



CFTC POSITION LIMITS FOR DERIVATIVES: CERTAIN EXEMPTIONS AND GUIDANCE

OVERVIEW

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On May 26, 2016, the U.S. Commodity Futures Trading Commission (CFTC or Commission) [voted unanimously](#) to issue for public comment a [supplement](#) to its December 2013 Position Limits for Derivatives [Proposed Rule](#). The supplement will propose 1) a new process for designated contract markets (DCMs) and swap execution facilities (SEFs) to recognize certain positions in commodity derivative contracts (CDC) as non-enumerated *bona fide* hedges (NEBFH) or enumerated anticipatory *bona fide* hedges (ABFH), and exempt from federal position limits certain spread positions subject to Commission review; 2) to amend certain definitions, including the general definition of “*bona fide* hedging” (BFH); and 3) to delay for DCMs and SEFs that lack access to sufficient swap position information (SSPI) the requirement to establish and monitor position limits on swaps.

Please find below a summary of the supplemental proposal prepared by Delta Strategy Group.

SUMMARY

Exchange-Set Limitations on Swap Positions, 150.5

DCM Core Principle 5 and SEF Core Principle 6

The Commission will temporarily delay for exchanges (DCMs or SEFs) that lack access to “sufficient swap position information” the requirement to establish and monitor position limits on swaps.

“Sufficient Swap Position Information”

An exchange has access to SSPI if it:

- 1) Has access to daily information about its market participants’ open swap positions; or
- 2) Knows that its market participants regularly engage on its exchange in large volumes of speculative trading activity (i.e. surveillance of heavy trading activity), that would cause reasonable surveillance personnel to inquire further about a market participant’s intentions and total open swap positions.

Application

The delay in implementation of exchange-set limits applies to: 1) only swaps; and 2) only for exchange without SSPI. Nothing in this proposal prevents an exchange from nevertheless establishing position limits on swaps.

Federal position limits still apply to swaps that are economically equivalent to futures contracts.

Bona Fide Hedging Position Definition, 150.1

Eliminates the “incidental test” (IT) and “orderly trading requirement” (OTR).

Incidental Test

Although the IT is eliminated, the Commission notes that it interprets risk in the *economically*

appropriate test to mean price risk (PG 21 / FN 56).

The Commission believes a broad interpretation (i.e. execution and logistics risk and credit risk) appears to be inconsistent with the policy objectives of position limits regarding physical commodities, particularly:

- Diminishing excessive speculation that causes sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity;
- Deterring manipulation, squeezes, and corners; and
- Ensuring the price discovery function is not disrupted (PG 21-22/ FN 60).

Orderly Trading Requirement

Although the OTR is eliminated, an exchange may use its own discretion to condition its recognition of a BFH position on the OTR.

The Commission reserves the authority to prohibit the intentional or reckless disregard for the orderly execution of transactions on a registered entity outside of the closing period (PG 23).

Futures-Equivalent Definition, 150.1

The Commission proposes *two further clarifications* (from the December 2013 proposal):

- 1) To address circumstances in which a referenced contract (RC) for which futures-equivalents must be calculated is itself a futures contract; and
 - Futures-equivalent includes a futures contract, which has been converted to an economically equivalent amount of an open position in a core referenced futures contract.
- 2) For purposes of calculating futures-equivalents, an option contract must also be converted to an economically equivalent amount of an open position in a core referenced futures contract.
 - i.e. where the unit of trading underlying an option contract (the notional quantity underlying an option contract) may differ from the unit of trading underlying a core referenced futures contract.

Intermarket Spread Position and Intramarket Spread Position Definitions, 150.1

Intermarket Spread Position

- “A long (short) position in one or more CDC in a particular commodity, or its products or its by-products, at a particular DCM, and a short (long) position in one or more CDC in that same, or similar, commodity, or its products or its by-products, away from that particular DCM.”

Intramarket Spread Position

- “A long position in one or more CDC in a particular commodity, or its products or its by-products, and a short position in one or more CDC in the same or similar, commodity, or its products or its by-products, on the same DCM.”

Reasoning

Takes into account that a market participant may take positions in multiple CDC to establish an intermarket spread position or an intramarket spread position.

Takes into account that such spread positions may be established by taking positions in derivative

contracts in the same commodity, in similar commodities, or in the products or by-products of the same or similar commodities.

