2001 Pennsylvania Avenue NW
Suite 600 | Washington, DC 20006

T 202 466 5460
F 202 296 3184

March 30, 2015

Via Electronic Submission

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Re-Opening of Comment Period Regarding Energy and Environmental Markets Advisory Committee Discussion of Position Limits for Derivatives (RIN Number 3038-AD99) and Aggregation of Positions (RIN Number 3038-AD82)

Dear Mr. Kirkpatrick:

The Futures Industry Association ("**FIA**") appreciates the opportunity to provide the Commodity Futures Trading Commission ("**Commission**" or "**CFTC**") with comments and recommendations in response to the Commission's re-opening of the comment period for its proposed rules (1) establishing position limits for derivatives, and (2) amending the rules governing the aggregation of positions.[1] FIA appreciates the Commission's willingness to reconsider various aspects of the Proposed Rules in light of the issues raised during the February 26, 2015 meeting of the Energy and Environmental Markets Advisory Committee ("**EEMAC**").

FIA's regular and associate members, their affiliates, and their customers actively participate in the listed and over-the-counter ("**OTC**") derivatives markets as intermediaries, principals, and users.[2] Consequently, FIA and its members have a significant interest in the Proposed Rules.

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[1] *See Position Limits for Derivatives and Aggregation of Positions*, 80 Fed. Reg. 10022 (Feb. 25, 2015) (proposed rule, re-opening of comment period); *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013) (proposed rule) ("**Position Limits Proposal**"); and *Aggregation of Positions*, 78 Fed. Reg. 68946 (Nov. 15, 2013) (proposed rule) ("**Aggregation Proposal**") (collectively "**Proposed Rules**"); *see also Position Limits for Derivatives and Aggregation of Positions*, 80 Fed. Reg. 200 (Jan. 5, 2015).

[2] FIA is the leading trade organization for the futures, options, and cleared swaps markets worldwide. FIA's membership includes clearing firms, exchanges, clearinghouses, and trading firms from more than 25 countries as well as technology vendors, lawyers, and other professionals serving the industry. FIA's mission is to support open, transparent, and competitive markets, to protect and enhance the integrity of the financial system, and to promote high standards of professional conduct. As the principal members of derivative clearinghouses worldwide, FIA's member firms play a critical role in the reduction of systemic risk in the global financial markets. FIA along with its affiliated associations, FIA Europe and FIA Asia, make up the global alliance, FIA Global, which seeks to address the common issues facing its collective memberships.

The Commission re-opened the comment period to focus on issues discussed during the EEMAC meeting that relate to energy commodities. Although FIA's comments relate primarily to questions raised at the EEMAC meeting, its comments apply equally to all Referenced Contracts, not just energy Referenced Contracts. In addition to the comments and recommendations set forth below, FIA incorporates by reference its prior comments to the Proposed Rules.[3]

FIA commends the Commission and Staff for continuing to receive public comments on one of the most complex rule proposals ever issued by the CFTC. FIA supports the Commission's proposed amendments to the aggregation rules, with the modifications recommended in FIA's prior comment letters.[4] However, as FIA has explained previously, FIA remains concerned about many aspects of the Commission's Position Limits Proposal. In particular, FIA is concerned that the proposed non-spot month limits likely will have unintended harmful consequences on the derivatives markets, including reduced liquidity for *bona fide* hedgers and impairment of efficient price discovery. The Commission should address spot month and non-spot month positions in phases. The Commission should limit the first phase of the Position Limits Proposal to establishing spot month limits *if* it finds that such limits are necessary. The Commission then should address non-spot month positions in a second and separate rulemaking proceeding.

