

MEMO# 27707

November 19, 2013

CFTC Re-Proposes Position Limits for Derivatives and Aggregation of Positions

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 92-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 80-13
INVESTMENT ADVISER MEMBERS No. 73-13
SEC RULES MEMBERS No. 104-13 RE: CFTC RE-PROPOSES POSITION LIMITS FOR
DERIVATIVES AND AGGREGATION OF POSITIONS

The Commodity Futures Trading Commission (“CFTC” or “Commission”) has proposed to amend regulations concerning speculative positions limits. [\[1\]](#) The Proposed Rules 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. The Proposed Rules would update definitions, revise the exemptions from speculative position limits, and extend the reporting requirements for persons claiming exemption from those limits. In a separate release, the CFTC also proposed modifications to the aggregation provisions. [\[2\]](#) This memorandum briefly describes the proposed rules.

I. Position Limits for Derivatives

Currently, the CFTC imposes speculative position limits with respect to certain agricultural products. [\[3\]](#) The speculative position limits in current Rule 150.2 apply only to certain futures contracts traded on specific exchanges and, on a futures-equivalent basis, to specific option contracts thereon. The Proposed Rules would impose federal position limits on “referenced contracts,” which include the 28 futures contracts defined as “Core Referenced Futures Contracts” or “CRFC,” [\[4\]](#) and all futures, options and swaps positions that are economically equivalent to a CRFC. [\[5\]](#) The referenced contracts do not include a guarantee of a swap, a basis contract, or a commodity index contract as proposed to be defined. The CFTC anticipates that it will in the future propose to expand the list of CRFC in physical commodities through subsequent releases. The Proposed Rules would apply position limits across all trading venues subject to the CFTC’s jurisdiction. [\[6\]](#)

The Proposed Rules would define the term “speculative position limit” to mean the

maximum position, either net long or net short, in a commodity derivatives contract that may be held or controlled by one person, absent an exemption. This limit may apply to a person's position in the spot month of commodity derivatives contracts in a particular commodity, a person's position in a single month of commodity derivative contracts in a particular commodity, or a person's combined position in all commodity derivative contracts in a particular commodity (all-months-combined).

Spot Month Limits

The Proposed Rules provide that no person may hold or control positions in referenced contracts in the spot month, [\[7\]](#) net long or net short, in excess of the levels specified separately by the CFTC for physical-delivery referenced contracts and for cash-settled referenced contracts. A trader's position in the physical-delivery referenced contract and cash-settled referenced contract are to be calculated separately under the spot month position limits fixed by the CFTC.

The Proposed Rules would establish the initial levels of speculative position limits for each referenced contract at the levels listed in appendix D to part 150, which are at the existing DCM-set levels for the CRFCs. The CFTC proposes to make the levels effective 60 days after publication in the Federal Register of the final rules. As an alternative to the initial spot month limits in proposed appendix D, the CFTC is considering setting the initial spot month limits based on estimated deliverable supplies submitted by the CME Group in correspondence dated July 1, 2013. Under this alternative, the CFTC would use the exchange's estimated deliverable supplies and apply the 25 percent formula to set the level of the spot month limits in a final rule if the CFTC verifies the exchange's estimated deliverable supplies are reasonable. The CFTC is also considering another alternative that would permit the CFTC, in its discretion, both for setting an initial spot month limit and subsequent resets, to use the recommended level, if any, of the spot month limit as submitted by each DCM listing a CRFC (if lower than 25 percent of estimated deliverable supply). Under this alternative, the CFTC would have discretion to set the level of any spot month limit to the DCM's recommended level, a level corresponding to 25 percent of estimated deliverable supply or a level in proposed appendix D.

The CFTC proposes to fix the levels of the spot-month limits for referenced contracts based on one-quarter of the estimated spot-month deliverable supply in the relevant CRFC, no less frequently than every two calendar years. [\[8\]](#) The CFTC proposes to update spot-month limits every two years and to stagger the dates on which DCMs must submit estimates of deliverable supply.

Single-Month and All-Months-Combined Limits

The Proposed Rules provide that no person may hold or control positions, net long or net short, in Referenced Contracts in a single-month or in all-months-combined (including the spot month) in excess of the levels specified by the CFTC. The Proposed Rules permit traders to net all positions in referenced contracts (regardless of whether such referenced contracts are physical-delivery or cash-settled) when calculating the trader's positions for purposes of the proposed single-month or all-months-combined position limits.

Under the Proposed Rules, the formula for the non-spot-month position limits is based on total open interest for all referenced contracts in a commodity. The actual position limits level will be set based on a formula: 10 percent of the open interest for the first 25,000 contracts and 2.5 percent of the open interest thereafter. [\[9\]](#) The initial levels are listed in appendix D. The CFTC proposes to fix the non-spot-month position limit levels no less

frequently than every two calendar years.

Grandfathering of Pre-Existing Positions

The Proposed Rules exempt conditionally from federal non-spot-month speculative limits any referenced contract position acquired by a person in good faith prior to the effective date of such limit. The exemption, however, would not be available for a pre-existing referenced contract position if a person's position is increased after the effective date of such limit. A person holding a pre-existing referenced contract position (in a commodity derivative contract other than a pre-enactment and transition period swaps) would be required, however, to comply with spot month speculative position limits.

II. Exemptions

In addition to proposing a new definition of "bona fide hedging position," the Proposed Rules would amend the three current exemptions from federal speculative limits; add exemptions for financial distress situations, certain spot-month positions in cash-settled referenced contracts, and grandfather pre-Dodd Frank and transition period swaps; and revise recordkeeping and reporting requirements for traders claiming an exemption.

Bona Fide Hedging

The proposed definition of bona fide hedging position includes two general requirements for all hedges; sets forth requirements for hedges of an excluded commodity [\[10\]](#) and incorporates guidance on risk management exemptions that may be adopted by an exchange; lists requirements for hedges of a physical commodity; lists enumerated exemptions; and specifies the requirements for cross-commodity hedges.

General Requirements

The proposed definition sets forth two general requirements for any legitimate hedging position: (1) the purpose of the position must be to offset price risks incidental to commercial cash, spot or forward operations and (2) the position must be established and liquidated in an orderly manner in accordance with sound commercial practices.

Hedges in an Excluded Commodity

For a bona fide hedging position for contracts in an excluded commodity, the position would be required to be (1) economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise and (2) either specifically enumerated in the definition of bona fide hedging position or recognized as a bona fide hedging position by a DCM or SEF consistent with the guidance on risk management exemptions in proposed appendix A to part 150. [\[11\]](#)

Hedges in a Physical Commodity

The proposed definition would recognize as bona fide a position in a commodity derivative contract that (1) represents a substitute for positions taken or to be taken at a later time in the physical marketing channel; (2) is economically appropriate to the reduction of risks; and (3) arises from the potential change in value of assets, liabilities or services, provided that the position is enumerated in the proposed definition of bona fide hedging position.

The Proposed Rules also would recognize as bona fide a commodity derivative contract that reduces the risks of a position resulting from a swap executed opposite a counterparty for

which the position at the time of the transaction would qualify as a bona fide hedging position in a physical commodity. The swap itself would be a bona fide hedging position to the extent it is offset although the CFTC will not recognize as bona fide hedges the offset of such swaps with physical-delivery commodity contracts during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery commodity derivative contract ("five day rule").

Enumerated Hedges

Under the Proposed Rules, a bona fide hedging position would include any of the following positions: (1) hedges of inventory and cash commodity purchase contracts; (2) hedges of cash commodity sales contracts; (3) hedges of unfilled anticipated requirements; (4) hedges by agents; and (5) other enumerated hedging positions for unsold anticipated production, offsetting unfixed-price cash commodity sales and purchases, anticipated royalties, and anticipated changes in the value of payments under service contracts. The CFTC provides examples to illustrate enumerated bona fide hedging positions in proposed appendix B.

Cross-Commodity Hedges

The proposed cross-commodity hedging provision would apply to all enumerated hedges as well as to pass-through swaps in the definition of bona fide hedging position. The cross-commodity hedging would be conditioned on the fluctuations in value of the position in the commodity derivative contract (or the commodity underlying the commodity derivative contract) being substantially related to the fluctuations in value of the actual or anticipated cash positions or pass-through swap and the five day rule being applied to a position in any physical-delivery commodity derivative contract. [\[12\]](#)

Calendar Spread or Arbitrage Positions

The CFTC proposes to delete the current exemption for spread or arbitrage positions between single months of a futures contract or options thereon, outside the spot month. The CFTC believes that the current practice of setting single-month limits at the same levels as all-months limits render the spread exemption unnecessary.

