



Shell Trading

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March 28, 2011

Via Online Submission

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Shell Trading (US) Company and Shell Energy North America (US), L.P. -
Position Limits for Derivatives, RIN Nos. 3038-AD15, 3038-AD16

Dear Mr. Stawick:

On January 26, 2011, the U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") issued a proposed rule, entitled "Position Limits for Derivatives" ("Position Limits NOPR" or "NOPR")¹ pursuant to Section 737 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act").² Shell Trading (US) Company ("STUSCO") and Shell Energy North America (US), L.P. ("Shell Energy") (collectively, "Shell Trading") respectfully submit these comments to address the proposed position limits rule.

STUSCO and Shell Energy are indirect subsidiaries of Royal Dutch Shell, plc ("Shell"). STUSCO trades various grades of crude oil, refinery feedstocks, bio-components, and finished oil-related products, including such commodities that are produced, manufactured, or imported by its affiliates. Shell Energy markets and trades natural gas, electricity, and environmental products, including the natural gas produced by its affiliates. Both companies actively participate in the U.S. energy derivatives markets. Together, they manage risk and optimize value across physical and financial, exchange-traded, and over-the-counter ("OTC") markets.

¹ Positions Limits for Derivatives, 76 Fed. Reg. 4752 (Jan. 26, 2011).

² Public Law No. 111-203, 124 Stat. 1376 (2010).

As Shell Trading and its affiliates have significant physical positions requiring hedging, the Position Limits NOPR will, if promulgated as a final rule, have a material impact on Shell Trading's operations, and due to the complexity and ambiguity of the rule, it will expose Shell Trading to significant compliance risk. For those reasons, Shell Trading appreciates this opportunity to provide its comments on the proposed rule and to request the Commission to provide clarification of certain provisions so that Shell Trading can continue to do business in the US derivatives markets with confidence that it is in compliance with the applicable regulations and the Commission's expectations.

I. Executive Summary

Shell Trading has several serious concerns about the proposed rule, most fundamentally, that the proposal may prevent large hedgers from effectively managing their commercial risks. This results from a reduction in the size of spot position limits, the inclusion of a large (but largely undefined) number of instruments under those limits, a restrictive hedge exemption process, and uncertainty about the treatment of inter-affiliate swaps. Just as important, Shell Trading believes that the rule is overly complex and contains many ambiguous provisions, and accordingly, exposes market participants to grave unnecessary costs and compliance risks. Examples of the complexity and ambiguity include the number of position limits applicable to each derivative contract, the lack of clarity about which contracts will be counted towards each limit, and the fact that these limits will be enforced in real-time.

Many of its concerns are amply addressed in the comments of other parties, so beyond a brief discussion of a few key issues, Shell Trading's comments take the form of an Appendix with one hundred questions that it believes should be addressed in a final regulation. Absent clarity about how the rule works and the obligations of market participants, large commercial hedgers will face significant uncertainties regarding how they will participate in the US derivatives market going forward.

II. The Position Limits Ultimately Instituted By This Rulemaking Must Be Adequate To Allow Entities With Large Physical Positions to Adequately Manage Their Risks

The spot limits proposed in the NOPR appear to be significantly below the current limits, despite the fact that additional transactions (uncleared OTC swaps) will now be included under those limits. Shell Trading believes that this result may threaten the effective management of large *bona fide* hedging positions.

As Shell Trading understands it, each exchange currently has a spot limit of twenty-five percent of deliverable supply associated with each contract. If the federal spot aggregate limit is twenty-five percent of deliverable supply, then the NOPR proposes to significantly reduce the spot limit in place today for economically equivalent derivatives traded on separate exchanges. The Commission should not implement limits lower than current levels. At a minimum, aggregate spot limits should equal current levels. Accordingly, for each federal spot aggregate limit, the

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Commission should determine the total existing spot limits currently in place for economically equivalent contracts and ensure that the new federal limit equals or exceeds those in place today.

