

March 30, 2015

Chris Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Position Limits for Derivatives, RIN No. 3038-AD99; Aggregation of Positions, RIN No. 3038-AD82

Dear Mr. Kirkpatrick:

On February 26, 2015, the Commodity Futures Trading Commission's (the "CFTC" or "Commission") held a meeting of its Energy and Environmental Markets Advisory Committee ("EEMAC") principally to discuss the topic of the Commission's proposed rule to implement federal position limits.¹ In connection with the EEMAC meeting, the Commission reopened the comment periods² for the (i) Notice of Proposed Rulemaking, *Position Limits for Derivatives* (the "PL NOPR"),³ and (ii) Notice of Proposed Rulemaking, *Aggregation of Positions* ("Aggregation NOPR").⁴

By this letter, the Coalition of Physical Energy Companies ("COPE") provides further comments on the topics raised by the EEMAC meeting. COPE is comprised of physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. COPE members generally use swaps, futures, options, and trade options in

¹ See *Meeting Questions for EEMAC Consideration*, CFTC Energy and Environmental Markets Advisory Committee, available at http://www.cftc.gov/ucm/groups/public/@externalaffairs/documents/file/eemac_questions022615.pdf.

² See *Position Limits for Derivatives and Aggregation of Positions*, 80 Fed. Reg. 10022 (February 25, 2015).

³ *Position Limits For Derivatives*, Notice of Proposed Rulemaking, 78 Fed. Reg. 75,680 (Dec. 12, 2013).

⁴ *Aggregation of Positions*, Notice of Proposed Rulemaking, 78 Fed. Reg. 68,946 (Nov. 15, 2013).

conjunction with their physical businesses, most typically for hedging. As physical commercial companies and hedgers in commodity markets, COPE members are among the intended beneficiaries of the proposed position limits regime.

As COPE has previously stated, we see no need for federal position limits and are significantly concerned that the PL NOPR is overly complex, burdensome, and fails to recognize the legitimacy of certain risk-reducing transactions as *bona fide* hedges. COPE has previously filed comments in this proceeding⁵ and participated in the public roundtable held by the Commission's staff to discuss the PL NOPR on June 19, 2014. While not repeating all of the arguments previously raised, COPE will provide its perspective on the impact the PL NOPR will have on physical energy companies; observations from the discussion at the EEMAC; and proposals for going forward.

COPE's Perspective

In its initial comments filed on February 10, 2014, COPE provided an overview of its views on the PL NOPR. COPE's position remains the same today. Fundamentally, COPE is concerned that the PL NOPR will result in significant burdens on physical energy companies seeking to hedge commercial risk without an offsetting benefit. In those comments, COPE explained:

COPE members use futures, options, and swaps (including trade options) to hedge their commercial risk and otherwise operate their physical businesses. In doing so, they attempt to employ the most cost-effective techniques to optimize and risk-manage their businesses. As understood in a commercial sense, COPE members generally do not speculate in futures, options, and swaps.

It has been COPE's experience that DCMs and over-the-counter swap and physical markets have functioned efficiently and permitted commercial companies to make informed choices regarding the products they will use to manage risk in their commercial businesses and to purchase and sell physical commodity products (which now may be labeled commodity options/trade options). If a market participant is trading on a DCM and requires a hedge exemption, it can work with exchange compliance and, if warranted by its commercial operations, receive a hedge exemption establishing proper limits on its positions.