I. The Commission Should Not Impose Position Limits Without First Finding that Position Limits Are Necessary

As FIA has commented previously, Section 4a(a)(1) of the Commodity Exchange Act, as amended ("**CEA**"), requires that, prior to imposing speculative position limits, the CFTC must make a finding that such limits are *necessary* to diminish, eliminate, or prevent excessive speculation.[5] FIA requests that, prior to imposing position limits on Referenced Contracts, the Commission make a quantitative finding that federal spot month and any non-spot month position limits are necessary for each Referenced Contract. To the extent that the Commission decides to finalize the Position Limits Proposal without making a quantitative and particularized finding that position limits are necessary for each Referenced Contract, FIA recommends that the Commission consider the regulatory treatment of speculative positions in phases, beginning with spot month positions, and thereafter non-spot month positions.

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[3] On January 22, 2015, FIA submitted a comment letter in response to the CFTC's request for comment following its December 9, 2014 Agricultural Advisory Committee Meeting ("**FIA Ag Advisory Letter**"). Attachment A to the FIA Ag Advisory Letter included a summary of FIA's position limits comment letters prior to the FIA Ag Advisory Letter.

[4] *See* Letter from FIA to CFTC (RIN 3038-AD82), dated Feb. 6, 2014 ("**FIA Aggregation Letter**"); and Letter from FIA to CFTC in response to CFTC public roundtable, dated July 31, 2014 ("**FIA Roundtable Letter**").

[5] *See* Letter from FIA to CFTC (RIN Number 3038-AD99), dated Feb. 7, 2014 ("**FIA PL Letter**"); and FIA Ag Advisory Letter.

II. The Commission Should Withdraw the Proposed Non-Spot Month Limits

In the absence of a finding that non-spot month limits are necessary, and in order to avoid the potential unintended consequences of significantly restricting liquidity for *bona fide* hedgers and negatively impacting the price discovery function, FIA recommends that the Commission withdraw the proposed non-spot month position limits, and address non-spot month positions as part of a later and separate rulemaking proposal. During the EEMAC meeting, both CME and ICE explained that, although certain energy contracts listed on their platforms may have liquidity during the prompt month, liquidity generally decreases further out the curve.[6] Because of the limited liquidity available in deferred months, the Commission should take particular care first to find that position limits outside of the spot month are necessary. As FIA has commented in the past, the Commission did not conduct a sufficient analysis to conclude that position limits outside of the spot month are "necessary" under CEA Section 4a(a)(1). Without such a finding, the Commission runs the very real risk, contrary to its statutory mandate, of unduly restricting liquidity for *bona fide* hedgers or negatively impacting the price discovery function.

In addition, pursuant to CEA Sections 4a(a)(2) and 4a(a)(3), the Commission must determine that any position limits it establishes are "appropriate." To assess whether a proposed limit is appropriate, the Commission must measure the impact of the proposed limit in light of the four statutory directives listed in 4a(a)(3)(B).[7] However, the Commission could not evaluate effectively the impact of the proposed non-spot month limits because the Commission did not review a complete set of data to make this evaluation. For example, the Commission could not identify the number of market participants that may exceed the proposed non-spot month limits because the Commission did not review all relevant futures and swaps data for each Referenced Contract to count a market participant's positions toward the proposed non-spot month limits. As described in the Position Limits Proposal, the Commission did not rely on OTC swap data reported to swap data repositories ("**SDR**") or swap data reported directly to the Commission under Part 20.[8] Without evaluating all relevant and current data for each Referenced Contract, it

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6 *E.g.*, ICE market data for the Henry Hub Natural Gas contract indicates that much fewer market participants trade and provide liquidity outside of the spot month compared to the spot month. *See* Energy & Environmental Markets Advisory Committee Panel I, Presentation of Intercontinental Exchange, p. 8 (Henry Hub Participation as of February 20, 2015), *available at* http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/eemac022615_icemarkets1.pdf.

7 Congress directed the Commission to set limits "as appropriate" and to "the maximum extent practicable" to: (i) diminish, eliminate or prevent excessive speculation; (ii) deter and prevent manipulation; (iii) ensure sufficient market liquidity for *bona fide* hedgers; and (iv) ensure that the price discovery function of the underlying market is not disrupted.

