U.S. COMMODITY FUTURES TRADING COMMISSION

ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE MEETING

Thursday, May 7, 2020

10:01 a.m.

[VIA TELECONFERENCE]

AGENDA

AGENDA (Continued)

AGENDA (Continued)

P R O C E E D I N G S

MS. KNAUFF: Good morning. As the Secretary of the Energy and Environmental Markets Advisory Committee, it is my pleasure to call this meeting to order. Welcome to the fourth EEMAC meeting with Commissioner Berkovitz as the Sponsor of the Committee and the second EEMAC meeting of 2020. In light of the global response to COVID-19, we are holding today's meeting as a virtual meeting to protect the safety of Agency personnel, the EEMAC Members, the Associate Members, guest panelists, and the public.

To ensure that today's virtual meeting goes as smoothly as possible and the recording of the meeting is complete and accurate, please identify yourself before you begin speaking and signal when you are done speaking so that we can continue with the next speaker or question. Please ensure that your phone is unmuted before you speak and mute your phone once you are done speaking. If you would like to be recognized during the discussion, please use the WebEx chat icon at the bottom of the screen to indicate that you have a question. If any meeting participant needs assistance during the call, please dial *0 for operator assistance.

EEMAC Member Dena Wiggins, who is the President and CEO of the Natural Gas Supply Association, will serve as the Chair of today's meeting. Before we begin this morning's discussion, I would like to turn to Commissioner Berkovitz for his opening remarks.

COMMISSIONER BERKOVITZ: Thank you, Abigail. Good morning and welcome to the Energy and Environmental Markets Advisory Committee meeting. The CFTC is completing its eighth week working remotely, and this is the second EEMAC meeting to be conducted by teleconference. We sincerely appreciate the participation of our Members and Associate Members during this difficult time. Your support and engagement with the CFTC has provided us with valuable information as we monitor the extraordinarily volatile markets, ensure market participants can continue to access these markets and consider proposed changes to our regulations.

Our agenda for today is to receive comments on the Commission's proposed rule on position limits for derivatives. Before we turn to that agenda, I would like to address what I know is on many members' minds regarding our energy markets.

I have spoken to a number of the committee members about this matter. And while the topic is not on today's agenda, I know many members are concerned about recent activities in the crude oil markets. I would, therefore, like to take just a few minutes to outline why and how I believe it may be appropriate for the EEMAC to take up this issue should the problems we saw in last month's WTI futures contract expiration recur at some point in the future. I will then turn back to today's meeting.

On Monday, April 20th, the day prior to the last day of trading and expiration of the May futures contract for WTI, the price of the May futures contract fell from $17.73 per barrel at the market open to a closing settlement price of -$37.63 per barrel. In the last 20 minutes of trading, buying was scarce as the price dropped approximately $40 per barrel. The spread to the June contract widened to just over $58 a barrel.

According to Professor Pirrong, a former member of this committee, based on the prior price history of the contract, this was a 40 standard deviation event. As a result of this unprecedented collapse, the price of the May crude oil futures contract became disconnected from the price of crude oil in the physical market and other derivative instruments.

The WTI contract is a key benchmark in the energy and financial markets. Businesses use the contract to manage their risks arising from energy prices. The contract is also used by financial market participants to manage inflationary and other risks correlated to energy prices. The extreme divergence between the price of the WTI futures contract and prices in the physical market particularly affected holders of various crude oil options, WTI mini futures contracts, and the trading at settlement trades that settled on the penultimate day of trading.

A futures contract that is disconnected from the physical market cannot effectively serve as a means to discover prices or manage price risks arising from the use of a commodity, fulfill its intended purpose, and meet the requirements for futures contracts in the Commodity Exchange Act and the Commission's regulations. A futures contract must be able to perform as intended under all market conditions. It is precisely in times of severe market stress or unusual market conditions, such as now are present in the oil market, that market participants most need the futures market to serve as an effective mechanism for price discovery and risk management.

The CFTC is analyzing the divergence and extraordinary price movements on the penultimate day of trading of WTI. A variety of explanations have been proffered in news reports and blogs for the precipitous price plunge. We must carefully examine the trading data and market participant activities on and around April 20th. A critical question that both the Commission and the CME must answer is the extent to which the trading in WTI on that day resulted from unique circumstances or actions or reflect structural issues with the contract that may persist or recur in the future.

The extraordinary conditions in the crude oil market that developed throughout March and April 2020 set the stage for this extreme price movement into negative territory on the penultimate day of trading. The May contract traded during a period of extraordinary imbalance between supply and demand in the physical crude oil market. The global economic slowdown resulting from the COVID-19 pandemic resulted in a steep decline in demand for crude oil and an excess of supply. The excess supply and the contango structure of the futures market have led to a filling of existing storage capacity, both in tanks and in floating storage.

Cushing, Oklahoma is a major oil pipeline and storage hub that also serves as a location for delivery on WTI futures contract held through expiration. According to the Energy Information Administration, "Crude oil storage facilities at Cushing have 76 million barrels of working storage capacity, of which 60 million barrels were filled as of April 17th." Press reports indicate that all of the unfilled capacity is leased. There is a high probability that the supply, demand, and storage conditions that were present during the trading in the May spot-month will persist through the upcoming weeks and into the spot-month for the June WTI futures contract.

The CFTC and the CME have the authority and the responsibility to ensure that trading on the WTI futures contract remains orderly and reflects the forces of supply and demand. The CFTC and the CME should continue to work to analyze the causes of the divergence in the May contract. Based upon that analysis, CME and the CFTC should take whatever measures may be appropriate to ensure that trading in a WTI futures contract is orderly and supports convergence of the futures and physical markets. In considering any such measures, the CFTC and CME should seek to ensure that the contract integrity and protect the price discovery process, while maintaining sufficient liquidity for commercial market participants.

A full understanding of the contract behavior during the May spot month may provide valuable information about the effectiveness of a variety of CFTC regulations. For example, an analysis of trading positions and market liquidity leading up to and during the expiration may inform the Commission on the effectiveness of the current and proposed position limits and accountability levels for crude oil futures contracts. Similarly, the effect of exchange-traded funds and other passive commodity investment vehicles on the term structure of and liquidity in the crude oil market can be assessed. The Commission should make public the results of any such analyses in a manner consistent with the requirements of the CEA.

In the event that convergence issues recur during the expiration of the June contract or in subsequent contracts, the EEMAC can perform a beneficial role in advising the Commission on what measures may be appropriate. There is precedent for a Commission advisory committee to perform such a role. The Commission's Agricultural Advisory Committee advised the Commission on measures to address the lack of convergence in the Chicago Board of Trade's wheat contract. Any such activity of the EEMAC would not be a substitute for or conflict with or interfere with the responsibility of the CFTC and CME to ensure orderly trading in the contract. The EEMAC would, instead, supplement those primary efforts. I urge the members of the committee to consider how the committee can constructively address these issues under such circumstances. I look forward to further discussions with the committee on this important matter for the Commission and our energy markets.

Turning back to the topic of today's meeting, in January, the Commission released its latest attempt to implement the directive in the Dodd-Frank Act to issue a position limits rule to cover agricultural, energy, and metals commodities. The EEMAC and members of the committee have a wealth of knowledge and experience in the issues implicated by this rulemaking.

On a number of occasions since returning to the Commission, I have outlined my views and some major objectives any position limits rulemaking should meet. First, the rule must impose effective limits on speculative positions. Second, it must provide adequate hedge exemptions to enable commercial businesses to manage the price risks it takes from their use of commodities.