For Example: Includes a short position in a crude oil derivative contract and long positions in a gasoline derivative contract and a diesel fuel derivative contract (a reserve crack spread).

Exemptions and Exchange-Set Speculative Position Limits

The Commission notes that the statute is silent or ambiguous with respect to whether the CFTC may authorize self-regulatory organizations (SROs) to recognize positions as BFH positions, and that an SRO's recognition is tentative because the Commission reserves the power to review the recognition, subject to reasonably fixed statutory standards (FN 31).

Since the Commission will permit exchanges to recognize NEBFH, to grant spread exemptions, and to recognize certain enumerated ABFH, the Commission proposes changes to 150.3 and 150.5(a)(2).

The Commission will revise 150.5(b)(5) to permit exchanges to recognize NEBFH, as well as spreads, to conform to this proposal, and is no longer proposing to prohibit recognizing spreads during the spot month, although exemptions would not have been permitted under the December 2013 proposal.

This proposal will maintain the status quo: exchanges that currently recognize spreads in the spot month will be able to continue to do so, however, exchanges will be responsible for determining whether recognizing spreads in the spot month would further the policy objectives of CEA 4a(3).

Non-Enumerated *Bona Fide* Hedges

Exchanges will be allowed to establish rules to recognize as NEBFH positions that meet the general definition of BFH positions. Exchange recognition of NEBFH would be subject to Commission review.

If the Commission determines that the exchange-granted recognition was inconsistent with the CEA or its regulations, the market participant would be required to reduce the derivative position or otherwise come into compliance with position limits within a "commercially reasonable amount of time" (PG 42).

The process does not protect exchanges or applicants from charges of violations of applicable sections of the CEA or other Commission regulations (i.e. attempted manipulation, perfected manipulation, or deceptive conduct; FN 42).

Requirements for Exchange Application Process, 150.9(a)

The Commission anticipates most exchanges to self-certify new rules or rule amendments to process NEBFH applications.

Exchanges are permitted to recognize a smaller than requested position.

The Commission permits exchange to establish a less expansive application process for NEBFH (single-track application process), but also permits exchange to establish a dual-track application process.

Exchanges are required to meet the following requirements when processing applications:

- 1) The position must be in a CDC that is an RC;
- 2) The exchange must list the CDC for trading;
- 3) The CDC must be actively traded on the exchange;
- 4) The exchange must have established position limits for the CDC; and
- 5) The exchange must have at least one year of experience administering exchange-set position limits for the CDC.

The Commission will require all applicants to submit certain factual statements and representations:

- 1) Description of the position in the CDC for which the application is submitted and the offsetting cash positions;
- 2) A statement concerning the maximum size of all gross positions in derivative contracts to be acquired during the year after the application is submitted;
- 3) Detailed information regarding the applicant's activity in the cash markets for the commodity underlying the position for which the application is submitted during the past three years;
- 4) Detailed information to demonstrate why the position satisfies the requirements of CEA 4(a)(c) and any other information necessary to enable the exchange to determine, and the Commission to verify, whether it is appropriate to recognize the position as a NEBFH.

Exchanges must include in its rules for the NEBFH application process certain timing requirements:

- 1) A person intending to rely on an exchange's recognition of a position as a NEBFH is required to submit an application in advance and to reapply *at least on an annual basis*;
- 2) An exchange must notify an applicant in a *timely manner* whether the position was recognized as a NEBFH or rejected, including the reasons for any rejection;
- 3) An exchange must, in a *timely manner*, notify an applicant if a submission is incomplete, determine whether a position is a NEBFH, and notify an applicant whether a position will be recognized, or the application rejected.
- 4) Exchanges may revoke, at any time, any recognition previously issued if it determines the recognition is no longer in accordance with the CEA.

Enhanced Reporting Rules: The Commission expects exchanges to promulgate enhanced reporting rules on market participants to obtain sufficient information to conduct an adequate surveillance program to detect and potentially deter excessively large positions that may disrupt the price discovery process. *At a minimum*, applicants should report when a NEBFH position has been established, and to update and maintain the accuracy of the reports.

