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CFTC Finalizes Aggregation Rules and Re-Proposes Position Limits Rule

On December 5, the Commodity Futures Trading Commission (CFTC) issued final regulations regarding the aggregation of positions and accounts to assess compliance with speculative position limits as well as to add a potential exemption to such requirements for entities within a group that trade independently of each other and have procedures and controls to ensure such independence. The CFTC also re-proposed regulations establishing position limits for 25 core physical commodity futures contracts and their economically equivalent futures, options and swaps (referenced contracts).

The final aggregation of positions rules (Final Aggregation Rule) will be effective on February 14, 2017. The proposed position limit rules will be subject to a 60-day comment period following publication in the *Federal Register*.

Aggregation of Positions: Final Rule

Aggregation Requirement

In general, in order to assess a person's compliance with applicable speculative position limits, the Final Aggregation Rule requires a person to aggregate all futures, swaps, and related options positions (on a futures equivalent basis) and accounts in which the person directly or indirectly controls trading with 1) all positions and accounts in which the person holds a 10 percent or more ownership or equity interest; and 2) the positions of any other person with which the person trades pursuant to an express or implied agreement. In order to better serve the overall purpose of the limits regime, the Final Aggregation Rule focuses on situations where the person is, in view of the circumstances, actually able to control the owned entity.

Historical Exemptions

There are three exemptions that currently exist that were approved in the Final Aggregation Rule: Independent Account Controller Exemption (IAC), the exemption for futures commission merchants, and the exemption that generally provides that any limited partner, shareholder, or other similar type of pool participant that, directly or indirectly, has a 10 percent or greater ownership or equity interest in a pool would not have to aggregate its positions.

Notwithstanding the current exemption for any limited partner, shareholder or other similar type of pool participant, the Final Aggregation Rule has added an additional aggregation requirement for a person that holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies. Notably,

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a participant in accounts or pools with substantially identical trading strategies must aggregate its positions, regardless of its ownership level.

Owned Entity Exemption

As part of its November 2013 proposed position limits and aggregation requirements, the CFTC introduced a new concept of an owned entity exemption (OEE), under which an entity that owned at least 10 percent and no more than 50 percent of another independently traded entity could disaggregate positions with such owned entity for position limits purposes, subject to a notice filing with the Commission. Persons with a greater than 50 percent ownership interest in another entity would generally not be permitted to disaggregate positions held by such entity.

Under the new CFTC OEE, the CFTC moved away from the 50 percent ceiling. Now, a person with any ownership or equity interest of 10 percent or more in an owned entity will not be required to aggregate the account or positions of the owned entity provided the person and its owned entity (to the extent that such person is aware of should be aware of the activities and practices of the aggregated entity or the owned entity)[1] if they:

1) *do not have knowledge of the trading decisions of the other entity*;

2) *trade according to separately developed and independent trading systems.* The CFTC, in commentary, noted the term "trading systems" was purposefully broad to include various methods, procedures and plans people use to initiate trading. Additionally, the CFTC has emphasized that the term "trading system" means the "process or method for deciding on the timing and direction of trades." However, the term does not refer to the mechanism or software that carries out those trades. Therefore, provided they do not have knowledge of each other's trading system, two affiliated traders will not be precluded from qualifying for disaggregation solely by sharing the same order execution platform to execute trades;

3) *maintain and enforce written procedures that prohibit each from "having knowledge of, gaining access to, or receiving data about, trade of the other."* These procedures must mandate security arrangements, including separate physical locations, to help ensure independence. The CFTC, in commentary, made clear that relevant personnel are not required to be in separate buildings. There must only be a physical barrier between personnel—such as locked doors with restricted access—that prevents access that might compromise their independence. The concept of separate physical locations applies not only to personnel, but also to the sharing of documents and other resources;

4) *do not share employees that control the trading decisions of either.* According to the CFTC commentary, the focus is the ability of employees "to control, direct or participate in the entities' trading decisions." The CFTC provides an example of such control—if the person who is responsible for directing the trading of a program consistently follows the trading from another person, such trading will be evidence the account is controlled by another person. However, the sharing of employees, such as accountants, risk managers, compliance and other mid- and back-office personnel between entities would generally not compromise independence and preclude the entities from qualifying for disaggregation. The same standard would be applied for the sharing of board or advisory committee members or research personnel; and

5) *do not have risk management systems that allow the sharing of trades or trading strategies with the employees of the other entity that control its trading decisions.* As with the sharing of employees, the focus is on monitoring the sharing of trades or trading strategy with employees that control the trading decisions of the other entity. The sharing of information to be used only for risk management or compliance purposes is not prohibited, so long as such information is not also used for trading purposes and the employees involved do not "control, direct or participate in the entities' trading decisions."

