

February 27, 2012

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

Via Email

Re: **LETTER OF THE COALITION OF PHYSICAL ENERGY COMPANIES**
in support of the Petition for Order to Exempt Owned Non-Financial Entities
From Aggregation for Compliance With Position Limits, and Order to Broaden
and Clarify Rule 151.7(i) of the Working Group of Commercial Energy Firms

Dear Mr. Stawick:

On January 19, 2012, the Working Group of Commercial Energy Firms (“Working Group”) submitted two petitions (the “Petitions”) to the Commodity Futures Trading Commission (the “Commission”) pursuant to Section 4a(a)(7) of the Commodity Exchange Act, as amended (the “CEA”), pertaining to Part 151 of the Commission’s regulations which implement federal position limits for derivatives¹ (the “Position Limit Rules”). The Petitions request that:

- (i) the Commission issue an order to exempt persons, under certain circumstances, from aggregating positions in Referenced Contracts (as defined in the Position Limits Rules) held by “owned non-financial entities” (as described therein) for purposes of compliance with the Position Limit Rules; and
- (ii) the Commission issue an order that broadens and clarifies Rule 151.7(i)² to permit a market participant to not aggregate positions in Referenced Contracts if doing so requires the sharing of information that could result in a violation of state, local or foreign law.³

¹ 17 C.F.R. Part 151 (2012); *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71,626 (Nov. 18, 2011) (Final Rule and Interim Final Rule).

² 17 C.F.R. § 151.7(i).

³ The Working Group submitted the Petitions severally, but averred that combining the Petitions is more efficient given that both requests arise from a set of common facts and the same underlying rules.

The Coalition of Physical Energy Companies (“COPE”)⁴ hereby submits this letter in support of the Petitions.⁵ COPE members are physical energy companies in the business of producing, processing, and merchandizing energy commodities at retail and wholesale. COPE members utilize swaps to hedge the commercial risks of their physical businesses.

Certain COPE members will be affected by the issues raised in the Petitions. As COPE understands the Position Limits Rules, entities that share a ten percent common equity ownership will be required to aggregate their positions regardless of whether they are under common control or share information.⁶ Further, such entities that are not subject to a bar on information sharing based upon Federal law will be required to aggregate accounts and share information even if such sharing violates local, state or international laws.⁷

Rather than recite the contents of the Petitions, COPE provides this letter to urge the Commission to promptly act on the Petitions and/or take other appropriate action to address the issues raised therein and to remedy other defects in the Position Limits Rules.⁸

COPE members that are subject to the aggregation requirements with respect to other firms that are under separate and unrelated management and with whom no non-public trading information is shared simply cannot understand how to comply with those aggregation requirements for their trading positions. In its comments on the proposed position limits rules, COPE supported the non-financial entity exemption proposed by the Commission with certain modifications to make it more logistically susceptible to implementation.⁹ Similarly, certain COPE members are affiliated with entities, such as local gas distribution companies, from which they are barred from sharing information by local, state or international law. The Commission should not force firms seeking to comply with all applicable laws to choose which law to break.

Because the compliance date for certain aspects of the Position Limits Rules is sixty days from the date the further definition of the term “swap” is published by the Federal Register,¹⁰ COPE

⁴ The members of COPE are: Apache Corporation; El Paso Corporation; Enterprise Products Partners, L.P.; Iberdrola Renewables, Inc.; Kinder Morgan; MarkWest Energy Partners, L.P.; Noble Energy, Inc.; NRG Energy, Inc.; Shell Energy North America (US), L.P.; SouthStar Energy Services LLC; and Targa Resources.

⁵ COPE has inquired of the Commission’s staff regarding whether the Petitions would be noticed for comment and, more generally, the mechanism by which the public can address the issues raised by the Petitions. COPE has been advised by Commission staff that a letter directed to the Secretary’s Office referencing the Petitions would be the proper vehicle in the absence of a formal notice.

⁶ See 17 C.F.R. § 151.7 (2012).

⁷ See *id.* at § 151.7(i) (“[A] person is not subject to the aggregation requirements of this section if the sharing of information associated with such aggregation would cause either person to violate Federal law or regulations adopted thereunder”) (emphasis added).

⁸ For example, as discussed in a separate Working Group petition supported by COPE by separate letter, the Position Limits Rules with respect to certain *Bona Fide* hedging transactions may not properly capture certain classes of transactions, and the Position Limits Rules require clarification with respect to the definitions of “Spot Month” and “Swaption.” With respect to the definition of “Spot Month” in particular, the definition provided in the Position Limits Rules could cover two settlement periods in two months, rather than the widely accepted definition of a single settlement period in a single month. See 17 C.F.R. § 151.3(c).

⁹ See Comments of the Coalition of Physical Energy Companies – Position Limits for Derivatives, at 13 (March 28, 2011).

¹⁰ See 76 Fed. Reg. 71,626 at 71,632.

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respectfully requests that the Commission act promptly to grant the Petitions or otherwise address the defects in the Position Limits Rules identified therein. Given the pressing need to address the issues raised by the Petitions, or to find a “magic bullet” for compliance with the Position Limits Rules long before the compliance date if the Petitions are not granted, COPE urges the Commission to either act as soon as possible to grant the Petitions, or to promptly make clear to market participants that it does not intend to address the matters raised in the Petitions.

Respectfully submitted,

/s/ David M. Perlman

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