At the Commission, where we considered the proposed rule, I outlined where I thought the proposed rule could be improved. Today, I am looking forward to hearing the views of others on the rule. These comments will inform my deliberations as well as our Agency. Specifically, today we will hear from a diverse group of Members and Associate Members on two issues critical to the position limits rulemaking. Our first panel will discuss the proposed size of speculative position limits for the spot month, single month, and all months combined. Our second panel will discuss the exemptions from speculative position limits and the process for recognizing non-enumerated, bona fide hedging transactions under the proposed rule.

Before we begin the first panel, I would like to take a moment to thank Bryan Durkin and Vincent Johnson for their distinguished participation on the EEMAC. As many of you have heard, Bryan has announced that he is retiring as President of the CME Group this month. Bryan joined the CME as Chief Operating Officer in 2007, when he led the integration of CME with CBOT and prior to that spent many years in leadership roles at CBOT. Bryan is a long-time veteran of the futures industry and brought a tremendous deal of knowledge and experience to his role in the EEMAC. We will miss Bryan's participation on this committee as well as his very capable leadership at CME.

I first met Bryan during the Commission's implementation of the Dodd-Frank Act. We were present together in some very contentious meetings. At all times, no matter how heated the discussion, Bryan displayed grace and calm under pressure. It has been a pleasure to be at the same table with Bryan and to work with him over the years.

We will also miss Vincent Johnson's participation on the EEMAC. Vince has recently left BP's Integrated Supply and Trading business after joining its legal department in 2006. A former member of the Commission's staff, Vince has a deep familiarity with derivative market regulation and regularly provided valuable insights to the committee. I also have known Vince for over a decade. Throughout my time at the CFTC, I could always count on Vince to pitch in and make a contribution to this committee or for market information to assist us in our regulatory activities. The CFTC's effectiveness depends upon the willingness of market participants to provide comments and information to us. And Vince has been exemplary and outstanding in this regard.

I wish you both, Bryan and Vince, well and look forward to continuing our relationships as you move into your new roles.

I would also like to welcome two new Members and one new Associate Member to the Committee. Derek Sammann is Senior Managing Director and Global Head of Commodities and Options Products with CME Group. Derek is responsible for leading the development, execution, and management of CME Group's global commodities portfolio, including the energy business line.

Trabue Bland is President of ICE Futures U.S. and a familiar face to the CFTC. Prior to joining ICE in 2007, Trabue was Counsel to Acting Chairman Walt Luken and also served in the CFTC's Division of Enforcement and Division of Clearing and Intermediary Oversight.

Delia Patterson is Senior Vice President for

Advocacy and Communications and General Counsel at the American Public Power Association. She also sits on the board of the Consumer Federation of America and the Energy Bar Association and is a member of the DOE Electricity Advisory Committee.

We are pleased to welcome Derek and Trabue as Members of the EEMAC and Delia as an Associate Member. We appreciate the opportunity to work with each of you and look forward to the depth of experience you will bring to the Commission.

I am also pleased to recognize Chairman Tarbert and Commissioner Quintenz, Commissioner Behnam, and Commissioner Stump. Thank you for your participation in today's meeting and support for the EEMAC.

Finally, but not least, I would like to thank Dena Wiggins for her continued service as the EEMAC Chair and especially to Abigail Knauff for excellent work as EEMAC's Secretary. We got emails regarding the latest revised statements and a script and the absolute latest information on an email at 12:32 a.m. this morning. And thank you very much, Abigail, for your dedication.

I also thank Lucy Hynes in my office for her work to support the EEMAC. Finally, I would like to recognize the Office of Data and Technology for facilitating this teleconference and my staff for their work in preparing for this meeting.

With that, I will turn it back to Abigail. Thank you.

MS. KNAUFF: Thank you, Commissioner Berkovitz. I now recognize Chairman Tarbert to give his opening remarks.

CHAIRMAN TARBERT: Good morning, everyone. It is great to be here at the EEMAC meeting today. I want to begin my statement by mentioning that this week is Public Service Recognition Week. So there is no more opportune time to salute all of the hard work being done on a daily basis by our staff here at the CFTC. This work is vital to keeping our markets operating, and these markets are necessary to get our economy moving again. Industry has also been stepping up to the plate, and we thank them for their efforts as well. Indeed, participating in fora such as this is also a public service.

Special thanks, in particular, for this meeting to Commissioner Berkovitz for sponsoring the committee and for holding the meeting today. I also want to thank Dena Wiggins for your service as Chair of EEMAC and, of course, to Abigail of our staff, who is the Designated Federal Officer. I will also join Commissioner Berkovitz in thanking Bryan Durkin and Vince Johnson for their distinguished service, and I want to welcome all of those new Members who have joined the EEMAC.

I want to say thank you to everyone on the call today for your insights and assistance to our Agency. Speculative position limits is a topic this Agency has spent a decade trying to tackle. With the feedback we receive today and the comment letters on our proposal; we can get this rule right.

As I have said before, position limits aren't a silver bullet, but they can reduce volatility caused by excessive levels of speculative trading. They can also help prevent corners and squeezes as well as disruptions in delivery under futures contracts. At the same time, speculative position limits are by their very nature limiting market activity. These markets need speculative traders to provide liquidity for producers and end users who use these markets to hedge. Without market makers, these markets will become illiquid and, thereby, make it more expensive to hedge. So we need to be mindful, first, that our limits are high enough to permit liquidity provisions and a healthy level of speculative trading but at the same time low enough to prevent bad speculative trading from disrupting delivery, affecting a corner or squeeze, or otherwise causing excessive volatility.

We must also be careful that our limits apply only to speculative activity. Speculative position limits must not apply to bona fide hedging activity. In this respect, position limits is the rare instance where the exception is almost as important as the rule itself. The Agency has worked over 10 years on a framework for granting exemptions for common commercial hedging practices.

I applaud Commissioner Berkovitz in calling this meeting to discuss both the levels to be set and the scope of the bona fide hedge exemption. We all understand the importance of getting the bona fide hedge exemption right so that this rule doesn't inadvertently harm the ability of producers, intermediaries, and end users to hedge their risks on physical commodity positions. Given the complexity of supply chains, this is especially pertinent to our energy markets.

Now, as Commissioner Berkovitz mentioned, we should also look at position limits through the prism of the recent price moves, particularly in the energy markets. We just witnessed one of the fastest and sharpest changes in supply and demand for any major commodity. We saw two periods in particular, mid-March and April 20th, where prices for crude oil futures moved dramatically downward. In mid-March, that movement was across the curve and included two days with downward moves of over 20 percent in the front month, but the movement in relative and absolute dollar terms was even sharper on April 20th. On that day, the sharpest movement and the only move into negative pricing occurred in the front month contract. April

20th also happened to be the penultimate day of trading before the futures contract was settled and after the options contract had settled.

The extreme volatility that we saw in the energy market, the most extreme volatility, occurred during the spot month, which is where the current proposal on position limits is focused. Spot month trading for physically delivered futures has always posed unique challenges. If a party is unable to make or take physical delivery and gets stuck holding a position during the delivery period, it can cause a disruption to the market. Short sellers could get squeezed, driving up the price of a cash market; or, as may have been the case with WTI, long holders could face difficulty in finding storage for delivered goods. This also could put downward pressure on the cash markets. We haven't seen these issues play out in non-spot-month contracts. We also haven't seen the same issues in purely financial-settled contracts. Even the cash-settled May WTI contracts didn't experience the negative prices on April 20th or the 21st.

Our proposal would put position limits in energy, metals, and non-legacy agricultural products only for the spot months. The proposal did not find non-spot month limits necessary for these products. The proposal, however, asked for public comment on that decision. So I very much look forward to today's first panel and to the comment letters on that topic.