The CFTC emphasized that the Final Aggregation Rule is meant only to address position limits, not to modify existing practices with respect to other rules. Therefore, exchanges will still be allowed to enforce their own reporting and exemption requirements.

[1] In the Final Aggregation Rule, in connection with the OEE, the CFTC added the qualifier "(to the extent that such person is aware of should be aware of the activities and practices of the aggregated entity or the owned entity)" to provide relief for passive investors who have no knowledge of the owned entity's trading. Passive investors include investors who do not have the ability to control the entity, nor routinely have access to relevant information about the owned entity. Therefore, if the passive investor is not aware, and should not be aware, of the owned entity's activities, it should be able to disaggregate the owned entity's positions from its own without further action.

For example, exchanges may still be able to grant separate exemptions to aggregated entities and will be permitted to enforce separate limits on entities that are aggregated for federal limits.

Other Exemptions

The CFTC approved disaggregation of positions in connection with underwriting (i.e., where ownership is based on ownership of securities that derive from an unsold allotment to or subscription by a participant in the distribution of the securities by the issuer or through an underwriter) and with certain broker-dealer activity that might otherwise be required to be aggregated (where ownership arises because of the ownership of securities acquired during the ordinary course of business, provided the broker-dealer has no knowledge of the trading decisions of the owned entity). The CFTC also approved disaggregation of positions or accounts of an owned entity where the sharing of information associated with aggregation could violate state or federal law or the law of a foreign jurisdiction or relevant regulation.

Notice

In general, a person claiming an aggregation exemption associated with CFTC position limits must file with the CFTC a notice in advance describing the relevant circumstances that warrant disaggregation. The statement must be signed by a senior officer certifying that the requirements for the applicable exemption have been met, or if the entity does not have senior officers, a person of equivalent authority and responsibility with respect to the entity.

The rule now provides for a 60-day grace period, after the acquisition of an ownership interest, to conduct due diligence and prepare a notice filing. Effectively, the person who acquires an ownership interest has 60 days to conduct the necessary due diligence and prepare the proper notice filing, and such actions will have a retroactive effect, as if the diligence and preparation of the filing preceded the acquisition.

In addition, the Final Aggregation Rule provides relief for a person who fails to timely file the notice to claim an exemption from aggregation. Specifically, even if a person does not properly file at the time where the person is eligible to claim an exemption from aggregation, there would not be a violation of the aggregation requirement or of a position limit "so long as the required filing is made within five business days after the person is aware, or should have been aware, that the notice has not been timely filed." However, the Final Aggregation Rule makes clear that no relief will be given to a person who is not eligible to claim an exemption from aggregation (even if the person believes in good faith that they are eligible to claim the exemption). There, aggregation is required, and the failure to timely file cannot be cured by making a later filing. The CFTC's Division of Market Oversight may call for additional information from a person claiming any disaggregation exemption.

In addition, the Final Aggregation Rule does not grandfather entities that are currently disaggregating positions. Therefore, as drafted, it appears that persons currently disaggregating or relying on an existing IAC exemption would have to file a notice with the CFTC by February 14, 2017 in order to maintain such exemption in connection with the nine agricultural futures and related options positions currently under the CFTC's direct oversight.

Position Limits Re-Proposal

Generally, the proposed new position limits will prohibit any person from holding or controlling positions in referenced contracts in excess of the level the CFTC specifies.[2] The re-proposal responds to comments received on a previous position limit proposal from December of 2013 (the 2013 Proposal) and a supplemental proposal in May of 2016 (the 2016 Proposal), which were both issued after a district court vacated prior position limits passed in 2011.[3] The re-proposal establishes limits for 25 referenced contracts, omitting three contracts initially included in previous proposals: Class III Milk, Feeder Cattle and Lean Hogs.

