



Little News is Good News: Is Anything New in Position Limits?



March 12, 2026



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THE FINAL RULE COMPLIANCE DATES





Compliance Dates

- The Final Rule had staggered compliance dates to provide market participants and exchanges with time to implement policies and procedures reasonably designed to ensure compliance with federal position limits.
- January 1, 2022:
 - Market participants were required to comply with the federal position limits on the 16 non-legacy core referenced futures contracts and any referenced contracts (other than economically equivalent swaps) related to those 16 futures contracts;
 - Exchanges were required to establish position limits and grant hedge exemptions.



Compliance Dates (cont'd)

- January 1, 2023:
 - Market participants were required to comply with federal position limits on economically equivalent swaps.
 - All positions established pursuant to previously-granted risk management exemptions had to comply with federal and exchange position limits.
 - The CFTC said that it would reevaluate whether DCMs/SEFs can enforce speculative position limits on economically equivalent swaps.
 - There has been no news on this issue.



Developments Since The Final Compliance Dates

- Overall Effectiveness and Operation of the Position Limits Rule
- Determining what constitutes an Economically Equivalent Swap
- No-Action Relief for Disaggregating Owned Entities
- Accountability Levels for New Types of Exchange Traded Contracts
- CFTC and Exchange Position Limits Enforcement Actions
- Hedge Exemption Issues



Economically Equivalent Swaps

- Swaps that meet the definition of an economically equivalent swap are subject to CFTC-set position limits.
- Economically equivalent swap means, with respect to a particular referenced contract, any swap that has **identical material contractual specifications**, terms, and conditions to such referenced contract.
- “Material” specifications are limited to those provisions that drive the economic value of a swap, for example:
 - the underlying commodity, including commodity reference price and grade differentials;
 - maturity or termination dates; and
 - settlement type (*i.e.*, cash-settled versus physically-settled).



Economically Equivalent Swaps (cont'd)

- Material contractual specifications do not include:
 - lot size specifications or notional amounts;
 - delivery dates diverging by less than one calendar day (less than two days for natural gas), or
 - different post-trade risk management arrangements.
- The narrow definition of an economically equivalent swap should mean that only a small population of swaps will be subject CFTC-set limits.



To Be Or Not To Be An Economically Equivalent Swap - That is the Question

- In 2022, prior to the compliance date for position limits on economically equivalent swaps, **FIA commissioned an analysis** of the meaning of the term “economically equivalent swap.”
- The CFTC said that **market participants were best positioned** to determine which swaps were economically equivalent to referenced contracts. *Position Limits for Derivatives*, 86 Fed. Reg. 3236, 3295 (Jan. 14, 2021).
- The widespread **industry consensus**, based upon the plain language of the definition of economically equivalent swap and the Commission’s statements in the preamble to the Final Rule, was that a **cash-settled swap that uses as its Commodity Reference Price a physically-settled core referenced futures contract does not fall within the definition of an economically equivalent swap because the settlement types are not identical.**



To Be Or Not To Be An Economically Equivalent Swap (cont'd)

- In July 2022, the then Director of DMO informally advised FIA that, notwithstanding the CFTC’s statement that market participants were best positioned to determine what constitutes an economically equivalent swap, DMO was of the view that **a swap is “economically equivalent under the definition set forth in Reg[.] 150.1 to the extent that the swap mirrors the terms of a cash-settled look-alike futures contract (that is, a swap that by definition copies all material terms of the corresponding future).”**
- According to Staff, “the economically equivalent swap definition explicates that a swap *may be deemed to be economically equivalent to any referenced contract.*” (Emphasis added).
- DMO’s use of the term “**mirror,**” particularly with respect to the price term of the two contracts, **focuses on price linkage.** Consequently, it equates the definition of economically equivalent swap with the definition of referenced contract—something **the Commission expressly declined** to do. 86 Fed. Reg. at 3302, n. 493.



To Be Or Not To Be An Economically Equivalent Swap (cont'd)

- In December 2022, following receipt of DMO's informal position, **FIA and ISDA petitioned the CFTC for a determination** that a swap that references a physically-settled core referenced futures contract is not an economically equivalent swap.
- Despite its express invitation to market participants to request guidance “in cases where uncertainty exists as to whether certain swaps would qualify (or would not qualify) as ‘economically equivalent,’ and therefore would be (or would not be) subject to Federal position limits[,]” 86 Fed. Reg. at 3295, the **CFTC never acted** on FIA's and ISDA's Petition.
- As a result, industry participants have had to determine on their own whether to adopt the definition of economically equivalent swap set forth in FIA's analysis or the definition set forth in DMO's informal communication.
- How does the CFTC monitor compliance with position limits on EESs?



CFTC Staff Referenced Contract Workbook

- CFTC Staff has published on the CFTC website a “Workbook” with a **non-exhaustive list** of futures contracts that meet the definition of a referenced contract, [available here](#)
- The last update appears to have been made in March 2023.
- It would be helpful if the CFTC provided market participants with **notice** when it updates the Workbook.
- The Workbook does not:
 - Provide an exhaustive list of referenced futures contracts (states the opposite)
 - Identify economically equivalent swaps; or
 - Identify futures contracts that the Staff believe do not meet the definition of referenced contract.
- CFTC update process – certification of reference contracts and coordination with exchanges.



Exchange Position Limit Tables

- The Exchanges also publish tables / spreadsheets that list position limits, accountability levels and reporting levels.
- The ICE position limits, position accountability levels, and reportable position levels tables are [available here](#)
- The CME position limits, position accountability levels, and reportable position levels in CME, CBOT, NYMEX, and COMEX products are set forth in a Position Limit, Position Accountability, and Reportable Level Table [available here](#)



Pass-Through Swap and Pass-Through Swap Offset Pairs

- If a pass-through swap counterparty (usually a swap dealer) executes a swap opposite a *bona fide* hedging counterparty, then the swap dealer is eligible to treat the swap as a *bona fide* hedge provided certain conditions are met.
- The swap dealer or non-hedging counterparty must:
 - receive from the *bona fide* hedging swap counterparty a **written representation that the pass-through swap qualifies as a *bona fide* hedge**; and
 - enter into a pass-through swap offset to reduce the price risk attendant to the pass-through swap.
- The pass-through swap counterparty **may rely in good faith on a written representation** made by the *bona fide* hedging swap counterparty, unless the pass-through swap counterparty has information that would cause a reasonable person to question the accuracy of the representation.