Going to the second panel, of course, we need to focus on bona fide hedging. The proposal enumerates a number of trading strategies as bona fide hedges. Of course, this list is non-exhaustive. And we have proposed what I think is a practical and workable solution for non-enumerated hedges to be recognized, but it will be more straightforward for hedgers to access the markets through an enumerated bona fide hedge. So the scope of those enumerated hedges is very important. The current proposal includes a number of enumerated hedges that the energy industry had asked for in prior proposals; in particular, for including anticipatory merchandising.

I think all of us are still interested in understanding if there are additional hedging strategies that should be enumerated. The energy industry has very unique hedging needs. We have got to make sure our markets still work for people hedging price risk in the cash markets. So we need to make sure the definition of bona fide hedging covers all reasonable hedging strategies. So I am also looking forward to today's second panel and to your comment letters on the scope of the bona fide hedging exemption.

Thank you all very much again for being at this meeting, and I look forward to hearing from you over the next few hours. Thank you so much.

MS. KNAUFF: Thank you, Chairman Tarbert. I now recognize Commissioner Quintenz to give his opening remarks.

COMMISSIONER QUINTENZ: Thank you very much, Abigail. And thank you, Commissioner Berkovitz, for convening today's meeting.

Let me just join with Commissioner Berkovitz and the Chairman in acknowledging Public Service Recognition Week and all of the dedicated employees that the CFTC has, who do a fantastic job every day to ensure that our derivatives markets have integrity, but

I also think that, you know, public service isn't just about service in government. It is service to government. And I would definitely include all of the members of all of our advisory committees in that and how valuable the feedback is from these forums to the work that we do and join with Commissioner Berkovitz and the Chairman in recognizing Bryan Durkin and Vince Johnson for their contributions -- Bryan is also a valued member of the Technology Advisory Committee -- and just to recognize all of the work that they have done in these forums over the years and thank them for that service.

So today's meeting is focusing on one of the most significant rulemakings pending before the Commission: position limits for derivatives. I am very interested in hearing from the Committee Members and Associate Members and our guest presenters about how that proposal can be improved to further promote credible, well-functioning derivatives and cash commodity markets that allow end users to successfully manage and hedge their risks. I would like to thank all of the presenters and members for their participation and engagement today.

A position limits rule if done poorly could directly affect the participants in America's real economy, perhaps more than any other area of the CFTC's regulations. Farmers and ranchers, energy producers, manufacturers, merchandisers, transporters, and other commercial end users that use the derivatives markets as a risk management tool to support their businesses would all feel the effects of reduced liquidity and more constraints on legitimate hedging activity. No proposal is perfect. I am eager to learn from this committee if specific improvements can be made to better accommodate current commercial hedging practices, make the proposal more workable, or address other concerns of the end user community.

I would like to join Chairman Tarbert in acknowledging that I think position limits is one tool in the toolbox of the Agency to monitor markets and ensure markets have integrity. And I believe it should be appropriately calibrated to represent that it is one mechanism by which we can detect and deter manipulative conduct.

The proposed Federal limits are generally higher than those in the past, sometimes significantly so, because the proposal utilized current estimates of deliverable supply, numbers which had not been updated in many cases since 1992. I am interested to hear from the presenters today about the process used to arrive at these new limits, including how revised deliverable supply estimates were further calibrated to establish limits tailored to individual contracts.

I am also interested to hear from this committee and today's presenters if the list of enumerated, self-effectuating bona fide hedge exemptions can be further clarified or expanded to encompass hedging practices frequently utilized in the energy sector today. In particular, with respect to cross-commodity and anticipatory merchandising hedges, I am interested in hearing if the proposal can be improved to provide greater certainty to market participants about what qualifies as an enumerated bona fide hedge. I am also interested to hear from presenters about the exchange-centered process that will be used to adjudicate non-enumerated bona fide hedge exemption requests. As part of their stewardship of their own position limits regimes, exchanges have long granted bona fide hedge exemptions in those markets where there are no Federal limits. As such, they have an incredible expertise that the Commission can leverage to help facilitate the approval of exemptions for non-enumerated bona fide hedges. I am interested to hear if there are ways this framework can be further streamlined so that it provides market participants with timely responses to their requests.

In closing, again I would like to thank all of the participants today, the panelists, the Members, the Associate Members, and the guest presenters, but especially Commissioner Berkovitz, Abigail, and Dena Wiggins, for organizing and running this meeting. Thank you very much.

MS. KNAUFF: Thank you, Commissioner Quintenz. I now recognize Commissioner Behnam to give his opening remarks.

COMMISSIONER BEHNAM: Thank you, Abigail. Good morning to everyone on the call. It is great to be with you and great to have you here as a part of the

EEMAC meeting. First and foremost, I want to recognize and thank Commissioner Berkovitz for his leadership in convening today's meeting, a very important meeting of issues to discuss. I also want to, of course, recognize Abigail and Dena Wiggins for their leadership as DFO and Chair of the EEMAC and, as always, recognize the Members of the EEMAC and the Associate Members, a very important advisory committee, has been for many years, and one that the Commission values tremendously.

With that, I also want to recognize Bryan Durkin's service and Vincent Johnson's service; as Commissioner Quintenz noted, Bryan's service on the TAC. Vincent also served on the MRAC. So these are very versatile, helpful individuals who care deeply about our markets and have for many, many years been great contributors to the Commission's work in consideration of rules and policies that we implement. So thank you to them for their many years of service and best of luck in the future on their next steps.

Last, but not least, I also want to thank CFTC staff. As Commissioner Berkovitz pointed out, Chairman Tarbert, Commissioner Quintenz, of course, being Public Service Recognition Week, we need to give them a special bit of recognition and thanks for their hard work, but given the past few months and that we are all dealing with the issues related to COVID-19 at home and in the workplace, CFTC staff deserve a special bout of gratitude because of the challenges that we have faced. And, of course, to all of the members and folks listening, as always, we hope that you are doing well and staying safe.

With respect to today's meeting, I look forward to the conversation. Position limits, as has been said, is a critical rule for the CFTC, and it is one that we have been deliberating for a number of years. I shared my views when we proposed the rule a few months ago. And both panels today will be very informative in the sense of giving the Commission a better sense of how we should move forward in the weeks and months ahead. These are, in fact, as has been said, again critical issues, not only for the proper functioning of the markets in an orderly fashion with integrity, liquidity, and all of these important things that preserve our markets and make them the best in the world, but as we are focused very, very strategically from the CFTC's perspective on promoting risk management and promoting price discovery and ensuring that commercial end users are able to use our markets in an effective way to manage risk, it is the foundation of our economy. And in these challenging times, our markets become that much more important. So to ensure that they are functioning properly, we need to do our job from a Commission perspective as well as we can.

Finally, I will just comment on Commissioner Berkovitz's points and thoughts about recent market volatility. I would certainly lend support to his comments about the EEMAC considering taking up some of these issues. These are certainly very important issues that everyone at the Commission from the Chairman down, including all of my colleagues at the Commission level, have been thinking about working with market participants to ensure, again, that markets are orderly, transparent, and functioning well. We are all here shooting for the same goal in terms of providing price discovery and risk management. And I think we need to constantly review and educate ourselves to learn from these very unprecedented times to ensure that markets are operating well, that we are continuing to do our job in a productive way. And this is why these advisory committees and our engagement on a regular basis, even during these trying times, becomes that much more important and that much more helpful to the Commission. So I certainly look forward to today's conversation.