For example, positions traded on the InterContinental Exchange ("ICE") in the Henry Hub LD1 Natural Gas contract are currently limited to 1,000 NYMEX contract equivalents in the spot month. Positions in the Henry Hub Natural Gas Financial Futures swap contract (NG) on the New York Mercantile Exchange ("NYMEX") are subject to an expiration month limit of 1,000 positions. The Henry Hub Natural Gas Last Day Financial Futures Swap (HH) is also subject to a spot limit of 1,000 contracts. Thus, under the current regulatory regime, a market participant could hold spot positions up to both limits on each exchange, for a total of 3,000 contracts, before consideration of hedge exemptions; however, under the Commission's position limits proposal, an aggregate federal position limit would apply and would effectively cap the number of positions that a market participant could hold in these contracts at well below the current level allowed by the exchanges. The NOPR is somewhat unclear on this point, but it appears that the spot limit will be at most 2,000 contracts and perhaps as few as 1,000 contracts.³ Therefore, the rule would have the effect of dramatically reducing the positions that a market participant can hold under currently applicable exchange-based limits, thus seriously limiting the ability of natural gas market participants to manage their risks.

There is no indication in Dodd-Frank that Congress intended that current position limit levels be reduced. Indeed, the current speculative limits and hedge exemption process for energy derivatives has worked well and proven to be robust in the face of challenges.

Moreover, the aggregation of uncleared OTC contracts that are the "economic equivalents" of the core referenced contracts will significantly exacerbate the problems posed by the lower spot limits. In short, the Commission's proposal will both lower the limits and increase the population of contracts that must fit under those limits, with a decided reduction in the number of derivative contracts a party can hold.

III. The Commission Should Provide a Clear and Straightforward Mechanism for Commercial Market Participants to Obtain *Bona Fide* Hedge Exemptions.

One might argue that commercial hedgers need not be concerned about lower spot position limits because of the availability of hedge exemptions. Unfortunately, it is far from certain that adequate hedge exemptions will be available.

³ NOPR at 4776 (Appendix A to Part 151). (It is unclear if the 1,000 contract limit for natural gas is limited to only the referenced core futures contract, or if it is applicable to the total of the physically-delivered contract class and cash-settled contract class or if it is the limit for the two classes separately.)

As is detailed in the comments filed by the Working Group of Commercial Energy Firms,⁴ the proposed rule appears to limit *bona fide* hedges to a subset of the types of transactions that are accepted as *bona fide* hedges under the Commission's current rules. The Working Group notes that the "enumerated transactions" allowed under the proposed rule does not include many types of transactions commonly used for hedging.

As regards hedge exemptions for *bona fide* hedging, Dodd-Frank requires that position limits do not apply to "*bona fide* hedge positions that may be held by any person."⁵ The NOPR does not clearly define how a commercial hedger will obtain and maintain a hedge exemption, whether it must make requests of both the Commission and an exchange, and the period for which the exemption will remain in place.

As Shell Trading understands it, a market participant is granted an automatic federal hedge exemption by virtue of the proposed rule. If a limit is exceeded, daily Form 404 filings are required. However, a case-specific hedge exemption will continue to be required from exchanges. Further, anticipatory hedge exemptions will be granted by the both the Commission, and presumably by affected exchanges, pursuant to their current practices. These exemptions may be processed using differing standards. Finally, the Commission has no time limitation on its generic exemption, while the anticipatory exemption is limited to one year.

The above is contrary to current practices of the exchanges and exposes commercial firms to considerable risk unless clarified by the Commission. Shell Trading requests that the Commission make the position limits regime it will include in any final rule unambiguously clear and straightforward to permit market participants to understand and comply with it. The questions in the Appendix highlight areas where additional clarity regarding hedge exemptions is needed.

IV. The Commission Should Clarify That Swaps Between Affiliates Do Not Count Toward Position Limits

Many companies, including Shell, use swaps as an efficient means to allocate risk within the corporate family to the subsidiaries that are best equipped to manage their risk. Swaps that are transactions between affiliates have no net effect on the aggregate positions of the parent company; therefore, the goals of the NOPR in setting aggregate position limits would not be served by counting such swaps towards position limits. The Commission should make clear that such positions will not, in fact, do so. Such clarification would be consistent with the Commission's approach in its previous Notice of Proposed Rulemaking and the further definition

⁴ See Comments of the Working Group of Commercial Energy Firms to Position Limits for Derivatives (Mar. 28, 2011).

⁵ Dodd-Frank § 737(a)(4).

of certain entities under Dodd-Frank.⁶ There the Commission recognized that the "economic reality" of swaps entered into between affiliates could include an allocation of risk within a corporate group.⁷ Swaps between affiliates are such an internal risk allocation, and, as such, the Commission should clarify and confirm that such positions would not count towards position limits under any final rules issued pursuant to the NOPR.