If finalized, the CFTC plans to provide a "substantial implementation period to ease the compliance burden" of the new limits. While a compliance date has not been set, final rules would be effective, at earliest, on January 3, 2018.

[2] The CFTC currently enforces speculative position limits for futures and options contracts on nine agricultural commodities as authorized by the Commodity Exchange Act. The CFTC is now proposing amendments to conform to the CEA modifications introduced by the Dodd-Frank Act in 2010.

[3] *See* International Swaps and Derivatives Association v. United States Commodity Futures Trading Commission, 887 F. Supp. 2d 259 (D.D.C. 2012).

Spot-Month and Non-Spot Month Position Limits

For spot-month position limits, the CFTC sets initial levels based on 25 percent of estimated of deliverable supply, as submitted by a Designated Contract Market (DCM) and verified by the CFTC. Alternatively, a DCM may recommend a lower level for spot-month position limits.

Separate limits will apply for non-spot-month positions, in all contract months combined or in a single contract month. Each limit will be based on 10 percent of the estimated average open interest in referenced contracts up to 25,000 contracts with a marginal increase of 2.5 percent thereafter. The CFTC will fix the level for each referenced contract no less frequently than every two calendar years.

Market participants with pre-existing positions in a spot-month will be required to comply with spot-month speculative position limits. A single-month or all-months combined speculative position limit would not apply to a commodity derivative contract acquired in good faith before the effective date of the new rules. However, a trader relying upon this relief would not be permitted to increase the size of its position after the new limits take effect.

The specific position limits contained in the re-proposal appear in Appendix A of this document.

Bona Fide Hedging

Positions constituting "bona fide hedging" are exempt from the proposed position limits. The re-proposal includes a modified definition of bona fide hedging that closely tracks section 4a(c) of the Commodity Exchange Act (the Act).

Bona fide hedging – Removal of the incidental test and the orderly trading requirement

In the December 2013 Proposal, the CFTC retained two elements of the traditional definition of bona fide hedging: the incidental test and the orderly trading requirement. The incidental test requires that the purpose of a bona fide hedging position "is to offset price risks incidental to commercial cash, spot, or forward operations." The orderly trading requirement mandates that a position "is established and liquidated in an orderly manner in accordance with sound commercial practices."

In the re-proposal, the CFTC eliminated the incidental test in favor of the economically appropriate test. The economically appropriate test addresses whether a position is "economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise" and is required in certain bona fide hedging exemptions as detailed below.

The re-proposal also eliminates the orderly trading requirement, but exchanges are free to impose a general orderly trading requirement on all market participants. Disruptive trading is separately prohibited under applicable law.

Bona fide hedging – Excluded commodities

For excluded commodities (i.e., financial contracts)[4] with enumerated exemptions, the re-proposal applies the economically appropriate test. Exchanges also have reasonable discretion to adopt their own bona fide hedging position exemptions for excluded commodities after submitting an exchange rule filing to the CFTC. For instance, an exchange could use its discretion to create a risk management exemption that omits the economically appropriate test.

Bona fide hedging – Physical commodities

For physical commodities (i.e., agricultural commodities, energy products and metals),[5] a position may qualify as a bona fide hedging position if it satisfies the following elements:

1) economically appropriate test (discussed above);

[4] Excluded commodities are defined in section 1a(19) of the Act.

[5] Physical commodities means any agricultural commodity, as defined in 17 CFR 1.3, or any exempt commodity, as defined in section 1a(20) of the Act.

2) the position represents a substitute for transactions made or to be made or positions taken or to be taken in the future in the physical marketing channel (temporary substitute test); and

3) the position arises from the potential change in the value of assets, liabilities, or services, whether current or anticipated (change in value requirement).

Bona fide hedges in a physical contract also would need to be either:

1) a pass-through swap offset (subject to certain timing limitations);

2) an expressly enumerated hedge (subject to any applicable conditions);

3) a cross commodity hedge; or

4) recognized as a non-enumerated bona fide hedge by a DCM or Swap Execution Facility (SEF).

Bona fide hedging – Pass-through swaps

A position could qualify as bona fide hedging if it is a pass-through swap offset, meaning a swap that reduces risks attendant to a position resulting from a swap that was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction. Alternatively, a swap executed opposite a pass-through swap counterparty, provided that the risk of that swap has been offset, could be a bona fide hedging position. The re-proposal imposes the "five day rule" discussed below on pass-through swaps.