Through the proposals set forth in the Position Limits NOPR, the Commission would materially disrupt this efficient and commercially reasonable market and potentially distort efficient decision making. If the position limits regulations are finalized as proposed, commercial companies will have to reorient the concept of hedging from one of business-oriented commercial hedging to the new and highly stylized regulatory

⁵ See COPE Comments Regarding Position Limits for Derivatives, filed Feb. 10, 2014 ("COPE PL NOPR Comments"); COPE Comments Regarding Aggregation of Positions, filed Feb. 10, 2014 ("COPE Aggregation NOPR Comments"); COPE Comments Regarding Position Limits for Derivatives, filed August 4, 2014 ("COPE PL Roundtable Comments").

concept of enumerated *bona fide* hedging as created by the Commission (solely for compliance with the rule). They will also have to label and track all referenced contracts⁶ entered into by them (and entities with whom they are aggregated) on a real-time basis (requiring, for example, immediate investigation in a transaction to determine if it somehow contains the indirect usage of a delivery location used in a core referenced futures contract). In addition, they will have to: calculate and include in such tracking the futures equivalent amounts of over-the-counter swaps and physical contracts; prepare and keep current the backup data as required by the Commission to support the filing of forms when position limits are exceeded or a conditional spot-month limit exemption is claimed; and create internal process, procedures, and information technology solutions to ensure compliance.

While COPE Members understand that the Position Limits NOPR is in large part intended to protect them from inappropriate market disruptions, the proposed construct creates a set of confusing burdens on end-user hedgers to solve a problem that the Commission itself is not sure exists. As the intended beneficiaries, COPE asks that, if the Commission is to adopt a final rule based on the Position Limits NOPR, it make the rule as simple, clear, and non-disruptive to commercial business as possible.⁷

The EEMAC Demonstrated Flaws in the PL NOPR

While there was a varied and wide-ranging discussion at the EEMAC meeting touching on various aspects of the PL NOPR and the underlying dynamics in regulated markets, certain important themes emerged during the discussion. Those themes were as follows:

- there does not appear to be a clear empirical basis to support a view that futures/derivatives markets have been or are likely to be subject to harm from “excessive speculation”;
- even if there was the potential of such harm, that the PL NOPR would not necessarily mitigate it;
- it is questionable whether there is adequate liquidity in today’s energy markets (particularly further out in time) to accommodate hedging demand; and
- the enumerated hedge regime proposed in the PL NOPR is inadequate to capture all legitimate hedging and is unduly burdensome to hedgers.

⁶ In the PL NOPR, a “referenced contract” includes the enumerated core referenced futures contracts, as well as futures, options or swaps that are directly or indirectly linked to the price of a core referenced futures contract, or the price of the same commodity underlying a core referenced futures contract for delivery at the same location. *See* PL NOPR at 75825 (proposed definition of “referenced contract”).

⁷ COPE PL NOPR Comments at PP 2-3.

These themes highlight significant shortcomings in the PL NOPR, and should give the Commission pause. As explained by participants at the EEMAC meeting, on both academic and empirical levels there does not appear to be any sound basis to identify circumstances in which excessive speculation has or will harm regulated swaps, futures or derivatives markets, and the PL NOPR does not seriously attempt to do so.⁸ Further, there has been no meaningful explanation to support a conclusion that the PL NOPR is targeted at excessive speculation.⁹

There was no significant opposition regarding any of the forgoing points. Thus, instead of the PL NOPR representing a regulatory solution targeted at a real market problem, the message received by COPE is that position limits may be viewed as a congressional mandate or political necessity with which we must reconcile. To the degree the Commission is seeking a real solution to a real problem, COPE submits that the PL NOPR is not it. Before embarking on a road that seems destined to impose significant burdens on end users/hedgers, the Commission should seriously consider if it believes federal position limits are necessary to carry out its mandate.

On a practical level, COPE shares the observations articulated by EEMAC members participating in the meeting, such as: that liquidity for hedging is less robust than it has been previously;¹⁰ that the proposed enumerated hedge regime does not capture all legitimate hedging

⁸ After evaluating the academic record, the Commission found in the PL NOPR that the “studies overall show a lack of consensus regarding the impact of speculation on commodity markets and the effectiveness of position limits.” PL NOPR at 75695; *see also* Excessive Speculation & Position Limits, Craig Pirrong, University of Houston, *available at* http://www.cftc.gov/PressRoom/Events/opaevent_eemac022615 (“Most empirical studies of recent commodity prices fail to find evidence of distortions, or that speculators caused distortions[.]”)