Financial Distress Exemption

The CFTC proposes to permit certain market participants to make a request to the CFTC for an exemption in financial distress scenarios. The Proposed Rules would codify the CFTC's prior exemptive practices to accommodate situations involving a customer default at a futures commission merchant ("FCM") or in the context of potential bankruptcy.

Conditional Spot Month Limit Exemption

The Proposed Rules would provide a conditional spot-month limit exemption that permits traders to acquire positions up to five times the spot-month limit if such positions are exclusively in cash-settled contracts. This exemption would only be available to traders who do not hold or control positions in the spot-month physical-delivery referenced contract. The CFTC proposes to impose enhanced reporting of cash market holdings of traders availing themselves of this exemption.

The CFTC also proposes alternatives to the conditional spot-month limit exemption. First, the CFTC is considering whether to restrict a trader claiming the conditional spot-month limit exemption to positions in cash-settled contracts that settle to an index based on cash-market transaction prices. This would prohibit traders from claiming a conditional

exemption if the trader held positions in the spot-month of cash-settled contracts that settle to prices based on the underlying physical-delivery futures contract. The second alternative would be setting an expanded spot-month limit for cash-settled contracts at five times the level of the limit for the physical-delivery core referenced futures contracts, regardless of positions in the underlying physical-delivery contract. The third alternative is to limit application of the expanded spot-month limit to a trader holding positions in cash-settled contracts that settle to an index based on cash-market transaction prices. Under this alternative, cash-settled contracts that settle to the underlying physical-delivery contract would be restricted by a spot-month limit set at the same level as that of the underlying physical-delivery contract. The CFTC is considering an aggregate spot-limit on all types of cash-settled contracts set at five times the level of the limit of the underlying physical-delivery contract for this alternative.

Pre-Dodd-Frank Enactment Swaps and Transition Period Swaps

The Proposed Rules would provide an exemption for: (1) swaps entered into prior to July 21, 2010 (date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)), the terms of which have not expired as of that date, and (2) swaps entered into during the period commencing July 22, 2010, the terms of which have not expired as of that date and ending 60 days after the publication of the final rules in the Federal Register. The CFTC, however, would allow both pre-enactment and transition swaps to be netted with commodity derivative contracts acquired more than 60 days after publication of the final rules in the Federal Register for the purpose of complying with any non-spot-month position limit.

Other Exemptions for Non-Enumerated Risk-Reducing Practices

A person engaged in risk-reducing practices that are not enumerated may use two different avenues to apply to the CFTC for relief. The person may request an interpretative letter from the CFTC staff pursuant to Rule 140.99 concerning the applicability of the bona fide hedging position exemption or the person may seek exemptive relief from the CFTC under section 4a(a)(7) of the CEA. The CFTC notes that market participants should consult proposed appendix C to part 150 to see whether their practices fall within a non-exhaustive list of examples of proposed bona fide hedging positions.

Previously-Granted Risk Management Exemptions

Prior to the Dodd-Frank Act, the Division of Market Oversight (“DMO”) recognized a broad range of transactions and positions as bona fide hedges based on facts and representations contained in filings. [\[13\]](#) DMO provided relief to persons using the futures markets to manage risks associated with financial investment portfolios and granted exemptions from speculative position limits to a broad range of trading strategies to reduce financial risks, regardless of whether a matching transaction ever took place in cash market for a physical commodity.

The CFTC proposes that the risk management exemptions granted will not apply to swap positions entered into after the effective date of a final position limits rulemaking, thereby revoking the exemptions for new swap positions.

Recordkeeping Requirements

The Proposed Rules specify recordkeeping requirements for persons who claim any exemption. Persons claiming an exemption must maintain complete books and records concerning all details of their related cash, forward, futures, options and swap positions and transactions. In addition, such persons must make books and records available to the CFTC

upon request, and the Proposed Rules would preserve the “special call” rule. The special call rule sets forth that any person claiming an exemption must, upon request, provide to the CFTC such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the commodity derivative contracts or cash market positions that support the claim of exemption; and the relevant business relationships supporting a claim of exemption.

The Proposed Rules also, among other things, would add three new series '04 reporting forms to effectuate additional reporting requirements; [\[14\]](#) extend the requirement to file series '04 reports to any person claiming an exemption; require persons availing themselves of the conditional spot month limit exemption to report certain detailed information; require persons relying on the pass-through swap exemption to file a report with the CFTC on new Form 604; and add new Form 704 to effectuate reporting requirements for anticipatory hedges.