Website Requirement: Exchanges are required to publish on its website, *at least quarterly*, a description (executive summary form) of each new type of derivative position that it recognizes as a NEBFH. The description must include a summary describing the type of derivative position and an explanation of why it qualifies as a NEBFH.

Commission Review: Exchanges may elect to request that the Commission review a NEBFH application that raises novel or complex issues.

Recordkeeping Requirements, 150.9(b)

Exchanges electing to process NEBFH applications must keep books and records until the termination, maturity, or expiration date of any recognition of a NEBFH and for a period of *five years after the date*.

Books and Records: Books and records are subject to requests for information, in a manner readily accessible until the termination, maturity, or expiration date of the recognition and during the first two years of the subsequent five-year period. Exchanges must preserve any written or electronic notes of *verbal interactions* with such parties. This section is subject to *CFTC Regulation 1.31*.

Applicants are subject to recordkeeping requirements of 150.3(g) as well as requests for additional information.

Exchange Reporting, 150.9(c)

Weekly Reports: Exchanges electing to process NEBFH applications must submit a weekly report to the Commission. These reports should include:

- The identify of the applicant seeking the recognition;
- The maximum size of the derivative position recognized by the exchange as a NEBFH;
- The size of any limit established by the exchange;
- Information on any revocation of, or modification to the terms and conditions of, a prior determination by the exchange to recognize a commodity derivative position (CDP) as an NEBFH;
- Any summary of a type of recognized NEBFH that was, during the course of the week, published or revised on the exchange's website (please refer to the rule text for additional details; PG 187).

Applicant Reports: Exchanges must submit to the Commission, at least monthly, any report made to the exchange by an applicant notifying the exchange the applicant owns or controls a CDP that the exchange has recognized as a NEBFH.

Timing: Exchanges must submit both reports under the Commission's reporting and transmission standards, and these reports must be submitted no later than 9:00AM EST on the third business day following the report date, unless otherwise notified by the Commission.

Review of Applications by the Commission, 150.9(d)

De Novo Review: The Commission will continue to do "a certain amount of de novo analysis and review" of applications. In this case, the Commission is required to notify the exchange and the applicant that they have 10 business days to provide any supplemental information, if warranted.

During the period of any Commission review, an applicant could continue to rely upon any recognition previously granted by the exchange, but if the Commission determines that remediation is necessary, it will provide for a "commercially reasonable amount of time" for the market participant to comply.

"Commercially reasonable amount of time"

The Commission may consider factors such as current market conditions and the protection of price discovery in the market, however, FN 168 states that the Commission "believes such time period would be less than one business day."

Commission Review of Summaries, 150.9(e)

Due to resource constraints, the Commission may not be able to pre-clear each executive summary, but it proposes to spot check summaries after the fact.

Certain Spread Positions

The Commission reserves the ability to recognize or not recognize BFH positions or to grant or not to grant spread exemptions (PG 31).

Requirements for Application Process, 150.10(a)(1)

Exchanges are required to meet the following requirements when processing applications:

- 1) List for trading at least one component of the spread or list for trading at least one contract that is an RC included in at least one component of the spread; and
- 2) The contract must be actively traded and subject to position limits for at least one year on that exchange.

Pass-Through Swaps: Exchanges are not permitted to recognize a spread between a commodity index contract and one or more RCs – where a BFH position could not be recognized for a pass-through swap offset of a commodity index contract. Rule text of 150.1(2)(ii):

- (A): “*Pass-through swap offsets*”: “Such position reduces risks attendant to a position resulting from a swap in the same physical commodity that was executed opposite a counterparty for which the position at the time of the transaction would qualify as a [BFH] position pursuant to a [pass-through swap counterparty], provided that no such risk-reducing position is maintained in any physical-delivery [CDC] during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery CDC; and
- (B): “*Pass-through swaps*”: “Such swap position was executed opposite a pass-through swap counterparty and to the extent such swap position has been offset pursuant to [a pass-through swap offset].”

Inter-Commodity Spreads (ICS): For ICS in which different components of the spread are traded on different exchanges, the exemption granted by one exchange would be recognized by the Commission for the applicable RCs, but would not bind the exchange(s) that list the other component of the spread.

Types of Eligible Spreads, 150.10(a)(2)

Exchanges may exempt from position limits the following spreads (this list is not exhaustive):

- Calendar spreads;
- Quality differential spreads;
- Processing spreads (i.e. energy crack or soybean crush spreads); and
- Product or by-product differential spreads.

