DIVISION OF MARKET OVERSIGHT

Advisory Regarding Compliance with Speculative Position Limits

I. Introduction and Background

The Division of Market Oversight ("Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission") issues this advisory to alert market participants with respect to their ongoing legal obligations to comply with speculative position limits. Speculative position limits apply to positions held on designated contract markets and on exempt commercial markets with significant price discovery contracts (collectively "exchanges"). Those limits provide for the maximum size of the net long or short position that any one person may hold or control in futures (or options on futures on a futures-equivalent basis) at any point in time.[1]

In enforcing speculative position limits, the Commission and the exchanges rely on information generated by the Commission's Large Trader Reporting System ("LTRS"),[2] or on equivalent large trader reporting systems maintained by individual exchanges. Both the Commission and the various exchange reporting systems require the filing of daily large trader reports. Under the Commission's LTRS, daily reports are filed "as of the close of the market."[3]

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[1] Speculative position limits are established in one of two ways, depending on the commodities involved. For certain designated agricultural commodities, the Commission establishes Federal speculative position limits. Those limits are set out in Commission regulation 150.2. For all other commodities, limits are established by the designated contract market ("DCM") or exempt commercial market ("ECM") where the commodity is traded, pursuant to core principles set out in the Commodity Exchange Act ("CEA" or "Act"). In the case of DCMs, speculative position limits are established pursuant to DCM Core Principle 5 (section 5(d)(5) of the Act), which is entitled, "Position Limitations or Accountability." Commission regulation 150.5 ("Exchange-set speculative position limits") is recognized as an "acceptable practice" for DCM compliance with Core Principle 5. In the case of ECMs, an ECM that trades a "significant price discovery contract" ("SPDC") is subject to ECM Core Principle 4 (section 2(h)(7)(C)(ii)(IV) of the Act), which is likewise entitled "Position Limitations or Accountability."

[2] *See:* Parts 15—17 of the Commission's regulations with respect to the Commission's LTRS.

[3] For example: regulation 15.00(p) defines "Reportable Position" as "any open contract position that at the close of the market on any business day equals or exceeds the [reportable level] specified" in regulation 15.03; regulation 17.00(a) requires futures commission merchants, clearing members and foreign brokers to file daily large trader reports "as of the close of market on the day covered by the report."

II. Intraday Compliance with Speculative Position Limits

In this Advisory, the Division reaffirms that, irrespective of the end-of-day applicability of the LTRS, speculative position limits apply on an intraday as well as an end-of-day basis. This applies to both the Federal limits set out in regulation 150.2 and any exchange limits imposed in accordance with the core principles for DCMs, or ECMs with SPDCs.[4] In other words, a trader whose position exceeds the applicable speculative position limit **at any time during the day** is in violation of the Commodity Exchange Act and CFTC regulations,[5] **even if** the position is subsequently reduced to a level within the applicable limit by the close of the market for that day. Accordingly, intraday speculative position limit violations have been and continue to be subject to Commission enforcement action as violations of the Act.[6]

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[4] *See, e.g.*: CME Group Market Regulation Advisory Notice RA0909-5 (September 11, 2009) and ICE OTC Advisory 01/10/001 (January 4, 2010). In each case the respective registered entity interprets its position limit rules to apply on both an intraday and an end-of-day basis.

[5] Violations of exchange speculative position limits approved by, or certified to, the Commission constitute violations of the Act pursuant to section 4a(e) of the Act.

[6] *See, e.g.*: Section 6(c) of the Act regarding civil penalties for violations of Commission regulations and section 9(a)(5) regarding criminal penalties for willful violations of Commission regulations. As noted above, violations of exchange speculative position limits are likewise subject to CFTC enforcement actions as violations of the Act. This advisory reiterates existing legal requirements and shall not be relied upon by any person to seek to excuse past violations.