8 *See* Position Limits Proposal at 75730-34. Moreover, the Commission failed to calculate the proposed non-spot month limits using the Commission's proposed formula of 10 percent of the open interest for the first 25,000 Referenced Contracts and 2.5 percent of open interest thereafter. The proposed non-spot month limits do not reflect data from all Referenced Contracts, but rather are based on open interest for futures, options on futures, and significant price discovery contracts ("**SPDC**") traded on an exempt commercial market for calendar years 2011 and 2012. In contrast, when the Commission implemented vacated Part 151, it declined to set non-spot month limits until it had collected 12 months of open interest data for futures, options on futures, and "*all* of a Referenced Contract's month-end open swaps positions [in] both cleared and uncleared swaps." *See* Former CFTC Rules 151.4(b)(2)(i)(C) & 151.4(d)(3)(i) (emphasis added).

is unclear how the Commission could determine that any proposed restrictions on the number of speculative positions a trader may hold outside of the spot month are appropriate. Due to the lack of any finding that the proposed non-spot month limits are necessary and appropriate, the Commission should withdraw its proposed hard non-spot month position limits.

III. The Commission Should Consider Proposing a Non-Spot Month Position Accountability Regime in a Separate Rulemaking Proceeding

The purpose of a position limits regime is to diminish, eliminate, or prevent "excessive speculation." Both CME and ICE explained during the EEMAC meeting that their respective non-spot month accountability regimes have a proven track record of successfully deterring excessive speculation and manipulation. Because liquidity tends to decrease farther out the curve, designated contract markets ("**DCM**") have employed accountability regimes to monitor positions in deferred months.[9] This flexible approach permits DCMs to preserve liquidity for *bona fide* hedgers, protect the price discovery function of the derivatives markets, and also restrict speculative activity where the DCM identifies the potential for excessive speculation based on a dynamic review of a trader's position.[10] In contrast, hard limits outside of the spot month restrict all positions that do not qualify as *bona fide* hedging positions, including legitimate and non-speculative activity, such as risk management positions.

The Commission has the statutory authority under various provisions of the CEA to implement and administer a position accountability regime.[11] As FIA explains below, an accountability level, coupled with the authority in appropriate circumstances to instruct a trader to reduce its position effectively operates as a form of a position limit. Because this two-component framework operates as a form of limit, the Commission has the discretion under CEA Section 4a(a) to characterize an accountability regime as one involving accountability levels or accountability limits. Unlike hard limits, an accountability limit would act as a threshold triggering further inquiry into the nature of the Referenced Contract positions. The Commission should utilize its discretion to implement an accountability regime rather than hard limits for deferred month positions because it would provide the Commission with a more appropriate, flexible, and targeted tool for preventing excessive speculation that would preserve liquidity for *bona fide* hedgers and protect the price discovery function of the markets.

A. The CEA Provides the Commission with the Statutory Authority to Establish a Position Accountability Regime

Various provisions of the CEA provide the Commission with the authority to establish an accountability regime for non-spot month positions in Referenced Contracts.

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9 *See e.g.*, EEMAC Committee Testimony, pp. 67, 73, 82, 96 & 107.

10 During the EEMAC meeting, ICE explained that "utiliz[ing] position accountability instead of limits [gives it] the ability to provide the necessary oversight on any market participant when needed, but to also ensure that there's sufficient liquidity so that market participants can operate, and enter and leave the market." *Id.* at 98.

11 *See* FIA Ag Advisory Letter, Section I.B.