Last Five Trading Days: The proposal does not limit the granting of spread exemptions to positions outside the spot month, however, the Commission is considering whether to prohibit an exchange from granting spread exemptions that would be applicable during the lesser of the last five days of trading or the time period for the spot month (PG 76).

“Cash-and-Carry” Exemptions (PG 77-80)

Cash-and-carry (CAC) exemptions permit a market participant to hold a long position greater than the speculative limit in the spot month and an equivalent short position in the following month in order to guarantee a return, at a minimum, that covers its carrying charges (i.e. cost of financing, insuring, and storing the physical inventory until the next expiration). Market participants are able to take physical delivery in the nearby month and redeliver the same product in a deferred month, often at a profit.

The Commission expresses concerns that this is not consistent with policy objectives, and while market participants are permitted to re-deliver the physical commodity, they are under no obligation to do so.

The Commission is considering and reviewing the following:

- Whether to impose on the exchange a requirement to ensure exit points in CAC spread exemptions are appropriate to facilitate an orderly liquidation in the expiring futures contract (concerned a large demand for delivery on CAC positions may distort the price of the expiring futures price upwards);
- The effectiveness of the exchange’s CAC spread exemptions and the procedure by which they are granted;
- Whether to prohibit CAC spread exemptions altogether;

- Permitting exchanges to grant CAC spread exemptions, but require suitable safeguards be placed (conditioned on a market participant reducing positions below speculative limit levels *in a timely manner* once current market prices no longer permit entry into a full carry transaction, rather than the less stringent condition of ICE Futures U.S. that a trader reduce positions “before the price of the nearby contract month rises to a premium to the second contract month.”)

Information Requested, 150.10(a)(3)

Applicants must demonstrate, and the exchange must determine, that exempting the spread position would, to the maximum extent practicable:

- Ensure sufficient market liquidity for *bona fide* hedgers, but not unduly reduce the effectiveness of position limits to diminish, eliminate, or prevent excessive speculation;
- Deter and prevent market manipulation, squeezes, and corners; and
- Ensure that the price discovery function of the underlying market is not disrupted.

Applicants must submit to the exchange a core set of information and materials that would include *at a minimum*:

- 1) Description of the spread position for which the application is submitted, including details on all components of the spread;
- 2) Detailed information to demonstrate why the spread position should be exempted from position limits, including how the exemption furthers the purposes of CEA 4a(a)(3)(B); and
- 3) A statement concerning the maximum size of all gross positions in derivative contracts to be acquired by the applicant during the year after the application is submitted.

Recordkeeping and Reporting Requirements, Review of Applications, and Summaries by Commission

The proposed processes for spread exemptions, 150.10(b)–(f), are substantially similar to the provisions in 150.9(b)–(f) for NEBFH, as described above.

Anticipatory *Bona Fide* Hedges, 150.11

The Commission expects a number of ABFH positions will be enumerated in the final rule. *However, please refer to the rule text (150.1(3); PG 173-176) to determine whether the ABFH will be enumerated due to requirements on trading days within the spot month and other constraints for ag contracts.*

Exchanges will be permitted to recognize certain ABFH positions (PG 86):

- Unfilled anticipatory requirements;
- Unsold anticipated production;
- Anticipated royalties;
- Anticipated service contract payments or receipts; or
- Anticipatory cross-commodity hedges.

Exchanges may adopt a shorter timeline for processing exemption applications (than proposed in the December 2013 proposal). Exchanges could potentially recognize a position as a BFH in *fewer than ten days after filing*.

Requirements for Application Process, 150.11(a)

The process is similar to 150.9(a) for NEBFH, in that exchanges with at least one year of experience and

expertise administering positions limits could elect to adopt rules to recognize CDPs as ABFHs.

However, the Commission will not propose to permit separate processes for applications based on novel versus non-novel facts and circumstances, and will not require exchanges to post summaries of any enumerated ABFH positions on its website.

Under 150.11(a)(5), contrary to 150.9(a) for NEBFH, applicants are required to file a report with the Commission (under 150.7) and a copy with the exchange. The Commission is proposing technical edits to 150.7 (PG 87-88).