I want to thank everyone again on the Committee, the Associate Members and the full Members. Your service is invaluable. And I look forward to your comments and contributions. Thank you.

MS. KNAUFF: Thank you, Commissioner Behnam. I now recognize Commissioner Stump to give her opening remarks.

COMMISSIONER STUMP: Thank you, Abigail.

Rather than repeat many of the things that have already been said, I just wanted to say that we, all five of us, are grateful for the opportunity to serve the Commission. And I don't know that any of us assumes that we had signed up for something such as the past few months when we agreed to take these jobs, but, nonetheless, it is the job that we have. And we are grateful for the assistance of the committees such as this that help us do our job. And while during my time at the CFTC, I have always found great value in the advisory committee dialogue, I think current events have made it more evident that there is great utility in these discussions.

Our last physical public Commission gathering was in February. And while we have carried on our enforcement proceedings and our rulemaking efforts and we have also responded to several unprecedented circumstances during the past few months, we miss that invaluable nature of our face-to-face engagement. And while we are capable of operating in these circumstances, our advisory committees are playing an ever more important role in facilitating public engagement. And the subject before the committee today is perhaps one of the best examples of public interest.

And so, for that reason, I very much appreciate Commissioner Berkovitz and Abigail for holding this meeting. And I thank all of the committee members and presenters for their willingness to lend their expertise. Thank you.

MS. KNAUFF: Thank you, Commissioner Stump. Dena, I am going to turn the meeting over to you now.

CHAIR WIGGINS: Okay. Thank you, Abigail. And thank you, Commissioner Berkovitz, Mr. Chairman, and all of the CFTC Commissioners. I am truly honored to be a Member of the EEMAC and to continue serving as the Chair of EEMAC. The committee serves as an important vehicle to discuss matters of concern to hedgers, consumers, exchanges, trading firms, end users, and energy producers within our energy and environmental markets as well as the Commission's regulation of these markets.

Today's meeting serves as a timely opportunity to discuss the Commission's 2020 position limits rulemaking as the Commission begins to craft its final position limits rule.

As Chair, I look forward to facilitating the discussion of the Associate Members' perspectives to the EEMAC and working with the EEMAC Members to provide the Commission with feedback and recommendations that assist the Agency in its oversight of our markets.

To ensure that today's discussion is consistent with the EEMAC charter, which prohibits Associate Members from providing reports and recommendations directly to the Commission, we will first take questions and comments from the EEMAC Associate Members after the panelists have made their presentations and prepared remarks on the respective panels. And then we will turn to the EEMAC Members for their questions and comments on the panelists' presentations, prepared remarks, and any feedback provided by the Associate Members. As Abigail mentioned earlier, please use the chat function to alert us that you have a question. We will then recognize you as a speaker after receiving your notification.

Before we begin our first panel, we would like to do a roll call of the Members, Associate Members, and guest panelists on the phone so that we have your attendance on the record. Abigail, could you lead the roll call, please?

MS. KNAUFF: Thank you, Dena. EEMAC Members, after I say your name and organization, please indicate that you are present. If you are inadvertently muted during the roll call, please email me to confirm that you are present on today's call so I can correct the record.

Trabue Bland, ICE Futures U.S.?

MR. BLAND: I am here.

MS. KNAUFF: Thank you.

Rob Creamer, FIA PTG?

MR. CREAMER: Present.

MS. KNAUFF: Thank you.

Demetri Karousos, Nodal Exchange, LLC?

MR. KAROUSOS: I'm here.

MS. KNAUFF: Thank you.

William McCoy, Morgan Stanley?

MR. McCOY: Present.

MS. KNAUFF: Lopa Parikh, Edison Electric Institute?

MS. PARIKH: Present.

MS. KNAUFF: Jackie Roberts, Consumer Advocate Division of West Virginia?

(No response.)

MS. KNAUFF: Derek Sammann, CME Group?

MR. SAMMANN: I'm here.

MS. KNAUFF: Tyson Slocum, Public Citizen?

MR. SLOCUM: Hi. I'm here.

MS. KNAUFF: Thank you.

EEMAC Associate Members, after I say your name, please indicate that you are present.

Matthew Agen, American Gas Association?

(No response.)

MS. KNAUFF: James Allison, JCA Advisory Services LLC?

(No response.)

MS. KNAUFF: Lael Campbell, Exelon Generation Company?

(No response.)

MS. KNAUFF: Paul Cicio, Industrial Energy Consumers of America?

(No response.)

MS. KNAUFF: Sean Cota, NEFI?

(No response.)

MS. KNAUFF: Daniel Dunleavy, Ingevity Corporation?

(No response.)

MS. KNAUFF: Would it be possible to unmute the Associate Members?

Erik Heinle, Office of the People's Counsel?

MR. HEINLE: Good morning, Abigail.

MS. KNAUFF: Thank you.

Paul Hughes, Southern Company?

MR. HUGHES: Hey, Abigail. I'm here.

MS. KNAUFF: Thank you.

Kaiser Malik, Calpine Corporation?

MR. MALIK: Present.

MS. KNAUFF: Timothy McKone, Citigroup Energy Inc.?

(No response.)

MS. KNAUFF: Robert Mork, National Association of State Utility and Consumer Advocates?

MR. MORK: Yes, I'm here.

MS. KNAUFF: Dr. John Parsons, Special Government Employee?

(No response.)

MS. KNAUFF: Delia Patterson, American Public Power Association?

(No response.)

MS. KNAUFF: Matthew Picardi, Commercial Energy Working Group?

MR. PICARDI: I'm here, Abigail.

MS. KNAUFF: Thank you.

Michael Prokop, Deloitte and Touche, LLP?

(No response.)

MS. KNAUFF: Malinda Prudencio, The Energy Authority?

MS. PRUDENCIO: I'm present, Abigail.

MS. KNAUFF: Thank you.

Dr. Sandor, Environmental Financial Products, LLC?

(No response.)

MS. KNAUFF: Noha Sidhom, Energy Trading Institute?

(No response.)

MS. KNAUFF: And Russell Wasson, National Rural Electric Cooperative Association?

MR. WASSON: I'm here, Abigail.

MS. KNAUFF: Thank you, Russ. Thank you.

We have several guest panelists today. After

I call your name, please indicate that you are present.
Thomas LaSala, CME Group?
MR. LASALA: Present.
MS. KNAUFF: Vito Naimoli, ICE Futures U.S.?
MR. NAIMOLI: Present.
MS. KNAUFF: Susan Bergles, Exelon Corporation?
MS. BERGLES: Present.
MS. KNAUFF: Jeffrey Walker, ACES?
MR. WALKER: Present.
MS. KNAUFF: And Jennifer Fordham, Natural Gas Supply Association?
MS. FORDHAM: Present.
MS. KNAUFF: Thank you.
I will now turn the meeting over to Dena.
CHAIR WIGGINS: Thank you, Abigail. Our first position limits panel today will discuss the proposed speculative position limits for spot months, single months, and all-months-combined for an energy derivative product, as proposed in the Commission's January 2020 proposal. We will hear prepared remarks from Tom LaSala, CME Group; Demetri Karousos, Nodal

Exchange; Bill McCoy, Morgan Stanley; Sean Cota, NEFI; Susan Bergles, Exelon; Daniel Dunleavy with Ingevity Corporation; Kaiser Malik, Calpine; and Dr. Richard Sandor of the Environmental Financial Products, LLC. Tom, would you begin, please?

MR. LASALA: Yes. Thank you, Dena, and thanks, of course, to Commissioner Berkovitz; Chairman Tarbert; Commissioners Behnam, Stump, and Quintenz. It is very much an honor for me to be invited to participate in today's panel and represent CME Group.