⁹ This is especially true when it is recognized that the proposed position limits apply to both physically delivered and *financially settling* contracts (which have no physical limitation on their number).

¹⁰ *See* Presentation of Erik Haas to EEMAC, Slides 5-8, *available at* http://www.cftc.gov/PressRoom/Events/opaevent_eemac022615 (showing waning participating in trading of Henry Hub futures contract); *see also* *Industry Renews CFTC Position Limits Concerns*, Argus Media, *available at* <http://www.argusmedia.com/News/Article?id=999695> (Feb. 26, 2015) (“‘Dodd-Frank has had an impact on the markets. We cannot ignore that,’ electric generator Southern Co. manager of risk control Paul Hughes said. ‘The burden of excessive speculation that we are trying to relieve has become a burden of liquidity on hedging.’”); *Fight Over Position Limits Continue*, Resource Investor, *available at* <http://www.resourceinvestor.com/2015/03/04/fight-over-position-limits-continue> (March 4, 2015) (“Lael Campbell, director, governmental and regulatory affairs and public policy at Exelon, commented that it has become difficult to trade farther out in time because there are fewer participants willing to take the other side of the trade, and complained that the problem is not an excess of speculation but rather a lack of speculative interest.”).

as *bona fide hedging*;¹¹ and that the PL NOPR is overly complex and burdensome for hedgers. Assuming the Commission intends to move forward with federal position limits, it must ensure that hedgers can fully protect against their business risks in a robust market without undue burdens. In order to satisfy that goal, the PL NOPR must be modified.

Modifications to the PL NOPR Based on the EEMAC Meeting

All Month Limits Should Not Be Imposed At This Time

The PL NOPR proposes both spot month and all month position limits.¹² As shown at the EEMAC meeting, energy markets are lacking robust liquidity in periods remote from the spot period.¹³ The lack of liquidity appears to stem from a lack of speculators willing to take the positions opposite of those seeking to hedge.¹⁴ If all month position limits are enacted, it would seem that the number of parties available and willing to support the hedging needs of physical market participants would be further reduced.

Given the data produced and discussed among the participants at the EEMAC meeting, COPE recommends that the Commission not enact all month position limits at this time. As the limited basis for position limits seems more tied to the spot month, if the Commission feels position limits are needed, it can do so in the manner most related to the perceived problem without creating a further impact on liquidity. If the Commission determines, after experience with administering federal spot limits, that all month limits are needed, it can revisit the issue. In the meantime, there will still be accountability levels on Commission-registered contract markets for futures contracts, including contracts that will be Core Referenced Contracts and Referenced Contracts subject to the spot limits proposed by the PL NOPR.¹⁵

¹¹ See Illustrative Hedging Examples, Ronald S. Oppenheimer On behalf of The Commercial Energy Working Group Energy and Environmental Markets Advisory Committee Meeting February 26, 2015, available at http://www.cftc.gov/PressRoom/Events/opaevent_eemac022615.

¹² PL NOPR at 75826 (proposed §§ 150.2(a) (Spot-month speculative position limits), 150.2(b) (Single-month and all-months-combined speculative position limits).

¹³ See, e.g., See Presentation of Erik Haas to EEMAC Panel #2, Slide 7, available at http://www.cftc.gov/PressRoom/Events/opaevent_eemac022615 (Open Interest Forward Curve Comparison).

¹⁴ To the degree there is uncertainty as to the makeup of market participants in periods remote in time from the spot period, COPE recommends the Commission review and confirm the hedger/speculator makeup.

¹⁵ COPE does not support federal accountability levels as they would likely have a similar liquidity reducing effect to all month limits. COPE also believes that federal accountability levels would require a thoughtful and well conceived structure and oversight process before they can be considered. No such structure has been proposed as of this time.