Delegation of Authority

The Commission will delegate certain authorities under proposed 150.9, 150.10, and 150.11 to the Director of the Division of Market Oversight (DMO) or employee(s) the Director may designate from time to time. For example, DMO has authority to:

- Provide instructions regarding the submission of information required to be reported to the Commission by an exchange, and to specify the manner and determine the format, coding structure, and electronic data transmission procedures for submitting information;
- Review summaries of types of recognized NEBFH, and types of spread exemptions required to be posted on an exchange's website;
- Agree to or reject a request by an exchange to consider an application for recognition of a NEBFH or enumerated ABFH, or for a spread exemption;
- Review any application for recognition of a NEBFH or enumerated ABFH, or for a spread exemption, and all records required to be maintained by an exchange in connection with the application;
- Request records, and to request additional information in connection with an application from the exchange of the applicant;
- Determine that an application for recognition of an NEBFH, or for a spread exemption, requires additional analysis or review, and to provide notice to the exchange and the particular applicant that they have 10 days to supplement the application; and
- Determine that it is not appropriate to recognize a CDP as an enumerated ABFH, or that the disposition by an exchange of an application for recognition is inconsistent with the filing requirements.
 - After such determination is made, DMO reserves the authority to grant the applicant a commercially reasonable amount of time to liquidate its CDP or to come into compliance.

The Commission does not propose to delegate its authority to make a final determination as to the exchange's disposition – if the disposition raises concerns regarding consistency of the CEA or presents a novel or complex issue, the Commission will make the final determination.

The Director may submit to the Commission for its consideration any matter which has been delegated, and nothing prohibits the Commission from exercising the authority delegated to DMO.

Cost-Benefit Considerations and the Regulatory Flexibility Act

Type of Respondent	Estimated Number of Respondents	Report or Record	Average Reports Annually	Total Annual Responses	Estimated Number of Hours	Annual Burden in Fiscal Year	
Exchanges	6	150.9(a) Rule Filing	1	6	5	30	
	6	150.10(a) Rule Filing	1	6	5	30	
	6	150.11(a) Rule Filing	1	6	5	30	
	6	150.9(a) Review	185	1,110	5	5,550	
	6	150.10(a) Review	50	300	5	1,500	
	6	150.11(a) Review	50	300	5	1,500	
	6	150.9(a) Summaries	30	180	5	900	
	6	150.10(a) Summaries	10	60	5	300	
	6	150.9(a) Recordkeeping	1	6	30	180	
	6	150.10(a) Recordkeeping	1	6	30	180	
	6	150.11(a) Recordkeeping	1	6	30	180	
	6	150.9(a) Weekly Report	52	312	3	936	
	6	150.10(a) Weekly Report	52	312	3	936	
	6	150.11(a) Weekly Report	52	312	3	936	
	6	150.9(a) Monthly Report	12	72	2	144	
	6	150.10(a) Monthly Report	12	72	2	144	
	Market Participants	222	150.9(a)(3) Application & Notice	5	1,100	4	4,400
		25	150.10(a)(3) Application & Notice	2	50	3	150
25		150.11(a)(2) Application & Notice	2	50	3	150	
Total	278			5,486	6.95	17,636	

Request for Comment – 68 Questions

- 1) The Commission requests comment on all aspects of the proposed delay in implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring by exchanges of position limits for swaps. Does any DCM or SEF currently have access to sufficient data regarding individual market participants' open swaps positions to so set and monitor swaps position limits other than by special call? If yes, please describe in detail how such access could be obtained. If no, how easy or difficult would it be for an exchange to obtain access to sufficient swap position information by means of contract or other arrangements?
- 2) Are there any facts and circumstances specific to DCMs that, for purposes of exchange limits, currently recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1), that the Commission should accommodate in any final regulations regarding the processing of NEBFH applications?
- 3) Are there any concerns regarding an exchange that elects to stop processing NEBFH applications? For example, what should be the status of a previously recognized NEBFH, if the exchange that recognized a NEBFH no longer provides for an annual review?
- 4) Are there circumstances in which the Commission should permit an exchange to process an NEBFH application for a position in a commodity derivative contract where that contract is a referenced contract that is not actively traded on such exchange or for which the exchange has less than one year of experience administering position limits?
- 5) Should the Commission define "actively traded" in terms of a minimum monthly volume of trading, such as an average monthly trading volume of 1,000 futures- equivalent contracts over a twelve month period?
- 6) Are there any concerns if a market participant applies for recognition of a NEBFH on one exchange, intending to execute the trades comprising the recognized position away from that exchange (e.g., over the counter)?
- 7) Are there concerns regarding the applicability of NEBFH positions in the spot month? Should the Commission, parallel to the requirements of current regulation 1.3(z)(2) (i.e., the "five-day rule"), provide that such positions not be recognized as NEBFH positions during the lesser of the last five days of trading or the time period for the spot month?
- 8) If the Commission permits NEBFH positions to be held into the spot month, should recognition of NEBFH positions be conditioned upon additional filings to the exchange—similar to the proposed Form 504 filings required for the proposed conditional spot month limit exemption? As proposed, Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to the exchanges in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.9(c)(2).
- 9) Alternatively, if the Commission permits NEBFH positions to be held into the spot month, should the Commission require market participants to file the Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate, although the Commission could share such a