Let me begin by stating that CME Group is very supportive of the Commission's efforts to establish Federal limits for energy and metals markets as well as certain newly captured agricultural and soft markets and, furthermore, updating limits for the legacy ag markets. In its proposal, the Commission has made a preliminary finding that Federal speculative position limits are necessary for trading in the spot month in 25 physical core reference futures contracts and associated reference contracts. The Commission also determined that except for the nine legacy ag markets, Federal limits in the non-spot month for the balance of the markets are not necessary, thus limiting the Federal position limit to the spot month. This approach is consistent with the pattern adopted by DCMs as related to position limits in physical commodity markets in place today.

We believe the proposed spot-month limits from the CME Group contracts are appropriate and consistent with the recommendations by CME Group. We strongly support maintaining the same limit for both financial and physically-settled contracts and that such limit is set by the recommendation of the DCM that trades the core physical contract and who maintains the greatest knowledge of the proper functioning of such markets.

It is important to highlight the steps we take and processes we follow at CME Group for adopting and updating limits. The same process that went into making the recommendations to the Commission in connection with this rulemaking would be relied upon in the future. The process includes, first, analysis of deliverable supply, which is reviewed and interrogated by the CFTC DMO staff; second, analysis of market fundamentals, including liquidity, volatility, and convergence of futures and cash markets; third, analysis of market participant concentrations; and, lastly, feedback from market participants.

Taking an across-the-board approach and setting a Federal limit at the full 25 percent of deliverable supply could have a significant negative impact on many markets across all asset classes which have been articulated in our prior comment letters. Our recommendations were based on a measured approach, which we feel is appropriate to avoid the risk of disruption and ensure orderly operation of our markets as well as financially settled linked markets, which rely upon the settlement price of the core physical market. Getting an artificially high Federal limit can incent exchanges to set limits for competitive reasons, rather than for regulatory purposes. The consequences of this include denigrating price discovery in the core physical market.

Lastly, CME Group is encouraged by the Commission's inclusion of swaps in the rulemaking. The CME Group has always advocated for such inclusion, particularly with regard to look-alike markets. In that vein, the Commission might want to expand its look on look-alike definition. CME Group would, at a minimum, suggest that the reference contract workbook and economically-equivalent swap definition be consistent with regard to crude oil, ULSD, and RBOB by including penultimate settlement in order to not create loopholes between futures and swap markets.

With that, I will conclude and again thank you for your hard work, for the hard work conducted by the Commission and its staff in connection with this rulemaking.

CHAIR WIGGINS: Demetri, would you like to proceed?

MR. KAROUSOS: Yes. Thank you. Good morning, everyone. Chairman Tarbert, Commissioner Berkovitz; Commissioners Quintenz, Behnam, and Stump, Abigail, Lucy, and Dena, thank you for the opportunity to speak this morning. As noted, I am here representing Nodal Exchange and, in that context, will largely limit my comments to the power futures and options we offer. By the way, every time I say, "power," please translate that to electricity if that is more familiar to you.

As the Commission proceeds with its important work of implementing the outstanding components of the Dodd-Frank legislation, we think it is a good time to provide additional critical context, especially from segments of the energy industry which may not carry quite the same headline familiarity as oil or natural gas. Indeed, I was struck by the language in the introduction to the proposed rules where the Commission notes, "The existing framework is largely a historical remnant of an approach that predates cash-settled futures contracts, let alone swaps, institutional investor interest in commodity indexes, and highly liquid energy markets." I would add the existing framework predates the rise of the highly regulated day-ahead and real-time markets that represent the spot power market in all of the ISO/RTO regions; *i.e.*, those NERC regions that adopted the standard model or, as we are fond of saying, the Nodal model.

In the discussion of the proposed rules, the Commission spends much of its time working through its reasoning behind new position limits on the Henry Hub contract, in particular. Specifically, much of the document wrestles with the interplay between the physically and financially settled futures of the commodity.

The Commission notes its experience in monitoring manipulation by participants who use a combination of physically-settled futures and financial futures in which the participant "bangs the close" or "marks the close." This is indeed an important feature of physically-settled contracts as they represent price makers while financially settled contracts should be thought of as price takers, at least for final settlement purposes at expiration. However, the financially settled contracts really break down into two categories: the look-alike contracts that mimic physically-settled futures and the financially settled contracts that settle to independent indices or spot markets. In futures markets, where physically-settled contracts are established, such as natural gas or crude oil, these physical contracts effectively serve as the most important price discovery tool for the spot market at baseload supply and demand for the delivery month is managed with the physical futures or physical deals linked to it.

In short, the physical futures are, for all intents and purposes, the main spot market for that commodity. However, in the ISO/RTO power markets, the spot market month completely separately from the futures market and is based on 24 hourly auctions to set the day-ahead prices followed by daily operations in the spot market with 5- or 15-minute pricing based on actual supply and demand conditions on the individual grids for the real-time markets. These markets are carefully regulated and overseen by both market monitors, both internal to the ISOs and external, as well as the FERC and/or the relevant state public utility commissions.

As with the physical futures, in the physical/financial futures manipulation described above, any manipulation in the power market would necessarily occur in the spot market if it were to benefit bilateral physical deals, uncleared swaps, or futures positions. That would mean the cash market manipulation would have to go undetected or unpunished by the multiple monitors that manage these spot markets, especially as these monitors actively look for loss-making positions in these markets for just this kind of manipulation.

Any manipulation in the day-ahead market; *i.e.*, driving up pricing, would result in losses in the real-time market, where real-time supply and demand set the final price. These are the loss-making moves that are immediately investigated by the market monitors. Unlike other physical markets, unusual withholding or shuttering supply is also monitored. Contrast this with production shut-ins in the gas and oil market, and with the activity stirring the California power crisis around the turn of the century before the existence of the current ISO/RTO model was adopted.

Nodal Exchange appreciates the CFTC's spirit of flexibility and deference to the expertise of the exchanges, particularly in power derivative contracts, in weighing the risk of excessive manipulation here against the very real liquidity needs for the physical market participants, including generators, transmission capacity owners, and load-serving entities, such as municipal utilities and co-ops.

Following this general discussion of the key differences between financially settled power contracts versus those for natural gas or oil, I would also like to delve into another area, where we felt, the "gas model" was perhaps too generally being applied to the power market as well. Specifically, in the exclusions from the reference contract definitions, we find the following language, "While the proposed reference contract definition would include linked contracts, it would also explicitly exclude certain other types of contracts. Paragraph 3 of the proposed reference contract definition would explicitly exclude from that definition a location basis contract" and then later, "For example, in the proposed rules, a large power right position in the Henry Hub natural gas futures could not be netted down against a location basis contract that cash settles to the difference in price between Gulf Coast natural gas and Henry Hub natural gas."

This exclusion appears echoed in the new spread transaction language in Reg. 150.5, which positively identifies cost commodity spreads and calendar spreads, but it appears to leave out traditional locational basis spreads. Specifically, we have concerns that the exclusion language used with regards to the reference contract, and specifically natural gas, may ultimately be confused with an application in power and electricity. Gas location basis contracts are calculated as the difference between two locations, but the gas basis contract creates an outright exposure when combined with a Henry Hub contract. And note, these are usually taken on as two longs; *i.e.*, the Henry plus the basis, or two shorts. A combination of a long and a short, which defines a spread transaction, does not result in a spread at all here. The basis contract by itself represents the spread.