The Commission should take great care to avoid further reducing liquidity for hedgers. Placing all month limits on hold, subject to the identification of a need therefore in the future, would be a prudent approach at this time

The Proposed Enumerated Hedge Regime Should Be Revised To Incorporate A Role For DCMs

Enumerated *bona fide* hedges were discussed at length at the EEMAC. Various examples of transactions that would not merit *bona fide* hedge status under the PL NOPR were discussed without clarity as to whether they could ultimately be included on the list of acceptable *bona fide* hedges under any final rule.¹⁶ The discussion made clear that there are multiple transactions that hedgers view as risk reducing hedges that would meet the current *bona fide* hedge test in the Commodity Exchange Act and the Commissions regulations¹⁷ but that are not proposed to be on the *bona fide* hedge list under the PL NOPR.¹⁸

As the Commission knows, the system of specifically enumerated transactions being the only exceptions to position limits is not the only way that position limits can be administered. Today, energy contracts traded on DCMs are subject to spot month position limits but are not subject to a limiting enumerated hedge regime. Instead, physical energy companies in need of relief from exchange-based position limits in order to hedge their risk may seek a hedge exemption from the relevant DCM based upon the principles of *bona fide* hedges in the Commission's current regulations.¹⁹ If granted, that hedge exemption will increase the number of positions the physical energy company may hold in the affected contract without matching each transaction to an enumerated *bona fide* hedge. COPE is not aware of any concerns that this system has ever placed the market at risk of excessive speculation.

¹⁶ *Industry Renews CFTC Position Limits Concerns*, Argus Media, available at <http://www.argusmedia.com/News/Article?id=999695> (Feb. 26, 2015) (“Energy companies are worried that the proposed rules would hamper their ability to hedge using cross commodity transactions involving, say, natural gas and power or fuel oil and crude. The agency's proposals would require that movements of the cross commodities correlate closely for those transactions to qualify for the hedging exemption.”).

¹⁷ Of course, as set forth in COPE's comments dated February 10, 2014 and further cited below, the position limits regime would be further rationalized and uncomplicated by using the test of “mitigate or hedge commercial risk” used for the End User Exemption rather than the more complex *bona fide* hedge test.

¹⁸ *Industry Renews CFTC Position Limits Concerns*, Argus Media, available at <http://www.argusmedia.com/News/Article?id=999695> (Feb. 26, 2015) (“Exchange operator CME chief regulatory officer Tom LaSala, speaking on the sidelines of the session, said that ‘cutting back on certain practices which today are allowable under exemptions that we have in the spot month would potentially be detrimental to the market.’”).

¹⁹ See 17 C.F.R. § 1.3(z).

The benefit of this DCM administered hedge exemption approach is that a physical energy company can bring the specifics of its business needs forward and show the DCM that the positions will actually hedge its risk. It is a real world application of the *bona fide* hedging principles in the Commissions regulations. If the facts warrant a hedge exemption, it will be granted. If not, it will not (or a lesser amount will be granted).

Through the administration of hedge exemptions over time, DCMs have become familiar with physical energy companies' businesses, including the risk they need to hedge and how they can use DCM contracts do so. Through this approach, the DCM can evaluate the validity of the use of its listed products to hedge the risks faced by the applicant in the context of its historic and anticipated business activity, permitting the DCM to grant an exception that permits a level of contracts necessary to hedge the applicant's properly identified business risk. It is COPE's experience that this system has worked well. However, a broad range of legitimate hedging permitted under today's construct will no longer be recognized as *bona fide* under the enumerated hedge exemption process proposed in the PL NOPR. There is no reason that an expansion of the scope of contracts to be covered by federal position limits should also disqualify transactions (or positions) that are viewed as *bona fide* hedges today from retaining that status.