Pass-Through Swaps (cont'd)

- The Final Rule does not prescribe the form of, or manner by which the pass-through swap counterparty obtains, the written representation.
 - The Commission declined requests that a pass-through swap counterparty may reasonably rely solely upon the fact that the counterparty is a commercial end user and, absent an agreement between the counterparties, that the swap appears to be consistent with hedges entered into by end users in the same line of business.
- The CFTC believes that including pass-through swaps and pass-through swap offsets within the definition of a *bona fide* hedge will mitigate some of the potential impact resulting from the rescission of the risk management exemption.
- The Commission deleted the language in the proposed pass-through swap provision that would have required the offset to be in the “same physical commodity” as the pass-through swap.



Exchange Pass-Through Swap Hedge Exemptions

- The exchanges require applicants for hedge exemptions to **substantiate that their counterparty has provided it with a written representation that the swap of the pass-through swap counterparty qualifies as a bona fide hedging transaction** in accordance with CFTC Regulation 150.1. See IFUS Request for Exemption from Position Limits, Q.6.b.
- The exchanges do not prescribe the form of the counterparty's representation, but they do not permit the pass-through swap counterparty to rely solely on the fact that their swap counterparty is a commercial end user.

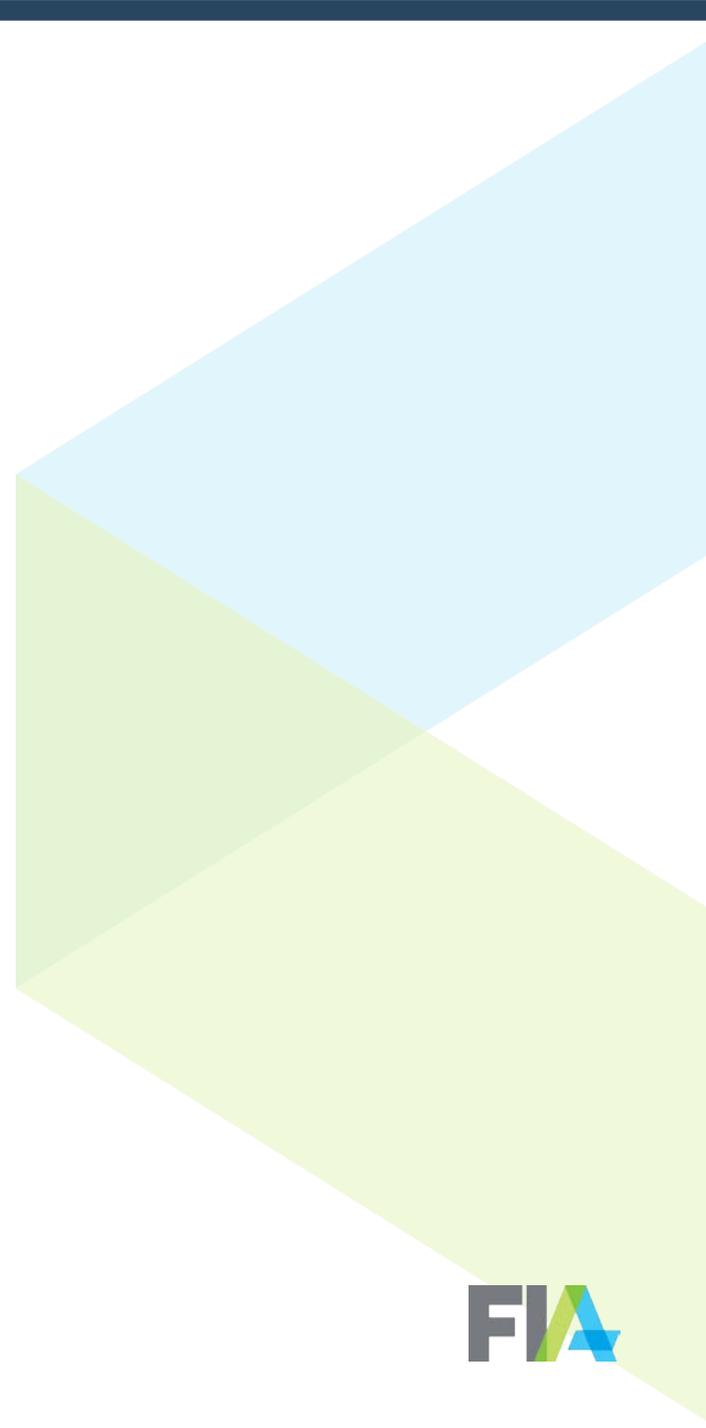


Hedge Exemption Issues

- Anticipated Merchandising Positions
 - What information must be submitted to substantiate the requested exemption?
- Calendar Spreads
 - ICE recognizes them.
 - CME does not recognize them – why is that?
- Non-enumerated hedge exemptions



Aggregation





Aggregating Contracts Subject to Limits

- CFTC regulation 150.4 requires traders to aggregate certain accounts and positions to comply with position limits. Exchanges have similar rules.
- An “Owner” or “Controller” must aggregate its positions with those of an “Owned Entity” if the Owner directly or indirectly:
 - Controls the trading associated with the positions;
 - Holds a 10 percent or greater ownership interest in an account or a 10 percent or greater ownership interest in an entity that holds an account; or
 - Holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies.

See ICE Futures U.S., Regulatory Requirements, Rule 612, [available here](#); CME Group Rule 559, [available here](#).



