



July 1, 2011

**VIA ELECTRONIC SUBMISSION**

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

Re: *Position Limits for Derivatives*, RIN 3038–AD15 and 3038–AD16

Dear Secretary Stawick:

The International Platinum Group Metals Association (“IPA”) is an international non-profit organisation open to participants in the production, processing and fabrication of platinum group metals (platinum, palladium, rhodium, ruthenium, iridium and osmium). The IPA, on behalf of their members, hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking, *Position Limits for Derivatives* (the “Proposed Position Limits Rule”).<sup>1</sup> This comment letter specifically addresses issues related to the proposed *bona fide* hedge exemption and echoes concerns regarding the exemption that were expressed in the June 5 comment letter filed by the Commodity Markets Council (“CMC”) and Hunton & Williams LLP (“June 5 comment letter”).

Like our agricultural and energy trade association counterparts who submitted the June 5 comment letter, we are concerned that the Commission’s proposed treatment of *bona fide* hedging is unduly narrow. The Commission appears to go beyond that which is required under Dodd-Frank Section 737 by proposing: i) to limit *bona fide* hedges to *only* those transactions that fit within five specific categories of enumerated hedges and ii) to remove the procedure set forth in CFTC Rule 1.3(z)(3) to apply for *bona fide* hedge exemptions for non-enumerated transactions. See 76 Fed. Reg. at 4763.

We find the Commission’s overly narrow approach particularly troubling because it is likely to have serious adverse effects in the metals and other physical commodity markets. For example, market liquidity will decrease as market participants whose legitimate hedging activity is not recognized by the Commission shift their trading to venues or instruments that fall outside the Commission’s position limit authority. Some market participants may choose not to hedge at all – in light of the Commission’s refusal to consider their hedging activity as exemption-worthy *bona fide* hedging -- and instead internalize their risk. As a result, costs to consumers will potentially increase.

Similar to the June 5 comment letter filed by CMC and Hunton & Williams LLP, we have attached a list of specific examples of commercial transactions executed in metals markets that would not be treated as *bona fide* hedging transactions pursuant to the Commission’s Proposed Position Limit Rule. (See Attachment A).

Although the examples in Attachment A do not appear on the proposed list of enumerated hedging transactions, they come within the definition of *bona fide* hedge set forth in Dodd-Frank Section 737 and CFTC Proposed Rule 151.5(a)(1). To provide legal certainty as to the status of the

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<sup>1</sup> *Position Limits for Derivatives*, Notice of Proposed Rulemaking, 76 Fed. Reg. 4752 (Jan. 26, 2011).

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transactions in the attached examples, any final Commission rules should incorporate such transactions into the list of enumerated hedges.

Furthermore, we strongly recommend that the Commissions provide the markets and market participants with greater clarity and certainty by retaining CFTC Rule 1.3(z)(3)'s procedure for applying for *bona fide* hedging exemptions for non-enumerated transactions or positions. Such process has afforded the Commission the discretion and flexibility to adapt to market dynamics and exempt a *bona fide* hedging strategy that constitutes legitimate hedging but would not otherwise fall under one of the enumerated categories.

Finally, we are greatly concerned by the Commission's proposed *bona fide* hedging reporting requirements and application process. With respect to reporting obligations, market participants relying on a *bona fide* hedge exemption would be required to report *daily* on their cash market positions. This rule would impose an undue burden on such market participants as they would be forced to build and maintain compliance systems to perform reporting that serves no public or regulatory benefit. Market participants also would be burdened by the proposed requirement that they only apply for an exemption *after* exceeding a position limit. The lack of a process for applying in advance will keep market participants in a constant state of legal uncertainty about their transactions and compromise their ability to accommodate their short-term and long-term hedging needs. Accordingly, the Commission should reconsider these aspects of its proposal and provide a clear, workable process for applying for, and complying with, *bona fide* hedging exemptions from federal speculative position limits.

#### **CONCLUSION.**

We support the Commission's mission to promote liquidity and protect the price discovery function of its regulated markets while deterring manipulation and other illegitimate market activity. However, we believe that the Commission's proposed rules relating to *bona fide* hedging would undermine the Commission's mission by unduly constraining legitimate market activity in the metals and other physical commodity markets. We appreciate this opportunity to comment and respectfully request that the Commission consider the concerns and recommendations set forth herein prior to the adoption of any final position limits rules.

If you have any questions, please contact Gabriele Randlshofer at +49 89 51 99 67 70.

Respectfully submitted,

/s/ Gabriele Randlshofer  
Managing Director  
International Platinum Group Metals Association\*

cc: Hon. Gary Gensler, Chairman  
Hon. Michael Dunn, Commissioner  
Hon. Bart Chilton, Commission  
Hon. Jill Sommers, Commissioner  
Hon. Scott O'Malia, Commissioner  
Dan Berkovitz, General Counsel, Office of General Counsel  
Bruce Fekrat, Special Counsel, Division of Market Oversight

## ATTACHMENT A

### EXAMPLES OF TRANSACTIONS THAT DO NOT QUALIFY AS BONA FIDE HEDGING UNDER THE PROPOSED POSITION LIMITS RULE

The following examples illustrate hedging transactions commonly entered into by participants in the metals markets that will be effectively excluded from the definition of *bona fide* hedge as set forth under the Commission's Proposed Position Limits Rule.