Bona fide hedging – Enumerated exemptions

The re-proposal enumerates eight exemptions under the definition of bona fide hedging, some of which are subject to a five-day rule. Under the five-day rule, positions cannot be maintained in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or the time period for the spot month in such physical delivery contract.[6] However, exchanges may remove the five-day rule on a case-by-case basis in physical-delivery contracts by treating the position as a non-enumerated bona fide hedging position.

Five hedging positions are subject to the five-day rule:

1) hedges of unsold anticipated production;

2) hedges of offsetting unfixed-price cash commodity sales and purchases;

3) hedges of anticipated royalties;

4) hedges of services; and

5) hedges of unfilled anticipated requirements.

Three enumerated hedging positions are not subject to a five-day rule:

1) hedges of inventory and cash commodity purchase contracts;

2) hedges of cash commodity sales contracts; and

3) hedges by agents.

The re-proposal made two further refinements to the enumerated exemptions defined in the earlier proposals. The CFTC will remove a 12 month constraint on hedging unfilled anticipated requirements for agricultural commodities. Additionally, the condition that a utility is "required or encouraged to hedge by its public utility commission" also has been removed.

6 The five-day rule would apply to pass-through swap offsets, anticipatory and cross-commodity hedges.

Bona fide hedging – Cross commodity hedges

The re-proposal also recognizes bona fide cross commodity hedges in the definition of a bona fide hedging position if 1) the "substantially related test" is satisfied; and 2) the five-day rule is applied to positions in any physical-delivery commodity derivative contract. The substantially related test requires the fluctuations in value of the position in the commodity derivative contract (or the commodity underlying the commodity derivative contract) to be substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through swap. The re-proposal eliminates the safe harbor quantitative test included in an earlier proposal.

Bona fide hedging – Applications for a non-enumerated bona fide hedging exemption

Qualified exchanges may accept applications for recognition of non-enumerated bona fide hedging exemptions and publish related rules to recognize such positions, subject to CFTC review. To qualify, an exchange must demonstrate active trading in the relevant derivatives contract and at least one year of experience setting position limits for the relevant commodities. New exchanges may be eligible if the exchange's staff members carrying out surveillance of a given commodity are sufficiently experienced or if the CFTC grants a waiver of the one-year experience requirement.

The CFTC maintains after-the-fact authority to disallow any previously granted non-enumerated hedge exemption. In such case, the impacted person would need to liquidate positions in excess of a speculative position limit in a "commercially reasonable amount of time," which the Commission suggests will typically be "less than one business day."

Consistent with the 2016 Proposal, the re-proposal requires an exchange to publish on its website descriptions of each type of derivative position it has recognized as a non-enumerated bona fide hedge. Since non-novel hedge applications may present similar fact patterns, exchanges are authorized (but not required) to create a different application process for novel and non-novel hedge applications.

Persons seeking non-enumerated hedge exemptions cannot apply after a position limits breach. These persons would be required to reapply at least annually for renewals of previously granted non-enumerated exemptions.

Exchanges are also permitted to recognize certain enumerated anticipatory hedge positions, subject to the five-day rule: 1) hedges of unfilled anticipated requirements; 2) hedges of unsold anticipated production; 3) hedges of anticipated royalties; 4) hedges of services; and 5) cross-commodity hedges. The re-proposal includes a requirement to file Form 704 for anticipatory hedges.

Bona fide hedging – Offsets of commodity trade options

The re-proposal confirms that hedges of commodity trade options are bona fide hedges. The CFTC believes that trade options should be deemed equivalent to a cash commodity purchase or sales contract only if adjusted on a futures-equivalent basis. As a result, a trade option may not be a bona fide hedging position unless a fixed strike price may be reasonably determined.

Other Exemptions

Aside from bona fide hedging, the re-proposal authorizes exemption from position limits for financial distress-positions, conditional spot-month limit positions, spread positions and other risk-reduction practices in Section 150.3.

Other exemptions – Financial distress

The re-proposal codifies the CFTC's existing practice of granting exemptions for market participants in financial distress. For example, market participants experiencing default of a customer, affiliate or acquisition target of the requesting entity may request relief from applicable position limits. This exemption should help avoid sudden liquidations, disruptions in price discovery and increases in systemic risk.