In contrast, in power, location basis contracts are outright contracts, which when then traded in combination with a major hub, such as Western Hub, create a spread position. This is no different than a product spread; *i.e.*, crude versus gasoline or natural gas versus NGLs or corn and ethanol or calendar spread. Each of these spreads actually serves to hedge important asset positions in the market, assets that either transform or transport one product to another. The cracked spread hedges refining capacity. The calendar spread hedges storage facilities. And the location spread hedges gas pipeline for natural gas or electric power transmission for power. We want to be sure that the intent of the exclusion is limited to those contracts that create outright exposure in combination with another contract, as is the case with the current natural gas basis contracts, rather than the traditional spread exposures in power electricity.

That concludes my remarks. Thank you again for your attention to these important distinctions across the energy complex.

CHAIR WIGGINS: Bill McCoy, would you like to present next?

MR. McCOY: Yes. Thank you, Dena. Good morning, Mr. Chairman and Commissioners Quintenz, Behnam, Stump, and Berkovitz. Thank you for this opportunity to speak about the proposed speculative position limit rules from the perspective of a swap dealer.

Morgan Stanley is pleased to support in substance the proposed rule and looks forward to supporting the Commission's effort to finalize it. It reflects careful considerations of prior industry comments and is better aligned with current commercial hedging practices than prior proposals. We support the Commission's decision to set spot-month limits on the 25 physically delivered core reference futures contracts based upon updated measures of deliverable supply. Focusing on the energy markets, we believe the Commission struck an appropriate balance between the Federal and exchange position limit regime by only setting hard limits on spot-month positions in the floor energy core reference futures contracts.

There are many reasons why it is appropriate not to set hard limits outside the spot month for these energy futures markets. The policy concerns underlying the perceived need for a position limit, protecting price convergence between the cash and futures market in the spot month, and preventing manipulation and market disruption are less of a concern in the more distant months where market participants are not forced to liquidate their open positions or stand to make or take deliveries. For the same reasons, the exchange's accountability-level regime has proven to be an effective and flexible means of preserving market liquidity, enhancing price discovery, and preventing market disruption in non-spot months' energy futures contracts.

Another reason why the Commission's proposed approach to position limits in the floor energy core reference futures contracts is appropriate is because rapid technological changes in the energy markets have identified new sources of hydrocarbon and renewable energy and exponentially increased supply. Thus, there is far less concern today of a finite supply of energy than there was a decade ago. In fact, as current market conditions have exhibited with the volatility in oil prices, including recent events involving crude oil, the focus today is on a lack of demand in the oversupply of energy products. Thus, the ability to bring reliable liquidity to hedgers farther out the curve without limits is critical.

The number and types of participants, from producers, processors, marketers, dealers to end users and the diversity of products, grades, and locations in the energy markets provide tremendous flexibility in a deep pool of liquidity and transparent pipe discovery in non-spot-month cash futures and swap markets. Liquidity providers, such as commodity merchants, trading firms, and swap dealers, provide end users with access to this pool of liquidity to meet their hedging needs.

As demonstrated by the fast-moving developments in the energy markets during the past two weeks, market participants on both sides of the supply and demand chains are heavily dependent on the speed and flexibility with which they can react in the derivatives markets to accommodate their change in hedging needs. The need for quick and flexible hedging solutions, which is accommodated by intermediaries, such as futures commission merchants and swap dealers, might not be possible if the futures and swap markets were subject to hard speculative position limits in the non-spot months. These are just a few of the reasons why the Commission made the right decision not to propose any non-spot month or all-month limits on positions in energy core reference futures contracts.

Finally, if the Commission determines in the final rule that it is necessary to impose spot-month limits on swap positions, we support the Commission's proposed definition of "economically-equivalent swaps" as any swap that has identical material contractual specifications, terms, or condition to a reference contract, implying for the first time that limits on swap positions likely will present a number of significant operational and technological challenges for both market participants and the Commission, such as identifying the scope of swaps subject to limits and designing the appropriate infrastructure to track those swap positions.

For these reasons, it is appropriate to limit the new regime if it is to apply to swaps to spot-month positions and a workable definition of economically-equivalent swaps. If the Commission adopts the definition of economically-equivalent swaps, as proposed, such decision will foster a greater likelihood of the successful implementation of the new rule by market participants and the Commission alike.

Thank you for allowing me to address this important issue relating to the proposed rule. I would be happy to respond to any questions later.

CHAIR WIGGINS: Thank you. Sean, the floor is yours.

MR. COTA: Hi. Commissioners, Madam Chairwoman, members of the committee, and hardworking CFTC staff, thank you for the opportunity to comment on the proposed rule on speculative position limits. Since this is my first time delivering remarks to many of you, I will provide some background on me, my organization, and a brief history of our engagement on this issue. Please note that all views and opinions expressed in these remarks are my own.

I currently serve as President and CEO of NEFI, a nonprofit, nonpartisan trade association that has been a leading voice for wholesale and retail liquid fuel distributors since 1942. Our industry delivers heating fuels, including heating oil, propane, and biofuel blends. Our members are not utilities. They are mainly small, multigenerational, family, Main Street businesses. Across the country, thousands of these family businesses, sometimes referred to as fuel dealers, deliver an average of five billion gallons of heating oil to more than 6.5 million homes and businesses. Our members have long utilized commodity derivatives and other financial hedge products to hedge price risk and insulate their customers from market volatility. They rely on the CFTC to be the cop on the beat.

In response to the commodity bubble of 2007 and 2008, NEFI organized a broad coalition of industry groups representing commodity producers, distributors, consumers, and derivative end users. This coalition successfully advocated for the creation of this very advisory committee. It also supported many of the reforms included in Title VII of the Dodd-Frank Act, including the requirement that the CFTC establish speculative position limits on energy and other previously exempt commodities within 180 days of enactment. On January 30th, 2020, a total of 3,480 days since the enactment of Dodd-Frank, the Commission presented its fifth proposed rule to establish a position limits regime.

While we commend Chairman Tarbert and the fellow Commissioners for their efforts to wrap up this loose-ended Dodd-Frank, this new proposed rule is not without its pros and significant cons. First, the proposed rule only covers 25 reference contracts. While NEFI members rely on the CME's NYMEX ULSD HO contract for hedging heating oil and other distillate risks, why not cover all?

Second, NEFI welcomes the definition of the reference contract to include all cash-settled futures and options as an economically equivalent to physical delivery contracts in the same commodity. We have consistently argued that this move is essential to guard against manipulation by a trader who holds positions in both physically-settled and cash-settled contracts for the same underlying commodity. However, the definition of economically-equivalent swap is narrower than in previous proposals. The narrowness of this definition allows for easy avoidance.

Third, the proposal focuses primarily on the spot month, where it suggests a very high, 25 percent, limit with the emphasis on preventing corners and squeezes. We agree with the comments by Commissioner Berkovitz that distributing limits across all months is preferable as it would protect market convergence and mute disruptive signals from large speculative trades. Notably, the proposed rule appears to arbitrarily exclude non-spot-month contracts for reference energy contracts from position limits and leaves this decision to the exchanges. Voluntary limits are really not limits. The Commission, not the exchanges, should be setting the rules of the road.

And, finally, under the proposed rule, the CFTC must prove that position limits are necessary before imposing them. This ignores the law. The law states that the CFTC shall set limits to diminish, eliminate, or prevent excessive speculation to defer and prevent market manipulation. Chairman Tarbert rightly said in January that excessive speculation has a damaging impact and that position limits can help to diminish these most harmful impacts. The practical effect of excessively high or voluntary position limits will be to encourage unsafe speculative behavior or, worse, manipulation.