#### I. UNFIXED PRICE COMMITMENTS – IN THE SAME CALENDAR MONTH.

**Proposed CFTC Rule 151.5(a)(2)(iii) would permit a hedge of offsetting unfixed price purchase and sale commitments only if they were based on different delivery months. The following example demonstrates the potential need to hedge basis risk in the same delivery month.**

*Example: Metal Producer, a silver mining company, wants to achieve no better nor worse than the prevailing market prices on its mine outputs. However, Metal Producer separately has a sales division which offers fixed price contracts to large silver consumers. Metal Producer buys Silver futures to hedge when its consumers purchase fixed OTC contracts. It sells Silver futures as well on a daily basis on the relevant futures contracts against its mine production output. Since the purchase and sale will occur during the same delivery month, this hedge would not constitute a bona fide hedge under the proposed rule.*

#### II. “ANTICIPATED” TRANSACTIONS.

**Although hedges of “anticipated ownership” and “anticipated merchandising” transactions would be *bona fide* hedges under the language in the Dodd-Frank Act and seemingly under proposed CFTC Rule 151.5(a)(1), they would not be treated as such because there is no provision for them as “enumerated hedges” under proposed CFTC Rule 151.5(a)(2).**

*Example: Metal Producer, a gold mining company, is in the business of locating and extracting gold from the mining assets that it owns. According to its strategic plan, Metal Producer will have newly mined and refined gold available for sale in July 2012. In order to protect its income, Metal Producer “goes short” on CME by selling August 2011 Gold futures contracts today. Under the proposed rule, this would not constitute a bona fide hedge since at the time that Metal Producer entered its futures position, there in fact was no underlying physical refined gold, which would not have existed until after it was mined.*

#### III. HEDGES OF “SPREAD” OR “ARBITRAGE” POSITIONS.

**Although hedges on the value of spread or arbitrage positions would be *bona fide* hedges under the language in the Dodd-Frank Act and seemingly under proposed CFTC Rule 151.5(a)(1), they would not be treated as such because there is no provision for them as “enumerated hedges” under proposed CFTC Rule 151.5(a)(2).**

*Example: Metal Fabricator, a copper fabricator, as part of normal business buys copper from metal dealers located in, among other places, the United States, using the CME reference price. Metal Fabricator is also in the business of selling its copper products to construction companies in China, using the Shanghai Metal Exchange (SHME) reference price. As such, there are times when Metal Fabricator believes the differential for a particular month is favorable and it seeks to lock in the differential by selling SHME futures and buying CME futures, even though it will ultimately buy copper priced in CME futures. This transaction, which allows Metal Fabricator to hedge the risk of the expected transactions in its business strategy, would not be a bona fide hedge since it is not enumerated under proposed CFTC Rule 151.5(a)(2).*

**IV. HEDGING IN THE LAST FIVE DAYS OF TRADING AN EXPIRING CONTRACT**

The following example illustrates the uneconomic consequences of prohibiting a *bona fide* hedge positions from being held in the last five days of trading.

***CROSS-COMMODITY HEDGES – Proposed CFTC Rule 151.5(a)(2)(v)***

*Example:* Metal Consumer, an automotive manufacturer, buys platinum and palladium from a metal dealer, combined for use in the autocatalytic converters of the cars it produces. Depending on the price environment for platinum and palladium, the percentage of platinum vs. palladium that Metal Consumer applies to its production varies in cost-effectiveness. In order to hedge this risk, Metal Consumer enters into a swap, hedging the risk that the price of platinum will decline relative to the price of palladium. Since the two prices are referencing different commodities, this hedge would not constitute a *bona fide* hedge if held in the last five days of trading.

**V. HEDGES OF CAPACITY**

Although hedges of capacity would be *bona fide* hedges under the language in the Dodd-Frank Act and seemingly under proposed CFTC Rule 151.5(a)(1), they would not be treated as such because there is no provision for them as “enumerated hedges” under proposed CFTC Rule 151.5(a)(2).

*Example:* During the seasonal lull of the summer, Metal Dealer, which has bullion storage capacity, is currently sitting completely empty. Metal Dealer locks in a spread of \$0.02 by buying July 2011 precious futures and selling September 2011 precious futures. Regardless of whether Metal Dealer actually buys precious in July 2011, this transaction represents a hedge by Metal Dealer of its storage capacity (i.e., the value of its bullion storage assets). This “hedging of capacity” strategy would not be a *bona fide* hedge because it is not enumerated under proposed CFTC Rule 151.5(a)(2).