Other exemptions – Conditional spot-month position limit exemption

Traders may acquire positions for natural gas up to 10,000 contracts if such positions are exclusively in cash-settled contracts. The natural-gas conditional exemption would not be available to traders who hold or control positions in the spot-month physical-delivery referenced contract to reduce the risk that traders with large positions in cash-settled contracts would attempt to distort the physical-delivery price to benefit such positions.

Other exemptions – Spread exemptions

The CFTC authorizes eligible exchanges to grant spread exemptions from federal position limits, including calendar spreads, quality differential spreads, processing spreads and product or by-product differential spreads. For an exchange electing to process spread exemption applications, 1) the exchange must list for trading at least one component of the spread or must list for trading at least one contract that is a referenced contract included in at least one component of the spread; and 2) any such exchange contract must be actively traded and subject to position limits for at least one year on that exchange. The one-year experience and active trading requirement can be met by any referenced contract in the particular commodity.

Exchanges may also recognize a "cash and carry" exemption in which a market participant enters a nearby long futures position and a deferred short futures position intending to take delivery and carry the commodity for re-delivery. Exchanges recognizing the exemption must establish suitable safeguards to require a market participant relying on such an exemption to reduce its position below the speculative limit in a timely manner once current market prices no longer permit entry into a full carry transaction.

The re-proposal provides a basic application process for exchanges electing to process spread exemptions. Exchanges with limits that are lower than federal limits may opt to use the process in the re-proposal or alternative means when processing applications.

Miscellaneous exemptions

The re-proposal exempts swaps entered into before July 21, 2010 (the enactment date of the Dodd-Frank Act), the terms of which have not expired as of July 21, 2010, and for swaps entered into during the period commencing July 22, 2010, the terms of which have not expired as of that date, and ending 60 days after the effective date of the final position limit rules. Market participants may also request an interpretive letter from the CFTC regarding a bona fide hedging position exemption. Alternatively, market participants may seek exemptive relief from the CFTC under CEA section 4a(a)(7) of the Act, the provision authorizing the CFTC to exempt any class of transaction from any requirement the CFTC may establish with respect to position limits.

In the absence of an exemption, market participants will need to comply with the position limits by the effective date.

Recordkeeping and Reporting

Market participants relying on 150.3 exemptions would need to maintain complete books and records concerning all details of their related cash, forward, futures, options and swap positions and transactions and follow reporting requirements. Market participants also may have obligations to file Forms 204, 304, 504, 604, 704.

The Form 204 is proposed to be expanded to include hedgers in all referenced contracts (and renamed the Statement of Cash Positions for Hedgers). The CFTC notes that the information required on the series '04 reports, generally, represents a trader's most basic position data. For the Form 204, the form includes basic information such as the core referenced futures contract, the quantity of cash commodity hedged in terms of futures equivalents of the core referenced futures contract, the cash commodity hedged, and the number of units of the cash commodity that the firm has purchased or sold.

In the re-proposal, the CFTC clarifies that the Form 204 allows filers to identify multiple referenced contracts used for hedging a particular commodity cash position in the same line of Form 204. Therefore, the CFTC notes that cash positions hedged by such referenced contracts should be reported on an aggregated basis.

Additionally, according to the CFTC commentary, the Form 204 does not require the futures equivalent value of derivative positions but rather the futures equivalent of the cash position underlying a hedged position. To easily identify the size of the position underlying a hedge position, the CFTC has proposed to require firms to report both the cash market unit of measurement and the futures equivalent measurement for a position.

A market participant only has to file Form 204 if it is over the limit at any point during the month, and the form requires only cash market activity (not derivatives market positions). Notably, the CFTC has not distinguished between spot-month limits and non-spot-month limits with respect to the filing of Form 204.

Also, to improve the efficiency in submitting the monthly forms and to alleviate the burden for filers, the CFTC has proposed to move to an entirely electronic filing system. In addition, the forms would be required to be certified by the reporting trader as true and correct.

The Form 304 (Statement of Cash Positions for Unfixed-Price Cotton "On Call") is required to report information on the quantity of call cotton bought or sold, on a weekly basis. The Form 504 (Statement of Cash Positions for Conditional Sport Month Exemptions) is required for speculators in the natural gas markets that are relying upon the conditional spot-month limit exemption. The Form 604 (Statement of Pass-Through Swap Exemptions) is required for a person relying on the pass-through swap exemption who holds either of the two position types. The Form 704 (Initial Statement and Annual Update for Anticipatory Bona Fide Hedging Positions) is a requirement for anticipatory hedges, and it combines the requirement to submit an initial statement and an annual update into one form.