filing with the exchanges. The Commission would adjust the title of the Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c). Consistent with the restrictions regarding the offset of risks arising from a swap position in CEA section 4a(c)(2)(B), proposed § 150.9(a)(1) would not permit an exchange to recognize a NEBFH involving a commodity index contract and one or more referenced contracts. That is, an exchange may not recognize a NEBFH where a bona fide hedge position could not be recognized for a pass through swap offset of a commodity index contract.

- 10) Would separate application processes for novel and non-novel NEBFHs be more likely to produce inaccurate results, e.g., inappropriate recognition of positions that are not bona fide hedges within the parameters set forth by Congress in section 4a(c) of the Act?
- 11) Is the proposed core set of information required of market participants adequate for an exchange to review applications for NEBFHs?
- 12) The Commission invites comment regarding the discretion proposed for exchanges to process NEBFH applications in a timely manner.
- 13) Should the Commission provide further guidance regarding the types of information that exchanges should seek to elicit from reporting rules with respect to NEBFH positions?
- 14) Should the Commission prescribe that exchanges publish any specific information regarding recognized NEBFHs based on novel facts and circumstances?
- 15) Should the Commission require exchanges to publish summary statistics, such as the number of recognized NEBFHs based on non-novel facts and circumstances?
- 16) Does the proposed flexibility for exchanges to request Commission review provide market participants with a sufficient process for review of a potential NEBFH?
- 17) The Commission requests comment on all aspects of the proposed reporting requirements.
- 18) The Commission requests comments on all aspects of the proposed review process.
- 19) Would permitting exchanges to process applications for spread exemptions from federal limits, subject to Commission review, provide for an efficient implementation of the Commission's statutory authority to exempt such spread positions?
- 20) Are there concerns regarding the applicability of spread exemptions in the spot month that the Commission should consider? Should the Commission, parallel to the requirements of current § 1.3(z)(2), provide that such spread positions not be exempted during the lesser of the last five days of trading or the time period for the spot month?
- 21) If the Commission permits exchanges to grant spread positions applicable in the spot month, should recognition of NEBFH positions be conditioned upon additional filings similar to the proposed Form 504 that is required for the proposed conditional spot month limit exemption? Proposed Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to an exchange in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.10(c)(2).
- 22) Alternatively, if the Commission permits exchanges to grant spread exemptions applicable in the spot month, should the Commission require market participants to file proposed Form 504 with the

Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate. The Commission would adjust the title of proposed Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c).