V. The Commission Should Simplify its Proposed Position Limits Regime and Reduce the Compliance Burden of the Position Limits NOPR

As a general matter, the Commission's position limit proposal is needlessly complex, multiplying the number of currently effective limits, adding several new reporting requirements, and changing well-established industry practices. The Commission proposes, in addition to existing exchange-based position limits and accountability levels, to impose federal aggregate limits for economically equivalent swaps, futures, and options traded on exchanges, foreign boards of trade, and OTC trades.⁸ These limits will be for spot, single month, and all months for all derivatives, swaps classes, and futures classes.⁹ In addition to these limits, there will be a position visibility process.¹⁰ Compliance with these limits will be on a real-time basis every day of the year.

Currently, market participants must comply with single exchange-based spot position limits and accountability levels for a specified contract. The expansion to at least six additional categories is unwarranted and extremely burdensome. The Position Limits NOPR in no way justifies the compliance burden and associated information technology and staffing expense required to calculate and track positions real-time across all of these categories for all of these periods. If the Commission finds it is warranted to adopt federal position limits, it should implement such limits in a manner that is effective and efficient.

A. There Should Be a Single Spot Limit Set at a Level No Less Than Currently In Place

Shell Trading recommends that if the Commission implements federal spot position limits, it should eliminate exchange-based position limits. At best, these limits will be redundant. At worst, they may cause unintended apportionment of trades across exchanges. The Commission

⁶ Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 75 Fed. Reg. 80174 (Dec. 21, 2010).

⁷ *Id.* at 80183.

⁸ NOPR at 4757, 4759.

⁹ *Id.* at 4759.

¹⁰ *Id.*

has not articulated, nor can Shell Trading understand, the value of multiple spot month limits for the same contract.¹¹

B. Limits in Addition To Spot Limits

If the derivatives affected by the proposed position limits are truly economically equivalent, then it is unnecessary to establish "futures class" and "swaps class." This feature of the Position Limits NOPR seems to only add complexity and burden. Like the redundancy of the exchange-based and federal spot limits, the Commission provides no meaningful basis for these redundant limits. Accordingly, Shell Trading recommends there should be no aggregate class limits imposed, so long as the overall spot limit is set at an appropriate level.

Further, given the significant burden and complexity relating to the tracking and reporting requirements associated with position limits spanning all derivatives, Shell Trading recommends the Commission eliminate the concept of position visibility.¹² The positions subject to position visibility are within acceptable "speculation" levels. They are all subject to the significant reporting requirements already proposed by the Commission in its implementation of Dodd-Frank. The Position Limits NOPR will require the tracking of physical positions separately from the derivatives that are subject to position limits, as well as the filing of related daily reports when triggers are met. Compliance with these requirements will be costly. As all derivatives will be reported and will be transparent to the Commission, a requirement to track and report physical positions when derivative holdings are below position limits (in addition to all the other reporting requirements imposed to implement Dodd-Frank) creates a further compliance burden and expense that does not seem to serve a purpose.

C. The Limits Should Not Be Subject to Real-Time Compliance

As can be seen from the foregoing, the scope and complexity of the Position Limits NOPR presents a massive compliance burden. Even if a market participant can develop tools to track its economically equivalent positions, the scope and complexity of the NOPR virtually guarantees that it will not be able to track positions on a real-time basis. The best that is likely to occur is an end-of-day report that can be reconciled to determine aggregate positions across all affected derivatives for all affected periods.

As real-time compliance with position limits is unlikely to be practically achievable, Shell Trading requests that the Commission establish a requirement that a market participant must

¹¹ It is somewhat of a misnomer to say there is one federal aggregate position limit proposed, by virtue of the "special conditional spot-month limit" which raises the position limit for cash settled contracts under specified conditions. *Id.* at 4765.

¹² The NOPR indicates that the Commission expects twenty unique owners for metals and energy to be affected over the course of a year with thirty unique owners being affected for additional natural gas and oil contracts. *Id.* at 4761. Shell Trading believes the levels will likely capture a larger universe of market participants, exposing them to a significant and unwarranted reporting burden.

review its positions at the close of a trading day and if its positions exceed limits either file a Form 404 or reduce its positions the next trading day below the position limit levels. If no such provision is adopted, Shell Trading is highly skeptical that many market participants will be able to comply with the rules other than by maintaining positions far below the limits that are ultimately set.