1. The Commission should find that hard limits are not necessary for deferred month contracts and instead adopt an accountability regime

Based upon the historical record and currently reported position data, the Commission should find that hard limits on non-spot month positions are not necessary or, at a minimum, determine that the Commission currently does not have sufficient data to support a finding that such limits are necessary. Instead, the Commission should implement an accountability regime because it provides an appropriate, effective, and flexible mechanism to prevent excessive speculation in deferred month Referenced Contracts.[12]

2. The Commission has the authority under CEA Section 4a(a)(7) to exempt deferred month positions from hard limits even if it determines some form of non-spot month limit is necessary

Even if the Commission finds that some form of limit on non-spot month positions is necessary, the Commission has the authority to exempt deferred month positions (and the persons holding such positions) from hard limits and instead to establish an accountability framework. CEA Section 4a(a)(7) provides that the "Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits." The Commission should use this broad grant of authority to exempt deferred month positions from hard limits because, as described further below, hard limits may significantly reduce liquidity for *bona fide* hedgers and impair the price discovery function of the underlying markets and, consequently, are less appropriate than an accountability regime.

3. The Commission has the discretion to adopt the form and size of limit it deems most appropriate under CEA Sections 4a(a)(2) and 4a(a)(3)

CEA Section 4a(a)(2) directs the Commission to establish "limits on the amounts of positions, *as appropriate*, other than bona fide hedge positions, that may be held by any person." Congress reiterated the reference to "as appropriate" in CEA Section 4a(a)(3), which provides that the Commission shall, "as appropriate," set limits for the spot month, each other month, and the aggregate number of positions based on the four statutory directives in CEA Section 4a(a)(3)(B). The phrase "as appropriate" provides the Commission with the discretion to determine the form and size of limits on deferred month positions that are most suitable for

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[12] If the Commission were to propose and adopt a position accountability framework, the Commission could utilize the data collected in the interim to determine whether hard limits on non-spot month positions are necessary.

deterring excessive speculation.[13] The Commission's obligation to balance the statutory directives in CEA Section 4a(a)(3)(B) to the maximum extent practicable underscores Congress' acknowledgment that the Commission must balance several competing interests in implementing an appropriate and effective speculative position limits regime. To accommodate these competing interests, Congress provided the Commission with the discretion to establish an "appropriate" limit, *i.e.*, one that best suits balancing these interests.

In an accountability regime, the Commission and DCMs would monitor positions in deferred months, and based upon a dynamic review of a trader's reasons for holding the positions, determine whether they constitute potentially excessive speculation. If a trader holds positions in excess of an accountability threshold that potentially constitute excessive speculation, the Commission or DCMs can order the trader to reduce its speculative positions. Thus, an accountability level, combined with the Commission's and a DCM's authority to order a trader to reduce its positions, establishes a form of limit on positions outside the spot month. Indeed, the Commission previously has concluded that an accountability framework represents "an alternative means to *limit* the burdens of excessive speculative positions," albeit a more flexible means that has allowed the Commission to be "responsive to the economic realities of contemporary markets and exchange competitive concerns."[14] As a result, the Commission has the discretion to adopt an accountability regime if it determines that it would represent a more suitable form of limit under CEA Sections 4a(a)(2) and 4a(a)(3).[15] Moreover, a reading of CEA Section 4a(a)(3) that obligates the Commission to establish hard limits, even where the Commission determines that an accountability regime is more appropriate, undercuts the

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13 The Commission should interpret the phrase "as appropriate" in CEA Section 4a(a) as granting it the authority to adopt the most suitable limit, including the form of the limit, in light of the overarching purpose of CEA Section 4a(a) to prevent the burdens of excessive speculation along with the specific directives in 4a(a)(3)(B) to ensure liquidity for *bona fide* hedgers and protect the price discovery function of the underlying markets. In following this approach, the Commission should construe its authority based upon CEA Section 4a(a) as a whole rather than focusing on certain provisions in isolation. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *ISDA v. CFTC*, 887 F. Supp. 2d 259 (D.D.C. 2012) ("[I]n searching for the plain meaning of [CEA Section 4a(a)], the Court must not take words in isolation, must view them in context, and must attempt to give effect to all words in the statute.").

14 *See* Position Limits Proposal at 75681 (emphasis added); *Foreign Commodity Options*, 61 Fed. Reg. 10891, at 10893 (Mar. 18, 1996) (final rule). In Section 4a(a)(3)(B), Congress similarly directed the Commission to take into account the economic realities of contemporary markets by specifically requiring it to consider effects on liquidity and price discovery.