- 23) Do cash-and-carry spread exemptions further the policy objectives of the Act, as outlined in proposed § 150.10(a)(3)? Why or why not? Do cash and carry spread exemptions facilitate an orderly liquidation? Do these exemptions impede convergence or distort the price of the expiring futures contract?
- 24) If cash-and-carry spread exemptions are allowed, what conditions should be placed on the exemptions? For example, on what basis should a trader be required to exit futures positions above position limit levels? Should such exemptions be conditioned, for example, to require a market participant to reduce the positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction? Are there other types of spread exemptions that may not further the policy objectives of CEA section 4a and, thus, should be prohibited or conditioned?
- 25) With cash-and-carry spread exemptions still under review by the Commission, should the proposed rules allow such exemptions to be granted under proposed § 150.10? Why or why not?
- 26) If the proposed rules do not prohibit such exemptions, an exchange could determine that cash-and-carry spread exemptions—or another type of spread exemption—further the policy objectives in proposed § 150.10(a)(3) and so begin to grant such exemptions from federal position limits. If, after finishing its review, the Commission disagrees with the exchange’s determination, is the proposed process in § 150.10(d) for reviewing exemptions sufficient to address any concerns raised?
- 27) Does the application process solicit sufficient information for an exchange to consider whether a spread exemption would, to the maximum extent practicable, further the policy objectives of CEA section 4a(a)(3)(B)? For example, how would an exchange determine whether an applicant for a spread exemption may provide liquidity, such that the goal of ensuring sufficient market liquidity for bona-fide hedgers would be furthered by the spread exemption?
- 28) How would exchanges oversee or monitor exemptions that have been granted, and, if the exchange determines it necessary, revoke the exemption?
- 29) Is it appropriate to have the same processes under § 150.10(b) through (f) for spread exemptions as proposed for NEBFHs outlined under § 150.09 (b) through (f)? If no, explain why and how those processes should differ.
- 30) The Commission requests comments on all aspects of proposed §150.11, including whether the Commission should consider any other factors in addition to those listed in proposed § 150.11(a)(1)(i), (ii), (iii), (iv) and (v).
- 31) The Commission invites comments on its proposed delegation of authority in § 150.11(e)(iv), and on all other aspects of its proposed delegation of authority in § 150.9(f), § 150.10(f) and § 150.11(e).
- 32) The Commission invites comment on all aspects of its proposed expanded definitions of “intermarket spread position” and “intramarket spread position.”
- 33) The Commission requests comment on its consideration of the benefits and costs associated with the proposed amendments to guidance. Are there additional costs and benefits that the

Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data, or other information of support for such assessments. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

- 34) The Commission requests comment on its consideration of the benefits and costs associated with the proposed revisions to the definition of “bona fide hedging position.” Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data and other information of support for such assessments.
- 35) Futures contracts function to hedge price risk because they lock-in prices and quantities at designated points in time. Futures contracts, thereby, create price certainty for market participants. Thus, the Commission believes that bona fide hedging positions need to ultimately result in hedging against some form of price risk as discussed in Section IIB3(i), above. Is the Commission reasonable in concluding that by eliminating the incidental test market participants will benefit from regulatory certainty and reduced compliance costs because they need only focus on price risk or other risks that can be transformed into price risk?
- 36) It is challenging to interpret the orderly-trading requirement in the context of the over-the-counter swaps market and permitted off-exchange transactions as discussed in Section IIB3(ii), above. Given this challenge, is it reasonable for the Commission to conclude that by eliminating the orderly-trading requirement, market participants benefit from avoiding the compliances costs of an unclear requirement?
- 37) The Commission recognizes that there exist alternatives to the proposed definition of “bona fide hedging position.” These alternatives include: (i) maintaining the status quo in current § 1.3(z), or (ii) pursuing the changes in the December 2013 position limits proposal. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.
- 38) Are there any benefits or costs associated with the proposed revisions to the definition of “futures equivalent”? If yes, commenters are encouraged to include both quantitative and qualitative assessments of these costs and benefits, as well as data or other information to support such assessments.
- 39) The Commission recognizes that one possible alternative to the clarifications made to the “futures-equivalent” definition is to retain the definition of “futures-equivalent” as proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.
- 40) Are there benefits or costs associated with the definitions of “intermarket spread position” and “intramarket spread position”? If yes, commenters are specifically encouraged to include both quantitative and qualitative assessments of these costs and benefits, as well as data or other information to support such assessments.
- 41) The Commission recognizes that one possible alternative to the proposed definitions of

“intermarket spread position” and “intramarket spread position” is to retain the definitions proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such alternative provided.