Acceptable Practices for DCMs and SEFs

The re-proposal contains requirements and acceptable practices for DCMs and SEFs that are trading facilities for setting position limits for the referenced contracts. The re-proposal also includes acceptable practices for exchange position limits or accountability rules in all other listed contracts, including excluded commodities. Under the re-proposal, DCMs and SEFs without access to sufficient position information on swaps would be temporarily relieved from the obligation to establish position limits on swaps.

APPENDIX A — INITIAL POSITION LIMIT LEVELS

Contract	Spot-Month	Single-Month and All-Months
Legacy Agricultural		
Chicago Board of Trade Corn (C)	600	62,400
Chicago Board of Trade Oats (O)	600	5,000
Chicago Board of Trade Soybeans (S)	600	31,900
Chicago Board of Trade Soybean Meal (SM)	720	16,900
Chicago Board of Trade Soybean Oil (SO)	540	16,700
Chicago Board of Trade Wheat (W)	600	32,800
ICE Futures U.S. Cotton No. 2 (CT)	1,600	9,400
Chicago Board of Trade KC HRW Wheat (KW)	600	12,000
Minneapolis Grain Exchange Hard Red Spring Wheat (MWE)	1,000	12,000
Other Agricultural		
Chicago Board of Trade Rough Rice (RR)	600	5,000
Chicago Mercantile Exchange Live Cattle (LC)	450	12,200
ICE Futures U.S. Cocoa (CC)	5,500	10,200
ICE Futures U.S. Coffee C (KC)	2,400	8,800
ICE Futures U.S. FCOJ-A (OJ)	2,800	5,000
ICE Futures U.S. Sugar No. 11 (SB)	23,300	38,400
ICE Futures U.S. Sugar No. 16 (SF)	7,000	7,000
Energy		
New York Mercantile Exchange Henry Hub Natural Gas (NG)	2,000	200,900
New York Mercantile Exchange Light Sweet Crude Oil (CL)	10,400	148,800
New York Mercantile Exchange NY Harbor ULSD (HO)	2,900	21,300
New York Mercantile Exchange RBOB Gasoline (RB)	6,800	15,300
Metal		
Commodity Exchange, Inc. Copper (HG)	1,000	7,800
Commodity Exchange, Inc. Gold (GC)	6,000	19,500
Commodity Exchange, Inc. Silver (SI)	3,000	7,600
New York Mercantile	100	5,000
Exchange Palladium (PA) New York Mercantile Exchange Platinum (PL)	500	5,000

APPENDIX B – EXEMPTIONS IN § 150.3

1. Bona fide hedging positions
2. Financial distress
3. Certain conditional spot-month limit positions (natural gas)
4. Spread positions and “cash and carry” recognized by a DCM or SEF
5. Other exemptions:
    a. Interpretive letter from CFTC staff
    b. Exemptive relief under 4a(a)(7) of the Act
6. Previously granted exemptions

APPENDIX C – BONA FIDE HEDGING EXEMPTIONS

1. Hedge of an excluded commodity—economically appropriate or recognized by a DCM or SEF that is a trading facility
2. Hedge of a physical commodity
    a. Economically appropriate
    b. Temporary substitute test
    c. Change in value requirement; and
    d. Bona fide hedges in a physical contract would also need to be either:
        i. A pass-through swap offset;*
        ii. An expressly enumerated hedge;
        iii. A cross commodity hedge;
        iv. Recognized as a non-enumerated bona fide hedge by a DCM or SEF
3. Enumerated hedging positions
    a. Hedges of inventory and cash commodity purchase contracts
    b. Hedges of cash commodity sales contracts
    c. Hedges of unfilled anticipated requirements*
    d. Hedges by agents
    e. Hedges of unsold anticipated production*
    f. Hedges of offsetting unfixed-price cash commodity sales and purchases*
    g. Hedges of anticipated royalties*
    h. Hedges of services*
4. Offsets of commodity trade options

* The five day rule applies to these exemptions.