15 The courts have "long recognized that considerable weight should be accorded to an [agency's] construction of a statutory scheme it is entrusted to administer." *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984). Under *Chevron*, if a statute is ambiguous with respect to a specific issue, courts will defer to an agency's interpretation if it is a permissible construction of the statute. *Id.* at 843. As noted by the D.C. District Court in its decision vacating former CFTC Rule 151, the phrase "as appropriate" in CEA Section 4a is ambiguous. Accordingly, a Commission determination that the phrase "as appropriate" permits the agency to adopt a suitable form of a limit, such as an accountability regime, should be entitled to deference under *Chevron*. *See ISDA v. CFTC*, 887 F. Supp. 2d 259, 277 (D.D.C. 2012). *See also Humane Society of U.S. v. EPA*, 790 F.2nd 106 (D.C. Cir. 1986) (finding no inconsistency with the legislative history of the statute, the court was "obliged to accept the agency's reading," of a statutory term, and rejected claims that "the agency's action fell short of the Act's demands," and that the agency should have adopted a narrower, more restrictive interpretation.).

Commission's discretion to establish limits that, to the maximum extent practicable, prevent excessive speculation and manipulation and, at the same time, ensure market liquidity for hedgers and avoid disruption of the price discovery function of the relevant markets.[16]

4. A position accountability framework is more suitable than hard limits to achieve the four directives that Congress included in CEA Section 4a(a)(3)(B)

During the EEMAC meeting, both CME and ICE explained that an accountability framework has a proven track record of protecting markets against excessive speculation. In addition, an accountability framework enhances market liquidity and the price discovery function because it is a more flexible form of limit based upon a dynamic review of a trader's positions in the context of the particular market. In contrast, a hard limit restricts all positions that do not qualify as *bona fide* hedging positions, regardless of whether they constitute excessive speculation or manage risk, or whether they enhance market liquidity and the price discovery function. As CME and ICE explained, although certain energy contracts listed on their platforms may have liquidity during the prompt month, liquidity generally decreases farther out the curve. Because of the limited liquidity available outside of the spot month, if the Commission imposes hard limits on deferred month positions, it runs the very real risk, contrary to its statutory mandate, of unduly restricting liquidity for *bona fide* hedgers and negatively impacting the price discovery function.

The proposed non-spot month limits are particularly problematic because the Commission relied on incomplete data in assessing their impact on trading activities and liquidity in deferred months. In connection with the EEMAC meeting, the Commission published Table 11a, which purports to reflect the number of unique persons who, based upon data from January 1, 2013 to December 31, 2014, would meet or exceed the proposed spot month, single month, or all-months-combined position limits for the twenty-eight Core Referenced Futures Contracts. It appears that the data the Commission relied upon to arrive at the estimates in Table 11a for the EEMAC meeting are similar to the data the Commission relied upon to arrive at the estimates described in Table 11 of the Position Limits Proposal.[17] Unfortunately, the estimates from Table 11 were limited to data on futures, options on futures, and SPDCs on exempt commercial markets, and did not include a market participant's OTC swap positions reported to an SDR or to the Commission under Part 20. Because the Position Limits Proposal establishes position limits on futures and swaps, an even larger number of market participants likely will be affected than is reflected in Table 11a.

According to Table 11a, the number of market participants at 100 percent of the all-months-combined position limit was one to three for the NYMEX Henry Hub Natural Gas futures contract, one to three for the NYMEX Light Sweet Crude Oil futures contract, six for the NYMEX NY Harbor ULSD contract, and 12 for the NYMEX RBOB Gasoline contract. The

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16 *See* CEA Section 4a(a)(3)(B).

17 *See* Position Limits Proposal at 75731.