Aggregating Contracts Subject to Limits – The Owned Entity Exemption

- CFTC regulation 150.4(b)(2) provides an exemption from the aggregation requirement, *i.e.*, it permits disaggregation (the “**Owned Entity Exemption**”), under which an Owner may disaggregate the positions of an Owned Entity if the Owner and the Owned Entity meet certain conditions specified in the exemption.
- The Owner and the Owned Entity (to the extent the Owner is aware or should be aware of the activities and practices of the aggregated or Owned Entity) (the “**Awareness Clause**”) must be able to show that they:
 - Do not have **knowledge** of the trading decisions of the other;
 - Trade pursuant to separately developed and **independent trading systems**;
 - Have and enforce **written procedures** that preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other (security arrangements and separate physical locations);



Aggregating Contracts Subject to Limits – The Owned Entity Exemption (cont'd)

- Do not share **employees** who control their trading decisions; and
- Do not have **risk management systems** that permit the sharing of trades or trading strategy with employees who control the trading decisions of the other.



CFTC Disaggregation No-Action Relief

- Aggregation is one area where there have been significant **positive developments** since the compliance dates in the position limits rule.
- On August 10, 2017, the CFTC provided market participants with no-action relief from certain provisions of the Owned Entity Exemption. CFTC Letter 17-37 (Aug. 10, 2017).
- The relief has been extended several times and will remain in effect until the later of the applicable effective date or compliance date of a rulemaking approved by the Commission addressing the aggregation and notice filing obligations described in CFTC Letter 17-37. See CFTC Letters 19-19, 22-09 and 25-21 (July 31, 2019, August 10, 2022, and July 18, 2025, respectively).
- FIA has asked the Commission to amend Regulation 150.4 to incorporate the no-action relief.



CFTC Disaggregation No-Action Relief (cont'd)

- The no-action relief:
 - Requires a market participant to file a **notice of disaggregation only upon request** by the CFTC or an Exchange on behalf of the CFTC (rather than in advance of such exemption being needed) and such notice only needs to address the specific accounts or positions identified by the CFTC or an Exchange on behalf of the CFTC;
 - Provides that an Owner may rely on the Awareness Clause if the Owner **does not have routine access to, and does not actually control**, the Owned Entity's "derivatives trading" (*i.e.*, contracts subject to CFTC-set position limits); and
 - Narrows the definition of trading decisions and information for purposes of the criteria of independence to "derivatives trading" (*i.e.*, contracts subject to CFTC-set position limits).



Disaggregation Policies and Procedures

- Market participants that disaggregate one or more owned entities must **implement and enforce written procedures** that are designed to preclude access to information regarding trades, positions and strategies of all disaggregated entities.
- The written procedures should include:
 - A **prohibition against sharing employees**, including secondees, who control the trading decisions and strategies of an owned and disaggregated entity.
 - **Login credentials** for risk managers and compliance, surveillance, back-office and accounting personnel to access the owned entity's trade capture or risk management system.
 - **Firewalls** that prevent a person who controls trading decisions of a disaggregated entity from being able to login to the trade capture or risk management systems of the owned entity.



Disaggregation Policies and Procedures (cont'd)

- A requirement that persons who control the trading of a disaggregated entity not sit in the same **physical location** as a person who controls the trading of the owned entity.
- A requirement to provide **periodic training** for employees that addresses position limits compliance, including compliance with the eligibility conditions for disaggregation.



Disaggregation at CME Group Exchanges

- To apply for disaggregation on CME Group Exchanges, a market participant must submit a request for disaggregation to the Market Regulation Department via email at Market_Reg_Surveillance_Chgo@cmegroup.com.
- The request must include:
 - A description of the relevant **circumstances that warrant disaggregation**; and
 - A statement of a senior officer of the entity **certifying** that the conditions set forth in the applicable aggregation exemption provision have been met.
- Remember: It is a **felony** to make a knowingly false or misleading statement, or to knowingly omit any material fact, in an application to a registered entity. CEA § 9(a)(3) and (4); 7 U.S.C. § 13(a)(3) and (4).



Disaggregation at ICE Futures U.S.

- To apply for disaggregation on ICE Futures U.S., a market participant must submit an Application for Disaggregation and any supporting documentation to the ICE Futures US Market Regulation Department by email at <mailto:MarketSurveillance-US@ice.com>. The application form is [available here](#)
- The information required to support an application to disaggregate includes:
 - A statement describing the **nature and purpose of the request** for disaggregation;
 - an **organizational chart** showing the applicant's relationship with the disaggregated parties and a **list of the accounts** to be disaggregated;
 - a copy of the applicant's **written procedures** that are designed to preclude access to information regarding trades, positions and strategies of all disaggregated parties; and
 - a **certification** from an officer that the application is accurate.



Disaggregation at Nodal Exchange

- Under Nodal Exchange Rule 6.8.3, to claim an exemption from aggregation limits under the provisions of CFTC Regulations, a market participant must provide a written notice to the Compliance Department, compliance@nodalexchange.com, which sets forth:
 - a **description of the relevant circumstances** that warrant disaggregation; and
 - a **statement** by a senior officer or executive of the entity **certifying** that the conditions set forth in the applicable CFTC aggregation exemption provision have been met.
- Upon request by the Compliance Department, a trader must provide any requested information which demonstrates that the trader meets the applicable requirements for the exemption.

Exchange Position Accountability Levels and Large Trader Reporting Requirements for Event Contract Swaps

Event Contracts

| | |
|--|--|
| Economic Indicator Event Contracts  | Prediction Markets  |
| Contract Size: \$1 | Contract Size: \$1 |
| Reportable Level: 2,500 | Reportable Level: 500 |
| Single Month Accountability Level: 250,000 | Single Month Accountability Level: 25,000 |

- Why / how does CME set accountability levels for event contracts?