D. OTC Swaps to Be Included with Core Referenced Contracts Must Be Actually Economically Equivalent

As set forth in the Position Limits NOPR, a market participant's position that is subject to the proposed limits includes swaps and other derivatives that are directly or indirectly linked. This includes swaps that are partially or fully settled on, or priced at a differential to, the price of any core referenced futures contract or directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location, or at locations with substantially the same supply and demand fundamentals, as that of any core referenced futures contract.¹³

As detailed in the comments filed by the Coalition of Physical Energy Companies ("COPE"),¹⁴ the expansive definition of "economically equivalent contract" could include a very large number of distinct contracts further limiting the ability of entities to hedge their physical exposures under the position limits. Additionally, given its unworkably broad scope, this definition is almost certain to result in different parties drawing different conclusions about which contracts are and are not included under the federal position limits. Shell Trading cannot imagine a more significant potential compliance issue than uncertainty about which instruments fit under a particular position limit.

The fact that a derivative meets the stated criteria does not make it "economically equivalent." For example, there are numerous swaps that reference the Henry Hub NYMEX futures contract that are not its economic equivalent. These swaps range from gas swaps at locations remote from Henry Hub that use that contract's settlement as a component of a structured index formula, to "virtual toll" power swaps in which the Henry Hub settlement is used with multiple other factors, such as a specified heat rate to create an electricity price expressed in dollars per MWh.

Perhaps intending to simplify application of the spot limits, the preamble of the NOPR states that only derivatives at the same location as the core referenced contract or that settle to a price series that prices the same commodity at the same delivery location would be included under the federal spot limit for a particular referenced contract.¹⁵ Shell Trading believes this would be a

¹³ *Id.* at 4768.

¹⁴ See Comments of the Coalition of Physical Energy Companies to Position Limits for Derivatives (Mar. 28, 2011).

¹⁵ NOPR at 4757.

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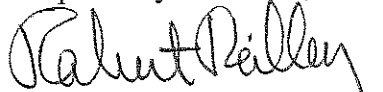
marked improvement; however, this more limited criterion does not appear in the proposed regulations themselves and, thus, would not be applicable if they were made final. Further, using different criteria for spot months than for the all month and any month periods only leads to further complexity, expense, and confusion.

The solution to the issues raised above is to include the only truly economically equivalent contract to a referenced contract -- a "look alike" contract. That is a contract that mimics the economics of the referenced contract. An example of a look alike contract is the Henry Hub contract traded on the Intercontinental Exchange (ICE)¹⁶ that mimics the NYMEX Henry Hub futures contract. The Henry Hub futures contract and its look alike on ICE or OTC can be clearly and confidently included as economic equivalents and will yield a rational result. Therefore, Shell Trading recommends that the Commission revise the criteria for derivatives subject to limits associated with a core referenced contract to look alikes, as proposed by COPE.

VI. Conclusion

Shell Trading requests that the Commission take the steps recommended above to implement the Position Limit NOPR in a manner that sets limits at levels that will allow commercial entities to continue to manage their risks and operate effectively, is not unduly burdensome on market participants, and provides the clarity needed to facilitate compliance. If the final rule addresses the issues raised by the questions presented in the Appendix in a straightforward fashion, it will allow Shell Trading and other market participants to understand the Commission's intent more fully and greatly enhance their ability to comply with the final regulations.

Respectfully submitted,



Robert Reilley
Vice President – Regulatory Affairs
Shell Energy North America (US), L.P.

cc: The Honorable Gary Gensler, Chairman
The Honorable Michael Dunn, Commissioner
The Honorable Jill E. Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott D. O'Malia, Commissioner
Mr. Dan Berkovitz, General Counsel

¹⁶ ICE Henry Hub Financial LD1 Fixed Price Contract.