This proposal also does not address the dramatic upheavals in the commodity markets resulting from the current pandemic or the April 20th historic WTI contract dislocation. The CFTC should withdraw the proposed rule and reconsider these historic impactful events. The May 2020 WTI contract trading lower than negative $40 per barrel is the elephant in the room. The CFTC needs to provide adequate time to examine this historically significant contract dislocation. Commissioners should also allow input from pandemically-affected industries and businesses who are too preoccupied in keeping their businesses operational, employees healthy, than commenting on this long-delayed CFTC rule.

I appreciate the opportunity to share my thoughts on this issue and look forward to the continued discussion.

CHAIR WIGGINS: Thank you. Susan, over to you.

MS. BERGLES: Thank you, Dena. Good morning to the Commissioners, Chairman, Commission staff, and other EEMAC members. Thank you for the opportunity to participate in today's EEMAC meeting. My name is Susan Bergles. I am Assistant General Counsel at Exelon Corporation. Like many of the EEMAC members, Exelon has been actively engaged in the CFTC's position on this proposal for some time. Our primary focus has been on the potential impact to market liquidity and the ability of commercial end users to effectively hedge.

Before discussing this proposal, I wanted to provide a little background of Exelon. Exelon Generation Company is among the largest competitive power generators in the Nation with earned generating assets totaling more than 32,700 megawatts of capacity, most of which participates in the competitive wholesale market. ExGen manages the sales, dispatch, and delivery from Exelon's portfolio of owned and contracted generation capacity. Constellation is the name of ExGen's retail business division. Constellation supplies power, natural gas, and energy products and services to approximately two million residential, public sector, and business customers. ExGen hedges, among other things, the commodity products risk associated with its portfolio of generation that is participating in the wholesale competitive market as well as the commodity price risk associated with Constellation's business of supplying electricity and natural gas to millions of commercial, industrial, and residential customers.

Getting to the latest proposed rule, we believe it is a significant improvement over prior proposals. It is apparent that the CFTC staff and the Commissioners have spent a significant amount of time working through the issues previously raised by commenters, and those efforts are much appreciated. Exelon relies on futures and swaps to hedge and mitigate commercial risk. So as we continue to assess the proposed spot limits, it is from this perspective. For example, when we consider the size of the proposed limits, we are focused on whether and when we might need to file for an exemption from the new Federal and exchange limits. One key aspect of knowing when we need an exemption is knowing the contracts that aggregate towards the same limits. Right now, the exchanges do a good job of posting a contract that aggregates. This makes it efficient to track our overall position and know when we need to apply to the exchange for an exemption.

Like other market participants, Exelon seeks regulatory certainty. One area where the proposed rule could be improved is in identifying which contracts are subject to Federal limits. To that end, while it is helpful, the posted staff workbook is currently formulated to be further enhanced. Although it identifies some contracts that should be included, we do not know how to interpret the fact that certain contracts are not included. This may mean that staff believes the contract should not be subject to Federal limits or it may mean that staff simply has not yet reviewed the contract or something else. It is a time-consuming and manual process for market participants to review the contract specifications for each potentially related futures contract in order to determine whether it is directly or indirectly linked to one of the 25 core reference futures contracts. This also could lead to different determinations made by different companies.

Once specific example of an improvement to the current staff workbook regards the existing Nodal Henry Hub natural gas contract. This contract is not in the staff workbook, which one could read to mean that it is not subject to Federal limits. However, Footnote 280 in the proposed rule states that the existing Nodal contract would be subject to Federal limits by virtue of being cash settled to the physically-settled NYMEX NG contract -- for our reference futures contract. Excuse me. It is unclear why the proposed rule addresses the Nodal contract at Footnote 280 but that contract is not in the staff workbook. Although this may be an unintended oversight, it is just an example of a confusion that could exist regarding what contracts should be counted.

The staff workbook, we believe, should be a comprehensive list of contracts subject to Federal limits. This would be consistent with the current exchange model, where the exchanges identify those contracts that aggregate toward the same limit. This would greatly reduce the potential for inconsistent treatment across market participants as well as the amount of time a company needs to spend working through contract specifications, particularly in natural gas, where there are a large number of futures contracts.

We understand that a comprehensive staff workbook would need to evolve over time in order to account for new exchange-listed products. To that end, the proposal provides the mechanism for the Commission staff to keep an up-to-date list of contracts subject to Federal limits. Specifically, when an exchange self certifies a new contract to the Commission or submits a new contract for Commission approval, the proposed rule requires that the exchange identify whether the contract meets the definition of a reference contract. The Commission staff should be able to utilize these exchange filings to update the staff workbook as needed. The CFTC should also consider leveraging the experience of the exchanges in making a determination as to the appropriate list of contracts subject to Federal and exchange limits.

Lastly, we appreciate the steps taken in the latest proposal to make the conditional limit exemption in natural gas a more attractive option. The conditional limit would allow a company that does not hold a position in a physically delivered NYMEX Henry Hub futures contract to hold up to 10,000 cash-settled futures equivalent contracts per a futures exchange and up to 10,000 futures equivalent swaps that are reference contracts.

We agree with the CFTC's approach to renew the previously proposed daily reporting requirements to rely upon the conditional limits. Those reporting requirements would have been burdensome without any apparent regulatory benefits. Our understanding is that a company could rely upon the conditional limit after applying to an exchange. It is unclear, however, how this process would work in conjunction with our existing hedge exemptions. We assume that if a company needed a hedge exemption to exceed the conditional limit, it would do so through a standard hedge exemption application that acknowledges the fact that the company is reliant upon the conditional limit as well as the hedge exemption. It would be helpful, though, if the Commission could provide additional clarity regarding this process.

Overall, we see the latest proposed rule as an improvement upon prior proposals. The Commission should be cautious as it moves forward to avoid unintended consequences; in particular, with respect to liquidity. If the CFTC moves forward with the final rule, we think it would be worthwhile to consider undertaking a study following its implementation to assess the impact and consider additional measures as appropriate.

Thank you for your time. And I look forward to our discussion today.

CHAIR WIGGINS: Thank you.

Daniel? Daniel, are you on the line?

(No response.)

CHAIR WIGGINS: Operator, would it be possible to unmute Daniel, please?

OPERATOR: All speaker lines are currently open.

CHAIR WIGGINS: Daniel?

(No response.)

CHAIR WIGGINS: Perhaps we should move to Kaiser, and then we will come back and see if Daniel is on the line before we conclude this panel. Kaiser, would you like to proceed?

MR. MALIK: Yes. Thank you, Dena. Good morning, Mr. Chairman and Commissioners Berkovitz, Behnam, Quintenz, and Stump, and staff of the Commodity Futures Trading Commission. Thank you for the opportunity to discuss the proposed position limits for a derivatives rule from the perspective of a commercial end user of the energy futures and swaps markets.

By way of background, Calpine is one of the largest competitive power companies in the United States. We own and operate 77 natural gas-fired and geothermal power plants. We sell power, steam capacity, renewable energy credits, and ancillary services to our customers, which include utilities, independent electric system operators and industrial companies, retail power providers, municipalities and other governmental entities, power marketers, as well as retail, commercial, industrial, governmental, and residential customers. The majority of our risk exposures arise from our ownership and operation of power plants.

Our primary risk exposures are spark spread, power prices, natural gas prices, capacity prices, locational price differences in power and in natural gas, natural gas transportation, electric transmission, direct prices, carbon allowance prices in California and the Northeast, and other admissions credit prices. In addition to the direct risk exposure to commodity prices, we also have a general market risk, such as risk related to performance of our counterparties and customers -- excuse me. I'm sorry. In addition to the direct risk exposure to commodity prices, we also have general market risk, such as risk related to performance of counterparties and customers and plant operating performance risk.