CFTC and Exchange Position Limits Enforcement

- Violations of CFTC and exchange-set position limits are strict liability offenses.
 - A trader's intent is irrelevant.
- Consequently, written position limits policies and procedures are critical for ensuring compliance with position limits.
- The CFTC and the exchanges have been very active enforcing compliance with position limits rules.



CFTC Position Limits Enforcement

- On September 25, 2024, the CFTC imposed a \$1.5 million civil penalty against a commodity marketer and registered swap dealer as part of a settlement involving several position limits violations, [available here](#)
- In an Order in which marketer / SD admitted that its conduct violated the cited sections of the CEA and CFTC regulations, the CFTC found that:
 - During March and April 2023, the marketer / SD held positions in April and May 2023 ICE H contracts in excess of both the 2,000-contract Federal speculative position limit and the 2,000-contract Exchange speculative position limit, without meeting the requirements of an exemption under Regulation 150.3.
 - The marketer / SD did not establish and enforce written policies and procedures reasonably designed to monitor for and prevent violations of Federal, DCM, or SEF position limits and to monitor for and prevent improper reliance upon any exemptions or exclusions from such position limits.



CFTC Position Limits Enforcement

- The marketer / SD **did not diligently supervise** its employees because it **lacked an adequate internal position limit monitoring system** that included an early warning system and written policies and procedures reasonably designed to detect and alert its senior management when position limits were in danger of being breached due to improper reliance upon any exemptions or exclusions from such position limits.



CFTC Position limits Enforcement

- Also on September 25, 2024, the CFTC imposed an \$800,000 civil penalty against a proprietary trader as part of a settlement involving position limits violations, [available here](#)
 - In an Order in which the proprietary trader admitted the facts and acknowledged that its conduct violated the cited sections of the CEA and CFTC regulations, the CFTC found that Between December 2022 and February 2024, the trader held conditional limit exemptions granted by the ICE Futures U.S. and the Nodal exchanges.
 - Despite holding these conditional limit exemptions, on numerous occasions the trader exceeded the Federal spot month speculative position limit for cash-settled reference contracts to the NYMEX's physically-delivered Henry Hub Natural Gas futures contract.



CFTC Position Limits Enforcement

- On August 14, 2024, the CFTC imposed a \$500,000 civil penalty against an international commodity marketer / proprietary trader and its affiliate as part of a settlement involving several position limits violations, [available here](#)
- In an Order in which the marketing entities neither admitted nor denied the CFTC's findings, the CFTC found that:
 - Between May and December 2022, the marketing entities held positions in the CME Live Cattle Futures contracts, NYMEX WTI Options and IFED WTI 1 Month Calendar Spread (Financial Option), as equivalents to the NYMEX Physically Settled WTI Crude Oil contracts that exceeded the speculative position limits for those contracts.



CFTC Position Limits Enforcement

Other CFTC settlements involving position limit violations include:

- *In re Challenger Life Company Ltd.*, CFTC Docket No. 23-29 (2023) (\$150,000 penalty for violating limits on platinum futures contracts), [available here](#)
- *CFTC v. Easterday*, (E.D. Wash. 2023) (\$1 million penalty for fraud and exceeding exchange-set position limits in the live cattle and feeder cattle futures markets), [available here](#)
- *In re AG Processing Inc.*, CFTC Docket No. 21-02 (2021) (\$400,000 penalty for exceeding the all-months speculative position limit on Soybean Meal futures contracts), [available here](#)



Exchange Position limits Enforcement

- ICE and CME also have been active enforcing compliance with position limits and aggregation requirements.
- In September 2025, ICE fined a proprietary trader \$20,000 and required it to **disgorge profits** of \$6,729 for establishing an intraday position that exceeded its hedge exemption limit, [available here](#)
- In June 2025, ICE fined the trading affiliate of an international food and agriculture company \$175,000 for failure to submit position limit reports in the required format, failure to supervise, and failure to establish, administer, and enforce supervisory systems, policies, and procedures reasonably designed to achieve compliance with Exchange rules, [available here](#)



Exchange Position limits Enforcement, *cont'd*

- In July 2025, CME fined an AP \$3,000 for submitting a late request for a hedge exemption after exceeding a position limit, [available here](#)
- In February 2025, CME fined a foreign asset management company \$20,000 and required it to **disgorge profits** of \$78,350 for exceeding an intraday position limit, [available here](#)
- In October 2025, CME fined a retail trader \$20,000 for **violating an intraday position limit**. The trader did not profit from exceeding the limit, [available here](#)



Exchange Position limits Enforcement, *cont'd*

- In July 2025, 4, ICE fined a commodity marketer and swap dealer \$1 million for the same position limits violations as in the CFTC settlement with the same company (exceeding position limits and failure to comply with hedge exemption, failure to supervise, and failure to establish, administer, and enforce supervisory systems, policies, and procedures reasonably designed to achieve compliance with Exchange rules governing the use of exemptions), [available here](#)
- In September 2024, ICE fined a proprietary trader \$450,000 and required it to **disgorge \$5 million** for exceeding position limits and hedge exemption levels and failure to establish, administer, and enforce supervisory systems, policies, and procedures reasonably designed to achieve compliance with Exchange rules, [available here](#)

New UK Rules On the Horizon

UK Wholesale Markets Review – Position Limits/Management Changes from July 2026

| | Current rules | From 6 July 2026 |
|--------------------------|--|---|
| Who sets position limits | FCA | Trading venues (TVs), subject to FCA oversight |
| Scope | All commodity derivatives (ETD and economically equivalent OTC) | 14 critical contracts chosen by the FCA plus contracts that are related to those, determined by TVs |
| Exemptions | Granted and supervised by the FCA Hedging exemption for NFEs; current exemptions will expire on 5 July 2026 | Granted and supervised by TVs; new exemptions for liquidity providers and a hedging pass-through exemption for financial firms; all exemptions to have ceilings applies; market participants need to apply for exemptions before 6 July |
| Position management | FCA driven; position reporting of ETD and EEOTC | TVs to apply accountability levels; can request enhanced information (e.g. OTC data); exemption flag for position reporting |