DCMs and SEFs

The Proposed Rules would maintain the requirement that DCMs meet the requirements of part 150, as applicable, and would require that SEFs that are trading facilities meet the requirements of part 150.

In addition, the CFTC proposes several updates to Rule 150.5 to promote compliance with DCM core principle 5 and SEF core principal 6. The Proposed Rules, among other things, would codify rules and revise guidance and acceptable practices for compliance with DCM core principle 5 and SEF core principle 6 for contracts not subject to the federal position limits. The Proposed Rules also would codify a set of rules and revise acceptable practices for compliance with DCM core principle 5 and SEF core principle 6 for contracts that are subject to the federal position limits. [\[15\]](#) The CFTC proposes to implement uniform requirements for DCMs and SEFs relating to hedging exemptions across all types of contracts, including those that are subject to federal limits. The CFTC also proposes to require DCMs and SEFs to have aggregation policies that mirror the federal aggregation provisions.

A DCM or SEF would continue to be free to enforce position limits that are more stringent than the federal limits. The federal spot month position limits do not apply to physical-delivery contracts after delivery obligations are established.

III. Aggregation of Positions

Currently, the part 150 position limits regime includes rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limits levels. The CFTC proposes modifications to the aggregation provisions of part 150 of its rules, which would be similar to the CFTC's existing aggregation policy. [\[16\]](#) The Aggregation Proposal, however, would apply the policy for aggregation under the CFTC's position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150 in addition to the 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. The Aggregation Proposal also reflects comments that were made to the CFTC's proposal in May 2012 in response to a petition for interim relief from part 151.

Under the Aggregation Proposal, a person must aggregate all positions for which that

person controls the trading decisions or holds a 10 percent or greater ownership or equity interest with all positions held and trading done by such person, as well as the positions of two or more persons acting pursuant to an express or implied agreement or understanding unless an exemption applies. The exemptions from aggregation include, among others, eligible entities [\[17\]](#) with independent account controllers [\[18\]](#) that manage customer positions (“IAC Exemption”).

Independent Account Controller Exemption for Eligible Entities

The CFTC proposes to adopt a new rule to take the place of the existing IAC Exemption, which would be substantially similar to the existing exemption. The CFTC, however, proposes to modify the existing exemption so that it could be applied with respect to any person with a role equivalent to a general partner in a limited partnership or a managing member of a limited liability company.

Under the Aggregation Proposal, an eligible entity need not aggregate its positions with the eligible entity’s client position or accounts carried by an authorized IAC except for the spot month in physical-delivery commodity contracts. If the IAC is affiliated with the eligible entity or another IAC, each of the affiliated entities must: (1) have and enforce written procedures to preclude the affiliated entities from having knowledge of, gaining access to or receiving data about, trades of the other and such procedures must include arrangements that would maintain the independence of their activities; (2) trade such accounts pursuant to separately developed and independent trading systems; (3) market such trading systems separately; and (4) solicit funds for such trading by separate disclosure documents.

Commodity Pools

Any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person, by power of attorney or otherwise directly or indirectly, has a 10 percent or greater ownership or equity interest in a pooled account or positions need not aggregate the accounts or positions of the pool with any other accounts or positions such person is required to aggregate. A person, however, must aggregate the pooled account or positions with all other accounts or positions owned or controlled by such person if such person (1) is the commodity pool operator of the pooled account; (2) is a principal or affiliate of the operator of the pool account unless certain conditions are met; (3) has, by power of attorney or otherwise directly or indirectly, a 25 percent or greater ownership or equity interest in a commodity pool, the operator of which is exempt from registration under Rule 4.13.

Ownership of Greater than Ten Percent in an Owned Entity

Under the CFTC’s Aggregation Proposal, persons with either an ownership or an equity interest in an account or position of less than 10 percent would not need to aggregate such positions solely on the basis of the ownership criteria, while persons with a 10 percent or greater ownership interest would be required to aggregate the account or positions. For a person with either an ownership or an equity interest in an owned entity of 50 percent or less, such person can file a notice for an exemption (effective upon submission) subject to certain conditions. The conditions include: (1) no shared knowledge of trading decisions; (2) trades pursuant to separately developed and independent trading systems; (3) written procedures to preclude sharing of trading information, including arrangements to maintain independence of activities; (4) not sharing employees that control the trading decisions; and (5) not having risk management systems that permit the sharing of trades or trading

strategy.

