for both exchange and federal limits. Alternatively, traders could apply directly to the CFTC for a non-enumerated bona fide hedging exemption.

The Proposal would also do the following:

- Eliminate the Risk-Management Exemption (for physical commodities) and Adoption of Pass-Through Swap Exemptions.
- Eliminate the current restriction on holding bona fide hedges exempt from the federal position limits during the last five days of the spot month period. An exchange, in its discretion, could continue to apply the five-day rule to the limits established by the exchange.
- Provide guidance on whether or when a trader seeking to avail itself of a bona fide hedging exemption may measure risk on a gross basis rather than a net basis. In general, measuring risk on a gross basis will be permitted if it would be consistent with the prior practice of the trader, is consistently applied to the trader's positions, and is not intended to evade applicable limits.

NECESSITY FINDING

As set forth in the Proposal, this Commission, unlike in prior Commission proposals, believes that as a result of the Dodd-Frank amendments to the CEA, Section 4a(a)(1) of the CEA¹² requires the Commission to make a necessity finding before imposing position limits. In *ISDA v. CFTC*, the US District Court for the District of Columbia interpreted Section 4a(a)(1), finding that it "clearly and unambiguously requires the Commission to make a finding of necessity prior to imposing position limits."¹³ However, the court also found that the Dodd-Frank amendments, and their relationship to Section 4a(a)(1), are "ambiguous and lend themselves to more than one plausible interpretation."¹⁴ Ultimately the court rejected the Commission's prior position that Section 4a(a) of the Act unambiguously mandated the imposition of position limits without any finding of necessity.

In the Proposal the Commission states that it interprets the amendments made by the Dodd-Frank Act to Section 4a of the CEA as tasking the Commission with establishing such position limits as it finds are "necessary" for the purpose of "diminishing, eliminating, or preventing" "[e]xcessive speculation . . . causing sudden or unreasonable fluctuations or unwarranted changes in . . . price." Therefore, it concludes that a necessity finding is required. The Commission's conclusion reverses the position taken in prior rulemakings regarding necessity findings (and does not reflect the unanimous view of the commissioners).

¹² Section 4(a)(1) reads in relevant part: "For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery function with respect to a registered entity, as the Commission finds are necessary to diminish, eliminate, or prevent such burden." 7 U.S.C. § 6a(a)(1).

¹³ *Int'l Swaps & Derivatives Ass'n*, 887 F. Supp. 2d at 269. The court also examines Section 4a of the Act in its entirety and determines that congressional intent is not unambiguous and, therefore, proceeds with Step Two of its *Chevron* analysis. The court states: "The Court expresses no opinion on whether the construction of Section 6a the CFTC now advances is permissible under *Chevron* Step Two. Although the Court does not foreclose the possibility that the CFTC could, in the exercise of its discretion, determine that it should impose position limits without a finding of necessity and appropriateness, it is not plain and clear that the statute requires this result." *Id.* at 282. In deciding not to remand the rule to the CFTC but, rather, to remand and vacate the rule, the court states: "The agency failed to bring its expertise and experience to bear when interpreting the statute and offered no explanation for how its interpretation comported with the policy objectives of the Act. The Court cannot be sure that the agency will interpret the statute in the same way and arrive at the same conclusion after further review and cannot be sure whether a similar position limits rule will withstand challenge under the APA." *Id.* at 284.

¹⁴ *Id.* at 281.

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The Commission's necessity analysis proceeds from the following propositions set forth in its reading of Section 4a:

- First, excessive speculation in the derivatives markets can cause sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity (unrelated to forces of supply and demand).
- Second, such price fluctuations are an undue and unnecessary burden on interstate commerce in the commodity.
- Third, position limits can diminish, eliminate, or prevent that burden.

The Proposal states that the Commission's job, then, is to make the further determination of whether it is necessary to use position limits, in light of facts and circumstances.

The Commission has made a preliminary necessity finding for all 25 core referenced futures contracts focusing on, for each commodity contract, (1) the importance of the derivatives markets to the underlying cash market, including whether physical delivery is called for; and (2) the importance of the cash markets underlying the core referenced futures contract to the US economy.

WHAT'S NEXT

The Proposal includes 57 questions on which the CFTC solicits comment, and it specifically requests comments that address aspects of the Proposal with which commenters agree. Thus, market participants may wish to consider providing comments on the Proposal, including comments on where the Proposal "gets it right" and where the Commission should improve the proposed regulations.

Topics that commenters may wish to consider addressing include

- whether the spot and non-spot month limits have been established appropriately to balance the need for market liquidity and price discovery against the prevention of excessive speculation;
- whether the definitions of linked contracts and economically equivalent swaps are sufficiently precise to allow traders and compliance staff to know with certainty which contracts must be aggregated for speculative position limits;
- whether the list of enumerated bona fide hedging transactions is appropriately inclusive or potentially subject to abuse by traders circumventing position limits;
- whether the approval process for bona fide hedging transactions is practicable and sufficiently sensitive to the timing needs of traders; and
- whether the CFTC has met its necessity finding burden.

Comments must be received on or before April 29, 2020, and it is our understanding that any requests for extensions to the comment period are unlikely to succeed. If adopted, the Commission proposes that the compliance date of any final position limits rule would be no later than 365 days after publication of final rules in the *Federal Register*.

APPENDIX: LATEST CFTC POSITION LIMITS PROPOSAL

SPOT MONTH LIMITS

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 (CT)	1,800	300	300
Other Agricultural Contracts			
CME Live Cattle (LC)	600/300/200 ¹⁵	n/a	450/300/200
CBOT Rough Rice (RR)	800	n/a	600/200/250
ICE Cocoa (CC)	4,900	n/a	3,000
ICE Coffee C (KC)	1,700	n/a	500
ICE FCOJ-A (OJ)	2,200	n/a	300
ICE US Sugar No. 11 (SB)	25,800	n/a	5,000
ICE US 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 ¹⁶	n/a	3,000
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

¹⁵ The proposed federal spot month limit for Live Cattle features a stepdown limit similar to the CME's existing Live Cattle stepdown exchange set limit. The proposed federal spot month stepdown 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.

¹⁶ The proposed federal spot month limit for Light Sweet Crude Oil features the following stepdown 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 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.

APPENDIX: LATEST CFTC POSITION LIMITS PROPOSAL

NON-SPOT MONTH LIMITS (SINGLE MONTH AND ALL MONTHS COMBINED LIMITS)

Core Referenced Futures Contract	2020 Proposed Single Month and All Months Limit	Existing Federal Single Month and All Months Limit	Existing Exchange-Set Single Month and All Months Limit
CBOT Corn (C)	57,800	33,000	33,000
CBOT Oats (O)	2,000	2,000	2,000
CBOT Soybeans (S)	27,300	15,000	15,000
CBOT Soybean Meal (SM)	16,900	6,500	6,500
CBOT Soybean Oil (SO)	17,400	8,000	8,000
CBOT Wheat (W)	19,300	12,000	12,000
CBOT KC Hard Red Winter Wheat (KW)	12,000	12,000	5,000
MGEX Hard Red Spring Wheat (MWE)	12,000	12,000	12,000
ICE Cotton No. 2 (CT)	11,900	5,000	5,000

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