* See [FCA's policy statement](#) amending MAR 10



UK Rules, *cont'd*

- Implementation by ICE Futures Europe and LME is on-going
- ICE Circulars
 - Rulebook changes: <https://www.ice.com/publicdocs/circulars/25159.pdf>
 - https://www.ice.com/publicdocs/circulars/25159_attach_1.pdf
 - https://www.ice.com/publicdocs/circulars/25159_attach_2.pdf
 - https://www.ice.com/publicdocs/circulars/25159_attach_3.xlsx
 - Position reporting changes: <https://www.ice.com/publicdocs/circulars/25087.pdf>
 - Exemptions: <https://www.ice.com/publicdocs/circulars/26016.pdf>
- LME Consultation on rulebook changes (open until 27th March): <https://www.lme.com/-/media/files/news/notices/2026/02/consultation-26-058-introducing-regulatory-position-limits-exemptions-and-position-management-contro.pdf>



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APPENDIX



Referenced Contracts

- The CFTC-set limits apply to “referenced contracts.”
 - Core referenced futures contracts;
 - Linked futures and linked options on futures contracts; and
 - Economically equivalent swaps.
- There are 25 futures contracts subject to CFTC limits – “core referenced futures contracts” – the same 25 futures contracts from the 2020 proposed rule.

Core Referenced Futures Contracts

CFTC Rule 150.2(d) – Core Referenced Futures Contracts

Legacy Agricultural

- CBOT Corn
- CBOT Oats
- CBOT Soybeans
- CBOT Soybean oil
- CBOT Soybean meal
- CBOT Wheat
- MGEX Hard Red Spring Wheat
- CBOT KC Hard Red Winter Wheat
- ICE Cotton No. 2

Non-Legacy Agricultural

- CBOT Rough Rice
- ICE Cocoa
- ICE Coffee C
- ICE FCOJ-A
- ICE U.S. Sugar No. 11
- ICE US Sugar No. 16
- CME Live Cattle

Metals

- COMEX Gold
- COMEX Silver
- COMEX Copper
- NYMEX Platinum
- NYMEX Palladium

Energy

- NYMEX Henry Hub Natural Gas
- NYMEX Light Sweet Crude Oil
- NYMEX New York Harbor ULSD Heating Oil
- NYMEX New York Harbor RBOB Gasoline



Futures Contracts and Options on Futures Contracts Linked to Core Referenced Contracts

- In addition to the core referenced futures contracts, a futures contract or an option on a futures contract is a referenced contract if it is:
 - 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
 - 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.



Contracts Excluded from the Definition of Referenced Contract

- Location basis contracts
- Commodity index contracts
- Trade options
- Swap guarantees
- Monthly average pricing contracts
- Outright price reporting agency index contracts



FEDERAL LIMITS



Spot Month Limits

- The CFTC set spot month limits across all 25 core referenced futures contracts and the related referenced contracts.
- The CFTC spot limits include a limit on physical delivery referenced contracts and a separate limit on cash-settled referenced contracts.
 - Spot limits on physical delivery referenced contracts apply on an aggregate basis.
 - With the exception of natural gas, spot limits on cash-settled referenced contracts apply on an aggregate basis.
 - For natural gas only, spot limits on cash-settled referenced contracts apply on a per-exchange basis and a separate limit for OTC referenced contracts.

Spot Month Limits Table – Legacy Agricultural

| Core Referenced Futures Contract | Final Federal Spot Limit ^[1] | Existing Exchange Spot Month Limit |
|--------------------------------------|---|------------------------------------|
| Legacy Agricultural Contracts | | |
| CBOT Corn (C) | 1,200 | 600 |
| CBOT Oats (O) | 600 | 600 |
| CBOT Soybeans (S) | 1,200 | 600 |
| CBOT Soybean Meal (SM) | 1,500 | 720 |
| CBOT Soybean Oil (SO) | 1,100 | 540 |
| CBOT Wheat (W) | 1,200 | 600/500/400/300/220 ^[2] |
| CBOT KC HRW Wheat (KW) | 1,200 | 600 |
| MGEX HRS Wheat (MWE) | 1,200 | 600 |
| ICE Cotton No. 2 (CT) | 900 | 300 |

^[1] A red number indicates that the final federal spot limit is lower than the proposed federal spot limit. A black number indicates that the final federal spot limit is the same as the proposed federal spot limit.

^[2] CBOT's existing exchange-set limit for Wheat (W) is 600 contracts. However, for its May contract month, CBOT has a variable spot limit that is dependent upon the deliverable supply that it publishes from the CBOT's Stocks and Grain report on the Friday preceding the first notice day for the May contract month.

Spot Month Limits Table – Non-Legacy Agricultural

| Core Referenced Futures Contract | Final Federal Spot Limit | Existing Exchange Spot Month Limit |
|-------------------------------------|----------------------------|------------------------------------|
| Other Agricultural Contracts | | |
| CME Live Cattle (LC) | 600/300/200 ^[3] | 600/300/200 ^[4] |
| CBOT Rough Rice (RR) | 800 | 600/200/250 ^[5] |
| Ice Cocoa (CC) | 4,900 | 1,000 |
| Ice Coffee C (KC) | 1,700 | 500 |
| ICE FCOJ-A (OJ) | 2,200 | 300 |
| ICE U.S. Sugar No. 11 (SB) | 25,800 | 5,000 |
| ICE U.S. Sugar No. 16 (SF) | 6,400 | n/a |

^[3] The final federal spot month limit for Live Cattle (LC) features a step-down limit similar to the CME’s existing Live Cattle step-down exchange set limit. The federal spot month step-down limit is: (1) 600 at the close of trading on the first business day following the first Friday of the contract month; (2) 300 at the close of trading on the business day prior to the last five trading days of the contract month; and (3) 200 at the close of trading on the business day prior to the last two trading days of the contract month.