APPENDIX

Shell Trading's Interpretive Questions

Existing Exchange-Based Limits

1. How will the limits imposed by exchanges be set under the Commission's proposal?
2. Will exchange-based limits continue to be based on individual contracts? (i.e. not be aggregated)?
3. Will exchange-based spot limits be the same as federal class limits?
4. What is the purpose of exchange accountability levels if federal limits exist for single month and all months?
5. Will exchanges continue to grant hedge exemptions?
6. If so, will the criteria be the same as those used for the federal aggregate limits?
7. Given the federal regulatory and generic hedge exemption, do market participants need to obtain hedge exemptions for exchange-based limits, or can they send the exchange a Form 404 when it is filed with the CFTC?
8. What will be the role of exchange compliance under the federal position limits regime?
9. Will FBOTs be required to have position limits for core referenced contracts equivalent to US exchanges?

Oversight

10. Who will supervise federal position limits? Will the CFTC monitor market participant compliance in some fashion?
11. How will the Commission's position reporting requirements be integrated into the oversight system?
12. Will self-regulatory organizations be involved in position limits oversight? If so, how will that work?
13. Will the Commission use data reported to a Swap Data Repository to supervise position limits?
14. Will Swap Data Repositories themselves have a compliance role for position limits or other surveillance?
15. Who will supervise positions on Foreign Boards of Trade (FBOTs)?
16. Does the Commission expect market participants to self-report violations?
17. Will the Commission provide interpretive advice about potential compliance issues?
18. Are hedge exemptions available for both the spot position limits and the all-month and any-month limits?
19. How would the reports provided pursuant to the proposed regulations regarding position reports for physical commodity swaps be integrated into the position limits oversight process? (*See* 72 Fed. Reg. 67258).

Position Limits

20. Are the limits included in Appendix A to the NOPR intended to apply separately to the physically-delivered class and the cash-settled class or to the two classes combined?
21. Will entities with hedge exemptions be allowed to hold speculative positions up to the positions limits?
22. How will deliverable supply for spot limits be established? (*See* § 151.4(a)(1)).
23. What level of oversight has the Commission undertaken to evaluate the accuracy of exchange-based deliverable supply determinations?
24. Deliverable supply will be established annually with exchange filings made by December 31. How long does the Commission anticipate it will take to process these filings? (*See* § 151.4(c)).
25. What will be the effective date of a deliverable supply revision? When it is filed or when it is accepted? (*See* § 151.4(c)).
26. Will market participants be permitted to submit comments to exchanges' deliverable supply filings?
27. Will aggregate spot limits be lower than current limits where a contract trades on more than one exchange? (For example, holdings on each exchange are limited to twenty-five percent of deliverable supply, but federal aggregate limits would apply to limit holdings to twenty-five percent deliverable supply across all exchanges and OTC.) (*See* § 151.4).
28. How will open interest for swaps be determined given the ambiguity in the manner in which "economically equivalent" swaps are described (see below)? (*See* NOPR at 4759-4760).
29. Are only those swaps that have a swap dealer as a party to be included in open interest calculations?
30. If end-user/end-user and major swap participants' swaps are excluded, won't the calculation of open interest be incomplete and too low?
31. Could the open interest levels for swaps include the open interest in uncleared swaps that will be reported to the Swap Data Repositories?
32. How will FBOT open interest be included in the calculation?
33. Does the Commission intend real-time compliance with position limits? If hedge exemption notices (Form 404) can be filed at 9 a.m. the day after a limit is breached, why is it significant if a limit is breached at some point during the trading day?

Position Visibility

34. Given that Position Visibility levels are set lower than Position Limits, why does the Commission expect the number of affected market participants to be so low (twenty initial metals and energy / thirty natural gas and light sweet crude)? (*See* NOPR at 4761).
35. Does the Commission expect that fewer than twenty metals and energy traders and thirty natural gas and light sweet crude traders will hold all hedge exemptions?

Economically Equivalent Swaps

36. Are all swaps that directly or indirectly reference a core referenced contract economically equivalent to such contract? (See § 151.1).
37. If all such swaps are not, *per se*, economically equivalent, how should a market participant determine which are?
38. How can a market participant tell if a swap has the same supply and demand fundamentals as a core referenced contract? (See § 151.1).
39. If market participants make good faith, subjective determinations as to which swaps are economically equivalent, isn't it likely that each market participant will compile positions which include a different set of swaps?
40. If swap dealers make good faith subjective determinations as to which swaps are economically equivalent, isn't it likely that each will calculate open interests differently?
41. How will economically equivalent contracts for the spot limits differ from economically equivalent contracts for the single month and all month limits (same delivery point concept)? (See NOPR at 4757).
42. Does the distinction between spot, single month, and all month economically equivalent contracts require market participants and swap dealers to analyze each differently and track each type independently?
43. If a market participant calculates its positions in good faith using economically equivalent swaps it believes are included, and the Commission disagrees with that assessment, will that market participant be subject to sanctions?
44. Will the Commission publish guidance on what is and what is not an economically equivalent swap?
45. Does the Commission anticipate that Swap Execution Facilities will indicate which of the swaps listed on its exchange are economically equivalent to a core referenced contract?
46. If so, what process will the Commission use to oversee the Swap Execution Facilities determinations?