- 42) The Commission requests comment on its considerations of the benefits of proposed § 150.9. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.
- 43) The Commission requests comment on its considerations of the costs of proposed § 150.9. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.
- 44) The Commission requests comment on whether a Commission administered process promotes more consistent and efficient decision-making. Commenters are encouraged to include both quantitative and qualitative assessments, as well as data or other information to support such assessments.
- 45) The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) not permitting exchanges to administer any process to recognize NEBFHs; or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.
- 46) The Commission requests comment on whether the options for recognizing NEBFHs outlined in the December 2013 position limits proposal are superior from a cost-benefit perspective to proposed § 150.9. If yes, please explain why.
- 47) The Commission requests comment on its considerations of the benefits of proposed § 150.10. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data or other information of support such assessments.
- 48) The Commission requests comment on its considerations of the costs of proposed § 150.10. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of costs as well as data or other information of support such assessments.
- 49) The Commission recognizes that there exist alternatives to proposed § 150.10. These alternatives include: (i) maintaining the status quo, or (ii) pursuing the changes in the December 2013 position limits proposal. The Commission requests comment on whether retaining the framework for spread exemptions as proposed in the December 2013 position limits proposal is superior from a cost-benefit perspective to proposed § 150.10. If yes, please explain why. The Commission requests comment on whether any alternatives to proposed § 150.10 would result in a superior cost-benefit profile, with support for any such alternative provided.
- 50) The Commission requests comment on its considerations of the benefits of proposed § 150.11. Are

there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

- 51) The Commission requests comment on its considerations of the costs of proposed § 150.11. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these costs, as well as data or other information to support such assessments.
- 52) The Commission recognizes that there may exist alternatives to proposed § 150.11, such as maintaining the status quo, or adopting only § 150.7 as proposed in the December 2013 position limits proposal. The Commission requests comment on whether alternatives to proposed § 150.11 would result in a superior cost- benefit profile, with support for any such alternative provided. The Commission requests comment on whether the framework for recognizing enumerated anticipatory bona fide hedging positions as proposed in the December 2013 position limits proposal would be superior from a cost-benefit perspective to proposed § 150.11. If yes, please explain why.
- 53) Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges further the goals of CEA section 4a(a)(3)(B) and properly protect market participants and the public? Please explain.
- 54) Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges affect excess speculation? Please explain.
- 55) Will the ability to assume larger positions by way of exemptions under this supplemental proposal facilitate effective market manipulation by market participants availing themselves of such exemptions? Are existing safeguards and deterrents to market manipulation sufficient to prevent manipulation or does the Commission need to impose position limits without exchange-granted exemptions to prevent manipulation, prophylactically? Please explain.
- 56) Is market integrity adversely affected by the proposed rules in this supplemental proposal? If so, how might the Commission mitigate any harmful impact?
- 57) Should the Commission provide more guidance to exchanges on how to assess recognitions under this supplemental proposal, for example, guidance on cash-and- carry spreads, or any other spreads involving the spot-month contract?
- 58) What costs and benefits would accrue to exchanges and market participants should the Commission provide additional guidance to exchanges on how to assess recognitions under this supplemental proposal? Please explain.
- 59) Are there any anti-competitive effects between exchanges, or exchanges and SEFs, because the rules proposed in this supplemental proposal have the practical effect of allowing exchanges to recognize and grant exemptions from position limits? If so, what are they? Please explain.
- 60) How might the rules proposed in this supplemental proposal affect price discovery? Please explain.
- 61) How might the rules proposed in this supplement proposal affect liquidity?
- 62) Will price discovery be improved on exchanges because of the exemptions outlined in this supplemental proposal?
- 63) How might spread exemptions that go into the spot month affect price discovery?

- 64) What price-discovery costs and benefits would accrue for spread exemptions that go into the spot month? Please explain.
- 65) How might the rules proposed in this supplemental proposal affect sound risk management practices?
- 66) Are there any other public interest considerations that the Commission should consider?
- 67) The Commission seeks comments on all aspects of its cost and benefit considerations. To the extent that any of the proposed rules in this supplemental proposal have an impact on activities outside the United States, the Commission requests comment on whether the associated costs and benefits are likely to be different from those associated with their impact on activities within the United States; and, if so, in what particular ways and to what extent. While at this point in time the Commission does not foresee any other costs or benefits that might be associated with the cross-border implications of this proposal, it seeks further any comment on this topic. For instance, would price discovery move to a foreign board of trade because of this proposed rulemaking? On all issues, commenters are encouraged to supply data and quantify where practical.
- 68) The Commission requests comment on whether there will be any lost benefits related to position limits because of the recognitions and exemptions in the proposed rules in this supplemental proposal.