^[4] CME’s existing exchange-set limit for Live Cattle (LC) has a step-down spot month limit: (1) 600 at the close of trading on the first business day following the first Friday of the contract month; (2) 300 at the close of trading on the business day prior to the last five trading days of the contract month; and (3) 200 at the close of trading on the business day prior to the last two trading days of the contract month.

^[5] CBOT’s existing exchange-set spot limit for Rough Rice (RR) is 600 contracts for all contract months. However, for July and September, there is a step-down limit from 600 contracts. In the last five trading days of the expiring futures month, the speculative position limit for the July futures month steps down to 200 contracts from 600 contracts and the speculative position limit for the September futures month steps down to 250 contracts from 600 contracts.



Spot Month Limits Table – Metals

| Core Referenced Futures Contract | Final Federal Spot Limit | Existing Exchange Spot Month Limit |
|----------------------------------|--------------------------|------------------------------------|
| Metal Contracts | | |
| COMEX Gold (GC) | 6,000 | 6,000 |
| COMEX Silver (SI) | 3,000 | 1,500 |
| COMEX Copper (HG) | 1,000 | 1,000 |
| NYMEX Platinum (PL) | 500 | 500 |
| NYMEX Palladium (PA) | 50 | 50 |

Spot Month Limits Table – Energy

| Core Referenced Futures Contract | Final Federal Spot Limit | Existing Exchange Spot Month Limit |
|----------------------------------|--------------------------|------------------------------------|
| Energy Contracts | | |
| NYMEX Henry Hub Natural Gas (NG) | 2,000 ^[6] | 1,000 ^[7] |
| NYMEX Light Sweet Crude Oil (CL) | 6,000/5,000/4,000 | 3,000 |
| NYMEX NYH ULSD Heating Oil (HO) | 2,000 | 1,000 |
| NYMEX NYH RBOB Gasoline (RB) | 2,000 | 1,000 |

^[6] The NYMEX Henry Hub Natural Gas (NG) federal spot limits for cash-settled look-alike referenced contracts will apply on a per-exchange basis rather than on an aggregate basis across exchanges.

^[7] Currently, the cash-settled natural gas contracts are subject to an exchange-set spot month position limit level of 1,000 equivalent-sized contracts *per exchange*. As of publication of the Final Rule, there are three exchanges that list cash-settled natural gas contracts: NYMEX, ICE, and Nodal. As a result, a market participant may hold up to 3,000 equivalent cash-settled natural gas contracts under existing exchange-set limits. If these exchanges increase their spot limits in response to this Final Rule, a market participant will be allowed to hold a total position of 8,000 cash-settled NYMEX NG referenced contracts across the four markets (NYMEX, ICE, Nodal, and the OTC swaps markets), as well as 2,000 physically-settled referenced contracts.



Non-Spot Month Limits

- The CFTC set single month and all-months-combined limits across all nine of the agricultural contracts that are currently subject to CFTC-set limits (“legacy agricultural contracts”).
- For all other legacy agricultural contracts the single month limit is set at the same size as the all-months-combined limit

Non-Spot Month Limits Table (Legacy Agricultural)

| Core Referenced Futures Contract | Existing Single Month and All-Months Combined Limit | 2020 Final Single Month and All-Months Combined Limit ^[1] |
|----------------------------------|---|--|
| CBOT Corn (C) | 33,000 | 57,800 |
| CBOT Oats (O) | 2,000 | 2,000 |
| CBOT Soybeans (S) | 15,000 | 27,300 |
| CBOT Soybean Meal (SM) | 6,500 | 16,900 |
| CBOT Soybean Oil (SO) | 8,000 | 17,400 |
| CBOT Wheat (W) | 12,000 | 19,300 |
| CBOT KC HRW Wheat (KW) | 12,000 | 12,000 |
| MGEX HRS Wheat (MWE) | 12,000 | 12,000 |
| ICE Cotton No. 2 (CT) | 5,000 | 5,950 (single month) 11,000 (all-months-combined) |

^[1] A red number indicates that the final federal spot limit is lower than the proposed federal spot limit. A black number indicates that the final federal spot limit is the same as the proposed federal spot limit.



Netting

- Spot Month Limits
 - The CFTC spot limits apply to physical delivery referenced contracts on a net basis.
 - With the exception of natural gas, the CFTC spot limits apply to cash-settled referenced contracts on a net basis, but market participants cannot net physical delivery and cash-settled referenced contracts.
 - For natural gas, spot limits apply to cash-settled referenced contracts on a per-exchange basis and separate OTC limit, so market participants cannot net contracts across exchanges or net exchange referenced contracts with OTC referenced contracts.
- Non-Spot Month Limits
 - The CFTC non-spot limits apply to physical delivery and cash-settled referenced contracts on a net basis.



EXCHANGE LIMITS



Exchange Limits

- For contracts subject to CFTC-set limits, there are separate exchange limits that are no higher than the CFTC limits.
- Given that the CFTC-set limits are generally higher than the existing exchange limits, market participants should continue to monitor the size of both CFTC and exchange limits.
- The CFTC will continue to monitor whether the exchanges have the ability to set, monitor and enforce limits on economically equivalent swaps.
- For physical commodity contracts that are not subject to CFTC-set limits and excluded commodity contracts, the position limits rule provides a framework for the exchanges to set spot and non-spot month limits or accountability levels.



Status of Exchange-Set Position Limits

- By when do the exchanges expect to adjust exchange-set position limits on futures contract subject to federal position limits?
- Will they be raised up to the new federal limits?
- What factors are the exchanges considering in setting the levels of exchange-set position limits?
- Prior to the adjustment of exchange-set position limits, what is the benefit to market participants of the Effective Date of the CFTC's Position Limits Rule?
- What are the exchanges' plans for accountability levels?