Pass Through of Bona Fide Hedge Exemption

47. Does the Commission intend that only transactions subject to a *bona fide* hedge exemption can be passed through? (Or any *bona fide* hedge transaction?) (See § 151.5(j)).
48. Will a party that "passes through" the *bona fide* hedge of a counterparty be entitled to rely on the representations of its counterparty that the swap is truly a *bona fide* hedge? (See § 151.5(g)).
49. Will swap dealers lack a hedge exemption for hedges they have provided to a counterparty if the counterparty is below position limits and does not require a *bona fide* hedge exemption?
50. Won't the lack of a complete pass through process result in swap dealers lacking the capacity to offer hedges to counterparties due to exceeding position limits?

51. If a swap transaction that was a *bona fide* hedge was “passed through” by a dealer, thereby justifying the dealer’s hedge exemption, and then the use of the swap changed, what mechanism does the Commission anticipate will be used to adjust the dealer’s hedge exemption downward? What is the deadline for such adjustments?
52. Given the ambiguity concerning economically equivalent swaps, how will pass-through be conducted if the parties to a transaction do not agree on whether a contract is economically equivalent to a core referenced contract?
53. Can the Commission structure a process in which a hedger need not inform its counterparty/competitor that it is utilizing a hedge exemption? (See § 151.5(g)).
54. With reference to Section 151.5(g), has the Commission considered the proprietary harm that would be caused by requiring traders to disclose the purpose of each swap to its counterparty?
55. Does the Commission view swap dealers with physical commodity businesses as not being competitors to hedgers with physical commodity businesses?
56. Again with reference to Section 151.5(g), if a party that does not wish to avail itself of an end-user clearing exemption and does not want its counterparty to “pass through” the transaction, is the party required to disclose the purpose of the transaction (hedging, speculation, etc.) to its counterparty?

Bona Fide Hedge Exemption

57. Will *bona fide* hedge exemptions be allowed for spot, any month, and all month periods? (See § 151.5(a)).
58. Is it correct that a person that does not require a pre-approved *bona fide* hedge exemption can lawfully exceed position limits as long as it submits a Form 404 by 9 a.m. the following day? (See § 151.5(b)).
59. Under what circumstances does the Commission contemplate that entities would submit Form 404A applications for anticipatory hedge exemption rather than simply waiting until it exceeds the default position limits and submitting Form 404? (See § 151.5(c)).
60. If a trader has an anticipatory hedge exemption, must it file a Form 404 each day that it exceeds position limits? (See § 151.5(b)).
61. Does the Commission anticipate acting on anticipatory hedge exemption filings within ten days of receipt? (See § 151.5(c)).
62. In evaluating Form 404A applications for anticipatory hedge exemptions, what criteria does the Commission intend to apply? (See § 151.5(c)).
63. Will there be a process for the review of Form 404S submitted by market participants? If so, and should the Commission believe that a Form 404 does not justify a hedge exemption, how will the market participant be notified, and how long will it have to reduce its position to the applicable limit(s)?
64. Will there be an escalation mechanism to dispute initial determinations regarding whether specific transactions are indeed *bona fide* hedging transactions?
65. Will there be an ultimate limit in the size of a hedge exemption? How will a trader that relies on a *bona fide* exemption know that it is approaching that ultimate limit?