For a person with a greater than 50 percent ownership of an owned entity, such person may apply to the CFTC for relief from aggregation on a case-by-case basis. The person would be required to demonstrate to the CFTC that the four conditions as specified in the Aggregation Proposal are satisfied. The relief would not be automatic but available only if the CFTC finds, in its discretion, that the conditions are met.

Information Sharing Restriction

The CFTC proposes to establish an exemption for situations where information sharing would create a reasonable risk of a violation of state or federal law or the law of a foreign jurisdiction. The proposed rule would require the person to provide a written memorandum of law that explains the legal basis for determining that information sharing creates a reasonable risk that either person could violate federal, state or foreign law instead of an opinion of counsel (as previously proposed).

Underwriter Exemption

The Aggregation Proposal includes an exemption from aggregation where an ownership interest is in an unsold allotment of securities.

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endnotes

[1] Position Limits for Derivatives, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister110513c.pdf> ("Proposed Rules"). Comments are due 60 days after publication of the Proposed Rules in the Federal Register. The CFTC originally adopted position limits in November 2011, which was challenged in court. In September 2012, the District Court for the District of Columbia vacated those rules. At the open meeting to vote on the Proposed Rules, the CFTC confirmed that it would voluntarily dismiss its appeal of the decision of the District Court.

[2] Aggregation of Positions, 78 FR 68946 (Nov. 15, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lfederalregister/documents/file/2013-27339a.pdf> ("Aggregation Proposal"). Comments on the Aggregation Proposal are due by January 14, 2013.

[3] The list of agricultural contracts includes nine currently traded contracts. The position limits on these agricultural contracts are referred to as "legacy" limits because these contracts have been subject to federal positions limits for decades.

[4] The 28 core referenced futures contracts are: Chicago Board of Trade Corn, Oats, Rough Rice, Soybeans, Soybean Meal, Soybean Oil and Wheat; Chicago Mercantile Exchange Feeder Cattle, Lean Hog, Live Cattle and Class III Milk; Commodity Exchange, Inc., Gold, Silver and Copper; ICE Futures U.S. Cocoa, Coffee C, FCOJ-A, Cotton No.2, Sugar No. 11 and Sugar No. 16; Kansas City Board of Trade Hard Winter Wheat (on September 6, 2013, CBOT and the Kansas City Board of Trade ("KCBT") requested that the Commission permit the transfer to CBOT, effective December 9, of all contracts listed on the KCBT, and all

associated open interest); Minneapolis Grain Exchange Hard Red Spring Wheat; and New York Mercantile Exchange Palladium, Platinum, Light Sweet Crude Oil, NY Harbor ULSD, RBOB Gasoline and Henry Hub Natural Gas.

[5] “Referenced contract” would be defined to mean, on a futures-equivalent basis with respect to a particular core referenced futures contract, a core referenced futures contract listed in Rule 150.2(d), or a futures contract, options contract, or swap, other than a guarantee of a swap, a basis contract, or a commodity index contract: (1) that is: (a) directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of that particular core referenced futures contract; or (b) directly or indirectly linked, including being partially or fully settled on, or priced at a fixed differential to, the price of the same commodity underlying that particular core referenced futures contract for delivery at the same location or locations as specified in that particular core referenced futures contract; and (2) where: (a) calendar spread contract means a cash-settled agreement, contract, or transaction that represents the difference between the settlement price in one or a series of contract months of an agreement, contract or transaction and the settlement price of another contract month or another series of contract months’ settlement prices for the same agreement, contract or transaction; (b) commodity index contract means an agreement, contract, or transaction that is not a basis or any type of spread contract, based on an index comprised of prices of commodities that are not the same or substantially the same; (c) spread contract means either a calendar spread contract or an intercommodity spread contract; and (d) intercommodity spread contract means a cash-settled agreement, contract or transaction that represents the difference between the settlement price of a referenced contract and the settlement price of another contract, agreement, or transaction that is based on a different commodity.

[6] Section 4a(a)(1) of the Commodity Exchange Act (“CEA”) authorizes the CFTC to extend position limits beyond futures and options contracts to swaps traded on a designated contract market (“DCM”) or swap execution facility (“SEF”) and swaps not traded on a DCM or SEF that perform or affect a significant price discovery function with respect to regulated entities (“SPDF swaps”).

[7] The term “spot month” is proposed to be defined, for physical-delivery commodity derivative contracts, as the period of time beginning at the earlier of the close of trading on the trading day preceding the first day on which delivery notices can be issued to the clearing organization of a contract market, or the close of trading on the trading day preceding the third-to-last trading day, until the contract is no longer listed for trading (or available for transfer, such as through exchange for physical transactions). For cash-settled contracts, spot month would mean the period of time beginning at the earlier of the close of trading on the trading day preceding the period in which the underlying cash-settlement price is calculated, or the close of trading on the trading day preceding the third-to-last trading day, until the contract cash-settlement price is determined and published; provided however, if the cash-settlement price is determined based on prices of a core referenced futures contract during the spot month period for that core referenced futures contract, then the spot month for that cash-settled contract is the same as the spot month for that core referenced futures contract.

[8] The Proposed Rules would require each DCM listing a core referenced futures contract to report to the CFTC an estimate of the spot-month deliverable supply, accompanied by a description of the methodology used to derive the estimate and any statistical data supporting the estimate.

[9] For the initial non-spot month limits, the CFTC proposes to use open interest for calendar years 2011 and 2012 in futures contracts, options thereon, and in swaps that are significant price discovery contracts that are traded on exempt commercial markets. For setting subsequent levels, the CFTC proposes to estimate average open interest in referenced contracts using data reported by DCMs and SEFs.

[10] “Excluded commodity” is defined in section 1a(19) of the CEA.

[11] In appendix A to part 150, the CFTC proposes to incorporate as guidance the concepts in the 1987 risk management exemptions interpretive statement. The CFTC believes that it would be consistent with the CEA for exchange rules to exempt a number of risk management positions in commodity derivative contracts in an excluded commodity. Such risk management exemption positions would include exemptions for unleveraged long positions, short calls on securities or currencies owned, and long positions in asset allocation strategies covered by hedged debt securities or currencies owned.

[12] Under the “five-day rule,” the CFTC will not recognize as bona fide hedges the offset of such swaps with physical-delivery contracts during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery commodity derivative contract

[13] Filers obtained exemptions for futures transactions used to hedge price risks from transactions involving options, warrants, certificates of deposit, structured notes and various other structured products and hybrid instruments referencing commodities or embedding transactions linked to the payout or performance of a commodity or basket of commodities.

[14] CFTC Form 204: Statement of Cash Positions in Grains and CFTC Form 304 Report: Statement of Cash Positions in Cotton.

[15] The Proposed Rules specify that a DCM or SEF that lists a contract on a commodity that is subject to a federal position limits must adopt position limits for that contract at a level that is no higher than the federal position limit. Exchanges with cash-settled contracts price-linked to contracts subject to federal limits also must adopt those limit levels.

[16] The Aggregation Proposal is substantially similar to the aggregation modifications adopted in part 151, which were vacated by the District Court for the District of Columbia in September 2012.

[17] An “eligible entity” means a commodity pool operator, the operator of a trading vehicle that is excluded or which itself has qualified for exclusion from the definition of the term “pool” or “commodity pool operator” under Rule 4.5; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under Rule 4.13; a commodity trading advisor; a bank or trust company; a savings association, an insurance company; or the separately organized affiliates of any of the above entities: (1) which authorizes an IAC independently to control all trading decision with respect to the eligible entity’s client positions and accounts that the IAC holds directly or indirectly, or on the eligible entity’s behalf, but without the eligible entity’s day-to-day direction; and (2) which maintains only such minimum control over the IAC as is consistent with its fiduciary responsibilities to the managed positions and accounts and necessary to fulfill its duty to supervise diligently the trading done on its behalf or if a limited partner, limited member or shareholder of a commodity pool the operator of which is exempt from

registration under Rule 4.13, only such limited control as is consistent with its status.

[\[18\]](#) The Proposed Rules include a definition of “independent account controller,” which means a person (1) who specifically is authorized by an eligible entity, independently to control trading decisions on behalf of, but without the day-to-day direction of, the eligible entity; (2) over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities for managed positions and accounts to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations that may be incumbent upon the eligible entry to fulfill; (3) who trades independently of the eligible entity and of any other IAC trading for the eligible entity; (4) who has no knowledge of trading decisions by any other IAC; and (5) who is (i) registered as an FCM, an introducing broker, a commodity trading advisor, or an association person of any such registrant, or (ii) a general partner, managing member or manager of a commodity pool the operator of which his excluded from registration under Rule 4.5 or 4.13.