The apparent problem in recognizing those contracts as *bona fide* hedges comes from the structure of the new position limits oversight regime proposed in the PL NOPR, rather than today's DCM hedge exception approach. That is, the enumerated hedge regime is dependent upon limiting the scope of *bona fide* hedges because it is based upon review and oversight only after the limits are exceeded. At that time, there is no opportunity to look at the facts and circumstances of the transaction to see if it is a risk reducing *bona fide* hedge. All that can be judged after the fact is whether a given transactions fits within the scope of the narrow pre-approved enumerated hedges.

The foregoing is a static process that is proposed to apply to a dynamic environment. It determines *a priori* what is a *bona fide* hedge (and what is not) and requires physical energy companies to accommodate their business needs to the preordained set of *bona fide* hedge categories. The conservatism embedded in such a process will cause valid hedges to not be considered *bona fide* because it is devoid of real world context.

COPE does not support an enumerated hedge approach to position limits for energy. It has not historically been needed, and it is overly limiting without serving any valid purpose. In addition, the proposed enumerated *bona fide* hedge regime will result in a highly burdensome compliance process for hedgers. COPE believes that if the Commission decides to move forward with position limits, it should consider an approach that would preserve the current DCM administered hedge exemption approach rather than enumerated hedges.

To implement a DCM-administered hedge exemption process, the Commission could delegate the ability to issue a hedge exemption to federal limits to the DCM that lists the Core Referenced Contract made subject to position limits by the Commission. That hedge exemption would be communicated to the Commission and any other exchange listing a Referenced Contract tracking

the Core Referenced Contract. The Commission would retain the ability to review and revise/reject any hedge exemption so granted. Market participants would be required to stay below the hedge exemption level, track their positions in real time, provide a simple notification to the Commission whenever they exceed a federal position limit, and be subject to special calls or Commission inquiries to insure that the hedge exemption is not exceeded.²⁰

The above approach would preserve the current successful DCM hedge exemption process and allow the facts and circumstances of physical energy companies risks and hedging needs to be considered on a prospective rather than retrospective basis. Also, it would greatly reduce the compliance burden on hedgers as their task would continue to be to track their position, rather than having to pair up all transactions with a list of *bona fide* hedges and keep the complex records that are required to support a filing under the PL NOPR. The notice filing made when the federal position limit was exceeded would be simple and non-burdensome. Of course, the policy goal of position limits would be met as no person without a hedge exemption would be permitted to exceed the federal position limits.

However, if the Commission continues to believe the enumerated hedge regime should be implemented in a final rule, COPE recommends that the enumerated *bona fide* hedges listed in a final rule not be static.²¹ Similar to the approach described above, DCMs that list the Core

²⁰ Of course the Commission could consider delegating aspects of the oversight process to DCMs.

²¹ Further, additional enumerated hedges such as the following should be included in the final rule as previously pointed out by COPE: *bona fide* hedges for unfilled storage capacity, unpriced physical purchase or sale commitments, binding irrevocable bids or offers, hedging of positions subject to negotiation, hedging physical positions using calendar month average pricing, and holding a cross-commodity hedge using a physical delivery contract into the spot month. COPE also has advocated against the application of the proposed “five-day rule” to restrict the positions that would otherwise qualify as *bona fide* hedges under the PL NOPR. See COPE PL NOPR Comments at PP 14-17. Other energy focused commenters have similarly sought additional enumerated hedges. See, e.g., Comments of the Commercial Energy Working Group, Position Limits for Derivatives, at PP 14-37, (advocating for additional enumerated *bona fide* hedges for multiple types of transactions) (filed Feb. 10, 2014); Comments of Edison Electric Institute and Electric Power Supply Association, Position Limits for Derivatives, at P 17-19 (advocating for additional enumerated *bona fide* hedges for unfixed price purchases and sales, certain transactions locking in price differentials, hedges on fixed price bids and offer, hedges of obligations subject to negotiation, and others) (filed Feb 10, 2014); Comments of National Rural Electric Cooperative Association, Large Public Power Council and American Public Power Association, Position Limits For Derivatives, at PP 4-7 (detailing need for broad hedge exemptions for physical hedgers) (filed Aug. 1, 2014)); Comments of International Energy Credit Association, Position Limits for Derivatives, at PP 8-10 (advocating for broader definition of *bona fide* hedging for purposes of hedge exemptions) (filed Feb. 10, 2014); Comments of the Natural Gas Supply Association, Position Limits for Derivatives, at PP 17-25 (filed Feb 10, 2014) (setting forth categories of hedges inappropriately denied *bona fide* hedge status under the

Referenced and Referenced Contracts should be delegated the authority, subject to Commission review, to consider and grant additional *bona fide* hedges. In doing so, the DCM would consider and, if warranted, recognize a fact pattern for which the contract properly reduces risk as a *bona fide* hedge and publish its finding. Similarly situated hedgers would be able to utilize a newly recognized *bona fide* hedge as an additional enumerated hedge. Of course, the Commission could reject or modify the DCM's finding. The outcome of this approach would be to incorporate the expertise of DCMs gained in granting hedge exemptions for use in permitting a more dynamic implementation of enumerated hedges (subject to proper Commission oversight).

If the Commission were to follow either of the foregoing proposals, it could take advantage of the resources and expertise of the DCMs but retain its role to establish and supervise federal position limits. If the hedge exemption approach was implemented, the compliance burden on hedgers would be greatly reduced from the approach proposed in the PL NOPR. While the hedge exemption approach would be significantly preferable, either approach would put in place a process that would permit legitimate risk limiting hedges by physical energy companies to be considered *bona fide* hedges.

Other COPE Comments on the PL NOPR and the Aggregation NOPR

While focusing these comments on issues from the EEMAC meeting last month, COPE will highlight a non-exhaustive list of issues relating to the PL NOPR and its implementation.

The Test For Hedges Permitted To Exceed Position Limits Should Be The Same as Hedges Exempted From Clearing By The End User Exception²²

In response to each of the position limits proposals, COPE has requested that the Commission utilize the definition of "hedging or mitigating commercial risk" for the end-user exemption to mandatory clearing and Major Swap Participant determination rather than the complex and incomplete "enumerated hedges" it had proposed.²³ COPE continues to believe that the Commission should simplify its regulatory scheme and use the common-sense and workable definition of "hedging" it has created for those elements of its regulation here. Simply stated, *if it's hedging – then it's hedging*. Hedging that qualifies for opting out of the clearing that is otherwise unambiguously mandatory under the Dodd-Frank statute is no less legitimate, non-speculative, or *bona fide* than hedging that is exempt from the Commission's regulatory position limits. Real world hedging recognized by the Commission as *not speculation*, sufficient to opt out of clearing, and sufficient to not be counted towards an entity's exposure for purposes of the

proposed rules, including short anticipatory hedge positions in the spot month, hedges of anticipated revenues associated with owned or leased merchandising capacity, and hedges of anticipated merchandizing exposure.

²² See COPE PL NOPR Comments at P 10-11.

²³ See 17 C.F.R. §§ 50.50(c) (defining "hedging or mitigating commercial risk" for purposes of the end-user exception to clearing), 1.3(kkk) (defining "hedging or mitigating commercial risk" for purposes of the Major Swap Participant determination)

Major Swap Participant definition, should, by definition, meet the “bona fide hedging” test for position limits.

The Commission Should Establish A List Of All Referenced Contracts²⁴

The Commission has published a non-exclusive list of referenced contracts.²⁵ A review of the published list reveals that the designated contracts appear to be thoughtfully reviewed and arguably economically equivalent to the core referenced futures contract to which they are linked. In addition, these contracts are exchange traded with a stated designation that make them susceptible to tracking and aggregation in real-time as required by the PL NOPR.

COPE believes that the Commission should limit referenced contracts to a specific list of contracts. That way, contracts without economic equivalence will not be captured, there will be no ambiguity as to what is in and what is out, and compliance will be simplified by creating a clear set of contracts that establish a “position” to which the aggregate limits apply. In addition, the Commission will have transparency into the positions of traders.

Commodity Options/Trade Options Should Be Excluded From Position Limits²⁶

Trade options are a component of a physical commercial business and are used to prudently supply or control inventory. In fact, a contract used for speculation will not meet the definition of a trade option (“offering or entering into the commodity option transaction solely for purposes related to its [physical]business”).²⁷ Since the purpose of position limits is to prevent excessive speculation in contracts that are generally used for price discovery, inclusion of over-the-counter physical trade options used in commercial business in the position limits regime serves no purpose.

Any Required Forms Should Not Be Burdensome and as Clear as Possible²⁸

The PL NOPR includes forms to be filed by affected persons at various times, with various frequencies, triggered by various circumstances.²⁹ These forms represent a significant data collection and categorization requirement in order for them to be correctly populated.³⁰

²⁴ See COPE PL NOPR Comments at PP 6-8.

²⁵ See Position Limits Workbook, Commodity Futures Trading Commission, <http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/PositionLimitsforDerivatives/ssLINK/po limitsworkbook>.

²⁶ See COPE PL NOPR Comments at PP 8-9.

²⁷ See 17 C.F.R §§ 32.3(a).

²⁸ See COPE PL NOPR Comments at P 24.

²⁹ See PL NOPR at 75788-90 (proposed §§ 19.00(a)(1) (Persons filing for exemption to speculative position limits); 19.00(b) (Manner of reporting); 19.01(b) (Time and place of filing reports)).

³⁰ See *id.* at 75789 (proposed § 19.01(a) (detailing extensive information of stocks and fixed price purchases and sales in connection with reports filed in connection with claiming bona fide hedge exemptions)).

The Commission should review its proposed forms and ensure that their application is as clear, limited, and workable as possible such that burdens can be reduced and the goals sought by the Commission are also met. Further, the Commission should create straightforward, user-friendly guidebooks for the forms it requires to assure that commercial end-user/hedgers can clearly understand and correctly and timely file any required forms. The Commission should also hold workshops to assist in improving the forms and making sure that questions and issues are surfaced and addressed.

Aggregation NOPR Comments³¹

Since the Commission has re-opened the comment period for the Aggregation NOPR, COPE will briefly reiterate the main themes from the previously filed COPE Aggregation NOPR Comments. COPE believes that if an entity that owns an equity interest in another entity does not have real-time knowledge, access, and/or control of the owned entity's positions, there should not be a requirement for the entities to aggregate positions for the purpose of position limits.³² Further, the Commission's proposed criteria for an exemption from aggregation when an entity has a more than 10% and not more than 50% equity interest in another entity has properly captured the elements needed to assure that there is no real-time knowledge, access, and/or control of an affected position. If the criteria are met, it should permit the affected entities to not aggregate regardless of percentage of ownership.

Conclusion

COPE appreciates the opportunity to provide these supplemental comments in conjunction with the EEMAC meeting. COPE is hopeful that the Commission will carefully review the information presented at the meeting and in follow up comments as it considers its actions on the PL NOPR and Aggregation NOPR.

³¹ See COPE Aggregation NOPR Comments at PP 2-3.

³² As pointed out in the COPE Aggregation NOPR Comments, the proposed criteria to establish a lack of real-time knowledge or control should be clarified to include an employee of an investor who participates on the board or similar governing body of an owned entity but does not control, direct, or participate in the owned entity's trading decisions. *COPE Aggregation NOPR Comments* at 3. Such a clarification will prevent the unnecessary complication and burden of aggregation while preserving the Commission's policy goals .

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March 30, 2015
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Respectfully Submitted,

/s/ David M. Perlman

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George D. Fatula

**Counsel to
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