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## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Parts 1, 15, 17, 19, 32, 37, 38, 140, and 150**

#### **RIN 3038-AD99; 3038-AD82**

#### **Position Limits for Derivatives and Aggregation of Positions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; provision of Table 11a; and reopening of comment periods.

**SUMMARY:** On December 12, 2013, the Commodity Futures Trading Commission (“Commission”) published in the Federal Register a notice of proposed rulemaking (the “Position Limits Proposal”) to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. On November 15, 2013, the Commission published in the Federal Register a notice of proposed rulemaking (the “Aggregation Proposal”) to amend existing regulations setting out the Commission’s policy for aggregation under its position limits regime. The Commission’s Energy and Environmental Markets Advisory Committee has scheduled a public meeting to be held on February 26, 2015, which will consider, among other matters, exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission’s Energy and Environmental Markets Advisory Committee, the Commission will post an agenda and associated materials, if any, on the Commission’s website; additionally, access to a video webcast of the meeting will be added to the website. In addition, and in connection with the meeting, the Commission is providing counts of the unique persons over percentages

of the 28 proposed position limit levels (currently provided in Table 11 of the Position Limits Proposal based on counts from the period of January 1, 2011, to December 31, 2012 period) in a new table, Table 11a, based on counts from the period of January 1, 2013, to December 31, 2014. To provide commenters with a sufficient period of time to respond to questions raised and points made at the Energy and Environmental Markets Committee meeting, as well as to provide an opportunity to comment on Table 11a, the Commission will reopen the comment periods for an additional 30 days. The Commission is providing notice that comments may be made on the issues addressed at the meeting or in the associated materials posted to the Commission's website, as they pertain to energy commodities. Furthermore, comments may be made on Table 11a, showing counts of the unique persons over percentages of the 28 proposed position limit levels based on counts from the period of January 1, 2013, to December 31, 2014.

**DATES:** The comment periods for the Aggregation Proposal published November 15, 2013, at 78 FR 68946, and for the Position Limits Proposal published December 12, 2013, at 78 FR 75680, will reopen on February 26, 2015, and will close on March 28, 2015.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AD99 for the Position Limits Proposal or RIN 3038–AD82 for the Aggregation Proposal, by any of the following methods:

- Agency Web site: <http://comments.cftc.gov>;
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity

Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581;

- Hand Delivery/Courier: Same as Mail, above; or
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted under § 145.9 of the Commission's regulations (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418–5452, [ssherrod@cftc.gov](mailto:ssherrod@cftc.gov); or Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, [radriance@cftc.gov](mailto:radriance@cftc.gov); Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Commission has long established and enforced speculative position limits for futures and options contracts on various agricultural commodities as authorized by the Commodity Exchange Act (“CEA”).<sup>1</sup> The part 150 position limits regime<sup>2</sup> generally includes three components: (1) the level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,<sup>3</sup> (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,<sup>4</sup> and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.<sup>5</sup> The Position Limits Proposal generally sets out proposed changes to the first and second components of the position limits regime and would establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are “economically equivalent” to such contracts (as such term is used in CEA section 4a(a)(5)).<sup>6</sup> The Aggregation Proposal generally sets out proposed changes to the third component of the position limits regime.<sup>7</sup>

The Commission published the Position Limits Proposal and the Aggregation Proposal separately because it believes that the proposed amendments regarding aggregation of positions could be appropriate regardless of whether the Position Limits

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<sup>1</sup> 7 U.S.C. 1 et seq.

<sup>2</sup> See 17 CFR part 150. Part 150 of the Commission’s regulations establishes federal position limits on futures and option contracts in nine enumerated agricultural commodities.

<sup>3</sup> See 17 CFR 150.2.

<sup>4</sup> See 17 CFR 150.3.

<sup>5</sup> See 17 CFR 150.4.

<sup>6</sup> See Position Limits for Derivatives, 78 FR 75680 (Dec. 12, 2013).

<sup>7</sup> See Aggregation of Positions, 78 FR 68946 (Nov. 15, 2013).

Proposal is finalized.<sup>8</sup> If the Aggregation Proposal is finalized first, the modifications would apply to the current position limits regime for futures and option contracts on nine enumerated agricultural commodities. If the Position Limits Proposal is subsequently finalized, the modifications in the Aggregation Proposal would apply to the position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.

In order to provide interested parties with an opportunity to comment on the Aggregation Proposal during the comment period on the Position Limits Proposal, the Commission extended the comment period for the Aggregation Proposal to February 10, 2014, the same end date as the comment period for the Position Limits Proposal.<sup>9</sup>

Subsequent to publication of the Position Limits Proposal and the Aggregation Proposal, the Commission directed staff to schedule a June 19, 2014, public roundtable to consider certain issues regarding position limits for physical commodity derivatives. The roundtable focused on hedges of a physical commodity by a commercial enterprise, including gross hedging, cross-commodity hedging, anticipatory hedging, and the process for obtaining a non-enumerated exemption. Discussion included the setting of spot month limits in physical-delivery and cash-settled contracts and a conditional spot-month limit exemption. Further, the roundtable included discussion of: the aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity; and aggregation based on substantially identical trading strategies. As well, the Commission invited comment on whether to provide parity for wheat contracts in non-

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<sup>8</sup> See id. at 68947.