EXEMPTIONS FROM LIMITS



Bona Fide Hedging Transactions or Positions

- *Bona fide* hedging transactions or positions must satisfy three conjunctive requirements:
 - The Temporary Substitute Test;
 - The Economically Appropriate Test; and
 - The Change in Value Requirement.
- The Final Rule eliminated the Incidental Test and the Orderly Trading Requirement.
- A pass-through swap and pass-through swap offset pair is a *bona fide* hedging position.



Bona Fide Hedging Transactions or Positions (cont'd)

- To be consistent with the statutory Temporary Substitute Test, a *bona fide* hedging position in physical commodities must **always** (and not just “normally” as under the historical definition) be in connection with the production, sale, or use of a physical cash-market commodity.
- The CFTC codified its “long-standing practice” that the reduction of “risks,” as set forth in the Economically Appropriate Test, refers to (and is limited to) the reduction of price risks.
 - The reduction of price risk in the Economically Appropriate Test can be informed by other types of risks, such as geopolitical turmoil, weather, or counterparty credit risks, but non-price risk cannot be a substitute for price risk associated with the underlying cash commodity.



Hedging Net or Gross

- The CFTC expects most market participants to hedge the price exposure of their net cash market position, but provided guidance in Appendix B(a) concerning when hedging on a gross basis is permitted.
- Gross hedging positions must satisfy the *bona fide* hedging definition. In addition:
 - The manner in which the hedger measures risk must be consistent and must follow the hedger's historical practice;
 - The hedger cannot measure risk on a gross basis to evade the speculative position limits or the aggregation rules; and
 - Upon request by the CFTC or an exchange, the hedger must be able to demonstrate compliance with these first two requirements.



Grandfathering of *Bona Fide* Hedging Transactions

- Existing *bona fide* hedge transactions and positions that meet the definition of a *bona fide* hedge are grandfathered for purposes of CFTC limits.
- The grandfathering of existing *bona fide* hedge transactions does not include positions taken in reliance upon risk management exemptions after January 1, 2023.



Enumerated Hedges

- The list of enumerated hedges is in Appendix A, which is incorporated by reference into Rule 150.3(a)(1)(i).
- ***Enumerated bona fide hedges are self-effectuating*** for purposes of federal position limits, provided that a market participant separately requests an exemption from the applicable exchange-set limit established pursuant to Rule 150.5(a).
- The enumerated hedges are:
 - Hedges of inventory and cash commodity fixed-price purchase contracts (existing);
 - Hedges of cash commodity fixed-price sales contracts (existing);
 - Hedges of offsetting unfixed-price cash commodity sales and purchases (existing but expanded to permit the cash commodity to be bought and sold at unfixed prices at a basis to different commodity derivative contracts in the same commodity, even if in the same calendar month);



Enumerated Hedges (cont'd)

- Hedges of unsold anticipated production (existing but expanded by removing the historical limitation that a market participant could only hedge 12 months of unsold anticipated production, and removing the 5-day rule);
- Hedges of unfilled anticipated requirements (existing but expanded as above);
- Hedges of anticipated merchandising (new but subject to a number of conditions to prevent misuse – limited to 12 months supply and limited to merchants);
- Hedges by agents (new);
- Hedges of anticipated mineral royalties (new; short positions only);
- Hedges of anticipated services (new);
- Offsets of commodity trade options (new);
- Cross-commodity hedges (existing but expanded by removing the 5-day rule).



Effectuating Enumerated Hedges

- The enumerated *bona fide* hedges automatically qualify as a *bona fide* hedge for purposes of CFTC-set limits.
- However, a market participant still must apply to an exchange for a *bona fide* hedge exemption, even for enumerated *bona fide* hedges.
 - An exchange has the discretion to limit, condition or otherwise restrict the ability to exceed an exchange limit based upon enumerated *bona fide* hedges.
 - For example, an exchange could limit the ability to rely upon an enumerated *bona fide* during the last five days of trading (so-called “5-Day Rule”)



Non-Enumerated Hedges

- To the extent a market participant's physical hedging needs are not addressed in the list of enumerated *bona fide* hedges, a market participant can apply for a non-enumerated *bona fide* hedge exemption from CFTC and exchange limits.
- A market participant can apply to an exchange or the CFTC for a non-enumerated *bona fide* hedge, however, the following considerations likely mean that market participants will apply to the exchanges:
 - The CFTC will review an exchange-granted non-enumerated hedge exemption, so an application to the exchange will address both CFTC and exchange limits.
 - If a market participant applies to the CFTC, the market participant must apply separately to the exchange for a non-enumerated hedge exemption.
 - Although there are time limits for the CFTC to review an exchange-granted non-enumerated hedge exemption, there are no time limits for the CFTC to respond to a non-enumerated hedge exemption application made directly to the CFTC.



The Process for Applying to an Exchange for Non-Enumerated Hedge Exemptions

- A market participant must apply to an exchange in advance of exceeding the applicable CFTC or exchange limit, however, an exchange may adopt rules that allow a market participant to apply within 5 days of exceeding a limit due to sudden and unforeseen hedging needs.
- Each exchange-granted non-enumerated hedge exemption is subject to CFTC-review:
 - 10-day review period for typical non-enumerated hedge exemptions, 2-day review period for non-enumerated hedge exemptions due to sudden and unforeseen circumstances
 - The CFTC (not the Staff) must act to deny or stay the exchange-granted exemption.
 - Absent CFTC action during the review period, the non-enumerated hedge exemption is deemed granted.



Exchange-Granted Non-Enumerated Hedge Exemptions

- A market participant may exceed the CFTC and exchange limits upon the exchange granting the non-enumerated hedge exemption – if the CFTC subsequently denies the exemption – the market participant is provided a reasonable period of time to reduce its positions below the applicable limit.
- Even after the 10-day or 2-day review period, the CFTC retains the ability to determine that a previously granted non-enumerated hedge exemption does not meet the definition of a *bona fide* hedge.
 - If the CFTC makes such a determination, an impacted market participant would be provided the opportunity to respond.
 - If the CFTC revokes the exemption, the market participant would be afforded a reasonable period of time to reduce its position below the applicable limit.