66. Does the Commission intend to limit *bona fide* hedging to transactions that are included in the list of enumerated transactions in § 151.5(a)(2)?
67. If an end-user transaction is eligible for the end-user exemption from clearing, isn't that transaction a *bona fide* hedge?
68. Is the definition of the term "hedging or mitigating commercial risk" used in the end-user exemption (Section 39.6) different from the list of enumerated transactions in Section 151.5(a)(2)? If not, should the Commission add "transactions that are used to hedge or mitigate commercial risk pursuant to Section 39.6" to Section 151.5(a)(2)?
69. If an energy trader were able to support an anticipatory hedge exemption for more than one year, could the Commission grant it on a "waiver" basis?
70. How can entities needing to hedge energy output for more than one year (power plant/oil and gas production) "lock in" a hedge exemption?
71. Will hedges that do not contain the same commodity or quantity as the positions in referenced contracts (dirty hedge) be eligible for *bona fide* hedge treatment?
72. Does the Commission intend that any "methodology used for determining the ratio of conversion between actual or anticipated cash positions" should be implemented on a good faith, best efforts basis consistent with the manner in which an entity keeps its books?

Forms

73. Will the Commission produce the forms discussed in the proposed rule for comment?
74. Will the Commission provide detailed instructions (and perhaps FAQs) with the forms when they are produced?
75. What format is required of a "certification" related to a conditional spot month position limit? (*See* § 151.4(a)).
76. What is the frequency of filing required of a "certification" related to a conditional spot month position limit? (*See* § 151.4(a)).
77. Are the following statements about the frequency of the filing of the proposed forms correct?
 - a. Forms 404 and 404S - On a daily basis, beginning the day after a position limit is exceeded pursuant to a *bona fide* hedge exemption, and the first day after the trader's position is below the position limit. (*See* § 151.10(b)).
 - b. Form 404A - To obtain an anticipatory hedge exemption ten days prior to when a market participant wishes to exceed position limits pursuant to a *bona fide* hedge exemption. (*See* § 151.10(b)).
 - c. Form 404A - Where a report is required to supplement a previously filed Form 404A for an anticipatory hedge exemption, at least ten days in advance of the date that a market participant wishes to exceed the previous amounts. (*See* § 151.10(b)).
 - d. Forms 404, 404S, and 401 or 402S (as applicable) - After the establishment of a position exceeding a visibility level on the later of either (a) 9 a.m. five business days after such time; or (b) 9 a.m. the first business day of the subsequent

calendar month. (See § 151.10(b)).

78. How does the Commission expect to process daily filings?
79. Will the daily and other filings be used to oversee position limit compliance?
80. Is it anticipated that some or all of the forms referenced in the NOPR will be electronically submitted? (See § 151.10(a)).
81. If the forms are to be electronically submitted, will the Commission produce a software template for market participants to utilize?
82. Will the information submitted on Forms 401, 402S, 404, 404A, and 404S be treated confidentially by the CFTC?

Recordkeeping

83. What is intended by “complete books and records”? (See § 151.5(e)).
84. Do existing trade capture systems satisfy complete books and records requirements?
85. How long do books and records need to be maintained?
86. Is there a distinction between the records (and the proposed retention periods) proposed to be retained pursuant to this section and those proposed to be retained pursuant to other NOPRs? (See, e.g. 75 Fed. Reg. 76574).

Inter-affiliate Swaps

87. Please confirm that inter-affiliate swaps should not be counted in position limits calculations.

Aggregation Exemption

88. How much detail is required in aggregation exemption petitions? Will the Commission be providing a form for these petitions? (See §§ 151.7(f), (g)).
89. How long does the Commission anticipate undertaking to process an aggregation exemption petition? (See §§ 151.7(f), (g)).
90. Will a market participant be required to aggregate positions until the Commission acts?
91. How does the Commission propose to address the issue of persons that are precluded by law from sharing information about positions (i.e. regulated utilities and affiliated marketers)?

Preexisting Positions

92. What is meant by a preexisting position being entered into in "good faith"? (See § 151.9(a)).
93. Are such positions entered into in other than "good faith" required to be aggregated for position limits compliance?

Implementation

94. Does the Commission plan to provide a mechanism for parties to get guidance about the proper handling of specific situations before the new limits are made effective?

95. Does the Commission intend to exercise flexibility in enforcement for a period of time after the new limits are established in the event of good faith errors and misunderstandings?
96. Does the Commission contemplate a waiver process to accommodate unusual circumstances? If so, how would those waivers be coordinated with the exchanges?

Post-NOPR Activities

97. Does the Commission intend to subject additional contracts to position limits in the future?
98. If so, how frequently will the Commission consider adding contracts?
99. What process will be used to add contracts?
100. Does the Commission intend to undertake any post-final rule studies to determine the effectiveness of position limits in eliminating excessive speculation?