<sup>9</sup> See 79 FR 2394 (Jan. 14, 2014).

spot month limits. In conjunction with the roundtable, staff questions regarding these topics were posted on the Commission's website.

To provide commenters with a sufficient period of time to respond to questions raised and points made at the roundtable, the Commission published a document in the Federal Register on May 29, 2014 (79 FR 30762), reopening the comment periods for the Position Limit Proposal and the Aggregation Proposal for three weeks, from June 12, 2014 to July 3, 2014. The Commission published a document in the Federal Register on July 3, 2014 (79 FR 37973), further extending the comment periods to August 4, 2014.

The Commission's Agricultural Advisory Committee met on December 9, 2014. The agenda adopted for the meeting included consideration, among other matters, of two issues associated with the Position Limits rulemaking: deliverable supply and exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission's Agricultural Advisory Committee, the Commission posted questions and presentation materials on the Commission's website; additionally, access to a video webcast of the meeting was added to the website.<sup>10</sup> To provide interested persons with a sufficient period of time to respond to questions raised and points made at the Agricultural Advisory Committee meeting, the Commission reopened both the Position Limit Proposal and the Aggregation Proposal for an additional 45-day comment period.<sup>11</sup>

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<sup>10</sup> Questions, presentation materials, and a video webcast have been made available at [http://www.cftc.gov/PressRoom/Events/opaevent\\_aac120914](http://www.cftc.gov/PressRoom/Events/opaevent_aac120914).

<sup>11</sup> See 79 FR 71973 (Dec. 4, 2014). The Commission also provided notice and clarification that, in addition to commenting on the agenda issues noted in the December 4, 2014, Federal Register release providing notice of the reopened comment period, comments could be made on the issues addressed at the meeting or in associated materials posted to the Commission's website, as they pertained to agricultural commodities, including hedges of a physical commodity by a commercial enterprise; and the process for estimating deliverable supplies used in the setting of spot month limits, as each pertained to agricultural commodities. See also 80 FR 200 (Jan. 5, 2015).

Comment letters received on the Position Limits Proposal are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436>. Comment letters received on the Aggregation Proposal are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1427>.

## **II. Reopening of Comment Period**

The Commission's Energy and Environmental Markets Advisory Committee has scheduled a meeting on February 26, 2015. The agenda adopted for the meeting includes consideration of exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission's Energy and Environmental Markets Advisory Committee, the Commission will post associated materials on the Commission's website; additionally, access to a video webcast of the meeting will be added to the website. To provide interested persons with a sufficient period of time to respond to questions raised and points made at the Energy and Environmental Markets Advisory Committee meeting, the Commission is reopening both the Position Limit Proposal and the Aggregation Proposal for an additional 30-day comment period. The Commission is providing notice that, in addition to commenting on the agenda issues, comments may be made on the issues addressed at the meeting or in associated materials posted to the Commission's website, as they pertain to energy commodities, including hedges of a physical commodity by a commercial enterprise, as pertains to energy commodities.

In addition, and in connection with the Energy and Environmental Markets Advisory Committee meeting, the Commission is providing counts of the unique persons exceeding the 28 proposed position limit levels (currently provided in Table 11 of the Positions Limits Proposal based on counts from the period of January 1, 2011, to

December 31, 2012 period<sup>12</sup>) by certain specified percentages in a new table, Table 11a, based on counts from the period of January 1, 2013, to December 31, 2014. As was the case with Table 11, to provide the public with additional information regarding the number of large position holders in the past two calendar years, Table 11a provides counts of unique persons over 60, 80, 100, and 500 percent of the levels of the position limits proposed for 28 core referenced futures products.<sup>13</sup> Note that the 500 percent line is omitted from Table 11a for contracts where no person held a position over that level. The Commission notes that in addition to commenting on the agenda issues and on the issues addressed at the meeting or in associated materials posted to the Commission's website, as they pertain to energy commodities, comments may be made on Table 11a.

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<sup>12</sup> See 78 FR 75680 at 75731 (Dec. 12, 2013).

<sup>13</sup> As is the case for Table 11, the Commission notes that Table 11a is presented using the proposed initial limit levels, without regard to alternatives presented in the proposed rule. See 78 FR at 75839 for the proposed initial limit levels for the spot month. The Commission also proposed alternatives methods for setting initial levels for the spot month. See FR at 75727-8. The proposed initial limit levels for the non-spot months are found at 78 FR 76787 (Dec. 19, 2013). The Commission also proposed an alternative method to establish higher initial limit levels in the non-spot months. See FR 78 at 75734.