Hedge Exemption Update from the Exchanges

- Exchanges will have to update their rules and the application process to accommodate new enumerated exemptions and to process non-enumerated exemptions
- Non Enumerated exemptions would need to include additional information:
 - An explanation of the hedging strategy, including a statement that the position complies with the requirements of CEA section 4a(c)(2) and the definition of bona fide hedging transaction or position in Rule 150.1, and information to demonstrate why the position satisfies such requirements and definition
 - A statement concerning the maximum size of all gross positions in commodity derivative contracts for which the application is submitted; and
 - A description of the applicant's activity in the cash markets and the swaps markets for the commodity underlying the position for which the application is submitted, including, but not limited to, information regarding the offsetting cash positions.



Hedge Exemption Update from the Exchanges (cont'd)

- Market participants should continue to monitor the Exchanges' rules, advisories and notices regarding position limits and exemptions
- New exchange hedge exemption rules will have to go through the CFTC Rule 40.6 self-certification process
- Will market participants have an opportunity to comment on the exchanges' new hedge exemption rules?
- By when do the exchanges expect to amend their rules for applying for enumerated and non-enumerated hedge exemptions?
- Prior to the exchanges amending their hedge exemption rules, what is the benefit to market participants of the Effective Date of the CFTC's Position Limits Rule?



Renewing an Exchange-Granted Non-Enumerated Hedge Exemptions

- Market participants must renew non-enumerated hedge exemptions with the exchange on an annual basis.
- The renewal application does not trigger a re-review by the CFTC, unless the facts and circumstances underlying a renewal application are materially different than the initial application. If the facts are materially different, the exchange must treat the application as an initial application for a non-enumerated hedge exemption and follow the CFTC-review process.



Risk Management Exemptions

- The Final Rule eliminated previously-granted risk management exemptions as of January 1, 2023. By that date, all open positions must comply with federal and exchange position limits.
- The Commission interpreted the Dodd-Frank Act’s removal of the word “normally” from the CEA’s statutory temporary substitute test as precluding it from continuing to grant risk management exemptions.
 - The Commission noted that it has other authority, including under CEA section 4a(a)(7), to exempt risk management positions from federal position limits.
- Exchanges may continue to recognize risk management positions for contracts that are not subject to federal limits, including for excluded commodities.



Spread Exemptions

- The following spread transactions are exempt from federal position limits:
 - intra-market spreads;
 - inter-market spreads;
 - intra-commodity spreads;
 - inter-commodity spreads;
 - calendar spreads;
 - quality differential spreads;
 - processing spreads (such as energy “crack” or soybean “crush” spreads);
 - product and by-product differential spreads; and
 - futures-options spreads.



Spread Exemptions (cont'd)

- Appendix G provides guidance to exchanges and market participants on the use of spread transaction exemptions granted pursuant to Rule 150.5(a).
- If a spread strategy is not covered by the definition of a spread transaction, a market participant must petition the CFTC pursuant to Rule 150.3(b) for a spread exemption.



Conditional Limit Exemption – Natural Gas

- If a market participant meets the conditions of the “conditional” limit, the size of the CFTC spot limit increases from 2,000 to 10,000 contracts per exchange and OTC.
- To be eligible for the conditional limit, a market participant cannot hold a spot position in the physical delivery referenced contracts.
- Can market participants combine the conditional limit exemption with other exemption types, such as the spread exemption or *bona fide* hedge exemption?



Financial Distress Exemption

- Allows a market participant to exceed federal position limits if necessary to take on the positions and associated risk of another market participant during a potential default or bankruptcy situation.
- Only available in response to a specific request filed with the Commission on a case-by-case basis, depending on the facts and circumstances involved.



General Topics



Anti-Evasion

- CFTC Rule 150.2(i) provides that “[f]or the purposes of applying the speculative position limits in this section, if used to *willfully circumvent or evade* speculative position limits:
 - A commodity index contract, monthly average pricing contract, outright price reporting agency index contract, and/or a location basis contract shall be considered to be a referenced contract;
 - A *bona fide* hedging transaction or position recognition or spread exemption shall no longer apply; and
 - A swap shall be considered to be an economically equivalent swap.”
- Evasion must be willful.



Anti-Evasion (cont'd)

- The determination of whether particular conduct is intended to circumvent or evade requires a facts and circumstances analysis.
- The Commission will consider, among other things, the extent to which the person lacked a legitimate business purpose for structuring the transaction in a particular manner.
- The Commission will consider whether a market participant has a history of structuring its swaps one way, but then starts structuring its swaps differently around the time the market participant risked exceeding a speculative position limit as a result of its swap position, such as by modifying the delivery date or other material terms and conditions so the swap no longer meets the definition of an “economically equivalent swap.”
- Fraud, deceit, or unlawful conduct are not prerequisites for evasion.



Necessity Finding

- The Commission determined that CEA section 4a(a)(2)(A) should be interpreted to require that before establishing position limits, the Commission must determine that limits are necessary.
- According to the Commission, position limits on the 25 core referenced futures contracts are necessary to prevent the economic burdens on interstate commerce associated with excessive speculation causing sudden or unreasonable fluctuations or unwarranted changes in the price of the commodities underlying these contracts.
- The Commission's necessity determination is based on two interrelated factors:
 - the importance of the 25 core referenced futures contracts to their respective underlying cash markets, including that they require physical delivery of the underlying commodity; and
 - the particular importance to the national economy of the commodities underlying the 25 core referenced futures contracts.



Necessity Finding (cont'd)

- The Commission also found that position limits are necessary:
 - during all months for the nine legacy agricultural contracts; and
 - only during the spot month for the 16 non-legacy core referenced futures contracts.
- According to the CFTC, the CEA does not require a necessity finding for economically equivalent swaps for which position limits are required pursuant to paragraph 4a(a)(5) of the CEA.

FIA