Commission should not conclude, based on these data, that the limits as proposed would not have a significant impact on the non-spot month markets for these contracts. As noted above, these figures may underestimate the number of market participants with positions at 100 percent of the all-months-combined position limits because the Commission did not include swaps data in this calculation. Moreover, even assuming that Table 11a's estimates are accurate, because there are fewer market participants outside of the spot month with whom to trade and to provide liquidity, imposing hard limits may unduly restrict liquidity for *bona fide* hedgers, and negatively impact the price discovery function.

5. The Commission and the DCMs have the authority to direct a market participant to reduce its positions

FIA understands that the Commission may believe that the only authority it has to order a market participant to reduce speculative positions above an accountability level is its emergency authority under CEA Section 8a(9). The CEA provides the Commission with broad authority to implement and enforce a position accountability regime. CEA Section 8a(5) authorizes the Commission "to make and promulgate such rules and regulations as, in the judgment of the Commission, are *reasonably necessary to effectuate* any of the provisions or to accomplish any of the purposes of this chapter."[18] Under this provision, the Commission has the power to adopt, as part of an accountability regime, a rule pursuant to which it or a DCM could direct a market participant to reduce speculative positions above an accountability limit because that authority is "reasonably necessary to effectuate" a position accountability rule. It also would be "reasonably necessary to effectuate" the Commission's authority to prevent excessive speculation under CEA section 4a(a)(1).[19]

B. The Commission Should Delegate the Administration of the Accountability Regime to DCMs to the Maximum Extent Practicable

FIA understands that the Commission may be concerned about whether it has sufficient resources to administer a position accountability regime. The administration of the position accountability regime likely requires fewer resources than are necessary to administer hard limits. Under the current Position Limits Proposal, the Commission and DCMs would need to monitor the positions of *all* market participants to ensure that they are in compliance with hard limits. Furthermore, any market participant that exceeded the proposed hard limit would need to file, and the Commission would need to review, forms related to the participant's underlying

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[18] Emphasis added.

[19] The Commission's general rulemaking authority accords it with broad powers to regulate all matters within its substantive field. The Supreme Court has held that a general conferral of rulemaking authority validates rules for all the matters the agency is charged with administering. *See City of Arlington v. F.C.C.*, 133 S. Ct. 1863 (2013). In specifically examining the scope of CEA Section 8a(5), the Supreme Court explained that the "agency's expertise is superior to that of a court when a dispute centers on whether a particular regulation is 'reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes' of the Act the agency is charged with enforcing; the agency's position…is therefore due substantial deference." *CFTC v. Schor*, 478 U.S. 833, 845 (1986). Thus, if the Commission were to establish a position accountability regime, it would have the authority and discretion to implement any regulations it deems reasonably necessary to administer such a regime.

commercial activity that serves as a basis for *bona fide* hedging positions (*i.e.*, Forms 204, 304, 604, and 704).

In contrast to hard limits, under an accountability framework, the Commission and DCMs only would need to monitor and address positions that pose a more likely threat of excessive speculation. To assist the Commission in the surveillance of positions that exceed an accountability threshold, the Commission could require market participants to file a notice with the Commission and any relevant DCM(s) when they exceed the threshold. In addition, the Commission should delegate to DCMs the authority to administer the accountability regime and, where necessary, coordinate their efforts with the Commission and other DCMs.[20] DCMs have more than two decades of experience, and a demonstrated track record in, administering position accountability regimes. Based upon their experience and expertise, the DCMs could assist the Commission in implementing a federal accountability regime. Because the federal accountability regime would apply to aggregate positions across DCMs and the OTC markets, the administration of a position accountability framework outside of the spot month should involve coordination between the Commission and the DCMs. FIA requests that the Commission consider the following structure when proposing a position accountability regime for deferred contract months:

- A DCM should be responsible for monitoring and enforcing the accountability regime where a market participant holds positions on its markets.

- Where a market participant holds an aggregate position across more than one DCM, the Commission should notify each DCM, which in turn should coordinate its administration of the position accountability regime with other DCMs.