**Table 11a. Unique Persons Over Percentages of Proposed Position Limit Levels, January 1, 2013, to December 31, 2014**

Commodity Type/ Core Referenced Futures Contract	Percent of Level	Unique Persons Over Level			
		Spot Month (Physica l- Delivery )	Spot Month (Cash- Settled)	Single Month	All Months
<b>Legacy Agricultural</b>					
CBOT Corn (C)	60	206	--	12	25
	80	147	--	4	7
	100	49	--	*	5
	500	4	--	--	--
CBOT Oats (O)	60	*	--	11	12
	80	*	--	6	8
	100	--	--	*	5
CBOT Soybeans (S)	60	127	--	14	18
	80	90	--	9	11
	100	31	--	6	9
	500	9	--	--	--
CBOT Soybean Meal (SM)	60	53	--	42	54
	80	31	--	12	19
	100	16	--	6	11
	500	*	--	--	--
CBOT Soybean Oil (SO)	60	82	--	31	38
	80	51	--	10	18
	100	18	--	5	11
	500	*	--	--	--
CBOT Wheat (W)	60	39	--	35	33
	80	30	--	12	17
	100	10	--	8	11
	500	*	--	--	--
ICE Cotton No. 2 (CT)	60	16	--	15	22
	80	10	--	10	14
	100	7	--	8	10
	500	4	--	--	--
KCBT Hard Winter Wheat (KW)	60	17	--	32	39

	80	7	--	16	27
	100	*	--	12	12
MGEX Hard Red Spring Wheat (MWE)	60	7	--	33	36
	80	4	--	20	29
	100	*	--	15	21
<b>Other Agricultural</b>					
CBOT Rough Rice (RR)	60	9	--	6	5
	80	7	--	4	4
	100	*	--	*	*
CME Milk Class III (DA)	60	NA	5	*	26
	80	NA	4	--	15
	100	NA	*	--	10
CME Feeder Cattle (FC)	60	NA	113	8	14
	80	NA	70	*	<b>8</b>
	100	NA	28	--	<b>5</b>
CME Lean Hog (LH)	60	NA	98	19	34
	80	NA	74	8	24
	100	NA	45	*	14
CME Live Cattle (LC)	60	51	--	14	29
	80	7	--	7	16
	100	5	--	*	8
ICUS Cocoa (CC)	60	4	--	47	42
	80	4	--	38	30
	100	*	--	21	21
ICE Coffee C (KC)	60	14	--	30	32
	80	10	--	13	16
	100	6	--	8	11
	500	*	--	--	--
ICE FCOJ-A (OJ)	60	5	--	7	7
	80	5	--	4	4
	100	5	--	4	4
ICE Sugar No. 11 (SB)	60	55	--	41	39
	80	42	--	31	29
	100	16	--	21	22
	500	*	--	--	--

ICE Sugar No. 16 (SF)	60	5	--	6	13
	80	5	--	6	11
	100	4	--	5	11
Energy					
NYMEX Henry Hub Natural Gas (NG)	60	187	236	*	7
	80	142	205	*	*
	100	83	187	--	*
	500	*	46	--	--
NYMEX Light Sweet Crude Oil (CL)	60	135	100	*	12
	80	95	87	*	7
	100	44	65	--	*
	500	--	--	--	--
NYMEX NY Harbor ULSD (HO)	60	76	68	13	16
	80	49	63	7	9
	100	31	44	*	6
	500	--	5	--	--
NYMEX RBOB Gasoline (RB)	60	97	57	26	30
	80	67	52	15	17
	100	36	37	11	12
	500	--	*	--	--
Metals					
COMEX Copper (HG)	60	12	--	61	62
	80	9	--	37	40
	100	4	--	29	30
COMEX Gold (GC)	60	13	--	22	24
	80	9	--	14	14
	100	5	--	10	11
COMEX Silver (SI)	60	9	--	34	32
	80	4	--	20	21
	100	*	--	16	16
NYMEX Palladium (PA)	60	9	--	12	13
	80	5	--	9	5
	100	*	--	4	4
NYMEX Platinum (PL)	60	11	--	29	29

	80	7	--	18	18
	100	*	--	9	9

Legend:

\* means fewer than 4 unique owners exceeded the level.

-- means no unique owners exceeded the level.

NA means not applicable.<sup>14</sup>

Both comment periods will reopen on February 26, 2015, and will close on March 28, 2015.

Issued in Washington, DC, on February 19, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Position Limits for Derivatives and Aggregation of Positions Reopening of Comment Periods – Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2015-03834 Filed 02/24/2015 at 8:45 am; Publication Date: 02/25/2015]

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<sup>14</sup> Table notes: (1) aggregation exemptions were not used in computing the counts of unique persons; (2) the position data was for futures, futures options and swaps that are significant price discovery contracts (SPDCs).