

CFTC ADOPTS FINAL RULES ON POSITION LIMITS; INDEPENDENT ACCOUNT CONTROLLER EXEMPTION RETAINED

The Commodity Futures Trading Commission adopted final rules on speculative position limits yesterday by a 3-2 vote.¹ As discussed during the CFTC's open meeting, the rules would, among other things:

1. apply to 28 futures contracts and any economically equivalent futures, options and swaps (collectively, "Referenced Contracts");
2. establish modified account aggregation standards while retaining the long-standing independent account controller exemption;
3. retain a modified version of current position limits on "legacy" agricultural futures contracts;² and
4. amend the scope of the bona fide hedging exemption and apply it to excluded commodities.

The full text of the final rules is not yet available but is expected to be published on the CFTC's website and in the Federal Register in the coming days.

Speculative Position Limits

Speculative limits on Referenced Contracts will be established in two phases:

Spot-month position limits

Spot-month limits will be effective 60 days after the term "swap" is further defined by the CFTC. The initial limits will be based on those in effect at that time on the relevant designated contract market. Spot-month limits will be adjusted annually for agricultural contracts and every two years for energy and metal contracts. Adjustments will be based on each contract's deliverable supply as determined by the CFTC in consultation with the relevant designated contract market.

- Generally, spot-month limits will be set at 25% of estimated deliverable supply and will be applied separately for physical-delivery and cash-settled contracts in the same commodity.
- Cash-settled NYMEX Henry Hub Natural Gas contracts will be subject to special rules.

¹ The new rules are being implemented pursuant to Section 737 of The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, enacted July 16, 2011 (the "Dodd-Frank Act").

² The nine "legacy" agricultural commodity futures contracts currently enumerated in Part 150 are: CBOT Corn; CBOT Oats; CBOT Soybeans; CBOT Soybean Meal; CBOT Soybean Oil; CBOT Wheat; ICE Futures U.S. Cotton No. 2; KCBT Hard Winter Wheat; and MGEX Hard Red Spring Wheat.

Non-spot-month position limits

Position limits for the nine legacy agricultural futures contracts will go into effect 60 days after the term “swap” is further defined by the CFTC. Position limits for the 19 non-legacy futures contracts³ affected by these rules will become effective after the CFTC has received one year of open interest data on cleared and uncleared swaps on physical commodities pursuant to the CFTC’s large trader reporting rule for swaps. Non-spot-month limits will be adjusted every two years based on open interest.

- Non-spot-month position limits will be set at 10% of the contract’s first 25,000 of open interest and 2.5% thereafter. These limits will be reset every two years based on the prior two years’ open interest data.
- Non-spot-month limits will be determined with reference to the open interest in futures, cleared swaps and uncleared swaps.

Independent Account Controller Exemption

Although the CFTC proposed to eliminate the independent account controller exemption in the rule proposal, the CFTC indicated that it would retain the exemption in the final rules. Under the current exemption, certain eligible entities are not required, for purposes of speculative position limits, to aggregate positions controlled by an independent account controller, if such controller (i) trades independently of the eligible entity and any other independent account controllers, (ii) has no knowledge of trading decisions by any other independent account controller, and (iii) is appropriately registered with the CFTC (or exempt from such registration).

Visibility Reports

The final rules will require traders with positions exceeding certain levels in energy and metal Referenced Contracts to file quarterly “visibility” reports with the CFTC.

The CFTC indicated that the visibility reports, among other things, are designed to improve its ability to enforce position limits and better understand trading activity in the physical commodity futures and swaps markets.

³ The 19 non-legacy futures contracts include:

Ten non-legacy agricultural contracts: CME Class III Milk; CME Feeder Cattle; CME Lean Hog; CME Live Cattle; CBOT Rough Rice; ICE Futures U.S. Cocoa; ICE Futures U.S. Coffee; ICE Futures U.S. FCOJ; ICE Futures U.S. Sugar No. 11; and ICE Futures U.S. Sugar No. 16;

Four energy contracts: NYMEX Henry Hub Natural Gas; NYMEX Light Sweet Crude Oil; NYMEX New York Harbor Gasoline Blendstock; and NYMEX New York Harbor Heating Oil; and

Five metal contracts: COMEX Copper; COMEX Gold; COMEX Silver; NYMEX Palladium; and NYMEX Platinum.

Bona Fide Hedging Exemption

The CFTC will include an enumerated list of the types of transactions that will qualify under the revised bona fide hedging exemption. CFTC Staff has indicated that certain anticipated merchandising transactions, royalties, and service contracts may qualify as bona fide hedging transactions.

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