- To the extent that a market participant holds positions on a DCM and in the OTC markets, the Commission should notify the DCM when the market participant's aggregate DCM and OTC positions exceed a federal accountability level, and the DCM should administer the accountability regime for positions held on the DCM and coordinate with the Commission regarding the OTC positions. To the extent that a market participant holds positions across multiple DCMs and in the OTC markets, the Commission should notify each DCM, which in turn should coordinate the administration of the accountability regime for positions on its respective markets and coordinate with the Commission regarding the OTC positions.

- Where a market participant holds positions exclusively in the OTC swaps markets, the Commission should administer the position accountability regime to those positions.

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[20] *See* FIA Ag Advisory Letter, Section I.A.

C. The Commission Should not Require SEFs to Establish Position Limits

As FIA previously has commented, the Commission should not require swap execution facilities ("**SEF**") to establish position limits.[21] Similarly, the Commission should not obligate SEFs to establish a position accountability framework. Unlike DCMs, SEFs only provide facilities for the execution of swap transactions. SEFs may utilize more than one derivatives clearing organization and also provide facilities for the execution of uncleared transactions. Once those transactions are executed, SEFs have no information about the resulting positions because they are maintained by market participants away from the SEF environment. For these reasons, a SEF is not suited to evaluate a market participant's overall position toward a federal limit or an accountability level.

IV. The Commission Should Update its Spot Month Position Limits to Accurately Reflect Current Estimates for Deliverable Supply

Consistent with its prior comments, FIA submits that the Commission's proposed spot month limits may be unduly restrictive.[22] Under the Position Limits Proposal, the Commission proposed to establish spot month position limits based on 25 percent of the estimated deliverable supply for the commodity underlying a particular Referenced Contract. However, the Position Limits Proposal relies on estimates for deliverable supply that are outdated, and thus the proposed spot month limits do not reflect 25 percent of the current estimate for deliverable supply. FIA urges the Commission to rely on more current and accurate estimates of deliverable supply when establishing spot month position limits.

The Commission's Table 11a from the EEMAC meeting demonstrates that the proposed spot month limits may be overly restrictive. For various Referenced Contracts, the number of market participants that meet or exceed a proposed spot month limit is significant. For example, the number of persons whose positions are at 100 percent of the spot month limit for the NYMEX Henry Hub Natural Gas physical delivery Referenced Contract was 83, and the number of persons at 100 percent for the spot month limit for cash-settled Henry Hub contracts was 187. These represent significant providers of market liquidity. Similar to the issues with the Table 11a estimates for the all-months-combined position limits, the spot month estimates may underestimate the number of market participants with positions at 100 percent of the spot month position limit because it appears that the Commission did not include OTC swaps data in this calculation.

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21 *See* FIA PL Letter, Section XI.E.

22 *See* FIA PL Letter, Section IV.A.

To the extent that market participants who meet or exceed the proposed limit cannot rely on the Commission's narrow definition of *bona fide* hedging, these market participants will be forced to reduce their positions, which may negatively impact the liquidity available for *bona fide* hedgers and also reduce valuable input into the price discovery process. Even if certain market participants can rely on the *bona fide* hedging exemption, the Commission's proposed reporting requirements will impose substantial compliance burdens on market participants.

V. Conclusion

FIA is concerned that certain aspects of the Position Limits Proposal may have unintended adverse consequences on Referenced Contract markets, such as reducing liquidity for *bona fide* hedgers and impairing the price discovery function of the markets. The recommendations discussed above and in FIA's prior comments are designed to permit market participants to continue to utilize the derivatives markets as a means to hedge and mitigate commercial risk.

Please contact Allison Lurton, Senior Vice President and General Counsel, at 202-466-5460, if you have any questions about FIA's comments or recommendations.

Respectfully submitted,

Walt L. Lukken

Walt L. Lukken
President and Chief Executive Officer

cc: Honorable Timothy G. Massad, Chairman
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Vincent A. McGonagle, Director
Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel