



3333 K Street, NW, Suite 110
Washington, D.C. 20007
Tel: 202-333-3288
Fax: 202-333-3266

February 10, 2014

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: RIN 3038–AD99;

Position Limits for Derivatives: NEM Supplemental Comments-- Trade Options

Dear Secretary Jurgens:

The National Energy Marketers Association (“NEM”)¹ appreciates the opportunity to provide supplemental comments related to Trade Options in the Commodity Futures Trading Commission’s (“Commission’s”) above-referenced request for comments on the proposed rule on position limits for derivatives. NEM previously filed comments on other aspects of the proposed Position Limit rules on February 7th.

NEM’s membership is primarily comprised of Retail Energy Marketers (and suppliers who serve them), that sell electricity and natural gas to consumers as a competitive alternative to the local utility. Retail Energy Marketers primarily buy physical energy and physical and financial hedges necessary to provide consumers with the physical energy they want at a price (or price structure) they want. For example, Retail Energy Marketers often purchase wholesale physical natural gas and electricity on a spot (delivery) month (day) basis and purchase financial hedges to lock in prices for any consumers who want a long-term fixed price contract. Energy marketers as well as their suppliers are not financial entities and are not dealers as contemplated in the legislative history of the Dodd-Frank Legislation.²

¹NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

²See NEM Comments RIN 3038-AD06, RIN 3038-AD10, RIN 3038–AC98, dated February 22, 2011, at pages 2-3.

NEM now provides supplemental comments to address the issue raised by the Commission with respect to the treatment of Trade Options under Position Limits. In summary, NEM recommends that the Commission use its alternative proposal of exempting Trade Options from the definition of Referenced Contracts. In the alternative, we recommend that the Commission allow another alternative -- the pass-through swap hedge exemption for offerees.

The NYMEX Natural Gas contract and the swaps, options and futures that are equivalent to it at Henry Hub is the core reference contract to most of NEM's members -- both its natural gas marketers and its electricity marketers. Indeed, since natural gas is the fuel for marginal generators during many of the peak hours of the year, it particularly drives the price of power in many Independent System Operator (ISO) markets, as was witnessed in the PJM, NYISO and ISO-NE markets this January. Furthermore, since NEM members serve retailer customers whose energy use is highly variable due to weather conditions for heating and cooling, the trade option is a very important tool for energy retailers and their suppliers to ensure that they have the right, but not the obligation, to call upon physical energy delivery.

The Commission has excluded physical contracts from the characterization of a Referenced Contract. Since Trade Options are so integral to the reliable physical supply of energy, NEM recommends that Trade Options should also be excluded from characterization as a Referenced Contract.

In the alternative, NEM recommends at a minimum that suppliers to NEM's customers, as offerees, should be allowed to use the pass-through swap hedge exemption. Since most retailers use the trade option to hedge the physical requirements of their retail customers, the suppliers to the retailers would qualify for the pass-through hedge exemption.

NEM appreciates this and previous opportunities provided by the Commission for stakeholders to provide input as the Commission undertakes the significant and complex task of implementing the Dodd-Frank Act. We would be pleased to provide any additional information that the Commission may request.

Respectfully submitted,

Craig G. Goodman, Esq.
President
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Telephone: (202) 333-3288
Fax: (202) 333-3266
E-Mail: cgoodman@energymarketers.com