Consistent with our risk management policy, we enter into natural gas, power, environmental product, geo-oil, and to other physical and financial commodity contracts to hedge the risk that we incur in the conduct and management of our commercial operations, and to optimize our portfolio power plants. Because seasonality and weather can have a significant effect on the results of our operations, we take those risks into account in our hedging optimization activities.

Calpine largely supports the proposed rule. It strikes us as reasonably well-aligned with current commercial hedging practices and less burdensome on the end users of futures and swaps than prior proposed position limit rules. As a commercial end user of derivatives, Calpine's primary interests are having access to: one, sufficient liquidity in the futures markets to enable us to hedge the risks we incur in our commercial operations in a cost-effective manner; and, two, reliable and accurate price discovery.

For these reasons, Calpine agrees with the Commission's decision to set the spot-month limit on the natural gas physically delivered core reference futures contracts based on the exchanges' updated measure of deliverable supply. We also support the Commission's decision to set a hard limit only on spot-month positions in natural gas reference contracts and to rely on the exchanges' accountability-level regimes for non-spot-month positions.

We do not think it is necessary, particularly in the current energy supply and pricing environment, to set hard limits on positions in non-spot-month reference contracts. Relying on exchange accountability levels should promote sufficient liquidity and enhance price discovery in non-spot-month futures contracts.

Calpine supports the proposed definition of reference contracts in exclusion from the definition of location basis contracts, commodity index contracts, the swap guarantees, and trade options. We also support the proposed definition of " economically-equivalent swap." We appreciate the efforts of the staff in preparing the workbook of commodity derivative contracts under the regulations regarding position limits for derivatives. Based upon our initial review, the workbook appears to include some futures contracts that are not reference contracts and to exclude some contracts that should be included. We understand that exchanges are working with the staff to make sure the workbook is comprehensive and accurate. A revised workbook will help market participants comply with the final rule. Calpine and other market participants also would benefit from regular updates of the workbook to assist with their compliance efforts.

I will reserve the remainder of my comments for the next panel. Thank you.

CHAIR WIGGINS: And thank you.

Daniel, are you on the line now?

MR. DUNLEAVY: I hope so. Can you hear me?

CHAIR WIGGINS: Yes, we can. Please proceed.

MR. DUNLEAVY: Okay. Thank you. My apologies. Good morning to the Commission, EEMAC members, and guests. Thank you for the opportunity to speak on the perspective from the industrial sector.

As an industrial end user of a significant amount of natural gas, Ingevity participates in the physical and financial U.S. natural gas markets. Consuming about 27 BCS a day, the U.S. industrial sector represents roughly one-third of daily natural gas consumption. As such, industrials rely on high-functioning and transparent energy markets to procure its physical supply, budget future natural gas costs, and hedge future consumption.

Ingevity is also indirectly exposed to energy markets as a cost component for other raw materials as well as being exposed on products that we make that delve into energy markets or energy-related markets, such as oilfield drilling and the automotive sector. For these indirect exposures, it is also important to have high-functioning energy futures markets that are representative of underlying market conditions.

We are pleased to see that the Commission is addressing position limits. Identified limits appear reasonable for the markets the Commission is targeting. We would recommend that the Commission cast a wider net and increase its oversight on natural gas basis markets. While the Henry Hub serves a purpose as a benchmark, the fact remains that industrials are spread all over the United States and has a large exposure to basis. Industrials are basically a one-way trader as buyers for our various locations. Adding to this buyer-only concentration risk, most of the trades for industrials' physical needs take place in a condensed time frame known as bid week.

While volumes may appear small compared to the Henry Hub, concentration risk inherent in how basis markets for physical procurement worked might increase the chances for market abuse by a large position holder relative to the volumes traded for any given basis hub. Therefore, we recommend that the Commission examine ways to expand its oversight on position size and activity at physical basis locations.

While we support the CFTC's adoption and enforcement of position limits, we also recommend that the CFTC take the lead on reexamining the limit to the pool of participants in the commodity markets. These limits were borne out of new regulations imposed by Dodd-Frank, the Volcker rule, and Federal Reserve. In summary, these regulations drove many banks out of the physical energy market. As an example, today, Ingevity does its financial hedging through commercial banks but does it physical procurement through a merchant energy company.

In general, the commercial banks are reluctant to offer physical risk management. It would be efficient to have more one-stop shops available. It could also spread the risk around the market to bank counterparties that have healthy balance sheets and diversified business portfolios. Merchant energy companies stand the risk of being singularly exposed to energy market dynamics and prices. One cannot help but think that the recent volatility in the oil markets might have been dampened if a wider pool of participants could step in and react to those market signals, trade accordingly, and perhaps mobilize physical assets to absorb the commodity.

Thank you for the opportunity to participate on this panel. And we look forward to a healthy discussion.

CHAIR WIGGINS: Thank you.

We will turn this over to Dr. Sandor now. Dr. Sandor, are you there?

(No response.)

CHAIR WIGGINS: Abigail --

DR. SANDOR: Hello?

CHAIR WIGGINS: -- have you heard from Dr. Sandor? Did you just speak?

DR. SANDOR: Hello? I am here.
CHAIR WIGGINS: Oh. Please proceed.
DR. SANDOR: Can you hear me?
CHAIR WIGGINS: Yes, we can. Thank you.
DR. SANDOR: Okay, Dena. Thank you, Chairman Tarbert, Commissioner Berkovitz, staff. Thank you for facilitating this presentation. It is quite brief. EFP is an incubator of exchanges and invents markets. I am here to comment on the position limits of environmental products, and I perhaps will be the most boring speaker of all.

The limits, both in the spots and the futures markets for the California Carbon Allowances, the Regional Greenhouse Gas Initiative allowances, the PJM Tri-Qualified RECs, and the New Jersey solar RECs all seem by the exchanges to perfectly satisfy the needs of the markets. For those of you that are not involved at a regular basis, environmental markets tend to be hedger-dominated. If anything, they could use more speculation, rather than less speculation, but have performed their hedging and price discovery function very well in promoting market-based solutions to environmental challenge.

I commend the Commission and the exchanges for instituting appropriate position limits and for encouraging these important markets. Thank you all very much.

CHAIR WIGGINS: Thank you, Dr. Sandor, and thank you to all of the panelists. At this time, I would like to open the floor to questions and comments from the Associate Members.

MS. KNAUFF: Hi, Dena. This is Abigail. We have a question from Jim Allison for Tom LaSala.

CHAIR WIGGINS: Jim, please proceed.

(Pause.)

MR. LASALA: Thomas here. I can't hear a question.

CHAIR WIGGINS: We are waiting for --

MS. KNAUFF: Jim Allison, please?

CHAIR WIGGINS: Waiting for Jim. Jim, are you able to ask your question?

MR. LASALA: He may have mistakenly raised his hands. I have seen a few of those.

CHAIR WIGGINS: Abigail, do you want to go to someone else? And we can try to come back to Jim.

MS. KNAUFF: I don't have any other questions in advance from Associate Members. So if anyone has a comment or a question to share, please volunteer at this time.

MR. PICARDI: Hi. This is Matt Picardi. Can you hear me?

CHAIR WIGGINS: Yes.

MR. PICARDI: Hi. I guess a question for Mr. LaSala and the other folks that were discussing an expansion of the application of the proposed rule to cover more swaps. Could you maybe give a little more background in terms of how maybe that would be accomplished under the way the proposed rule is drafted, what elements maybe should be changed to accomplish this? Thank you.

MR. LASALA: This is Tom. I will field that first. So I think in my opening remarks, what I mentioned was right now, there is a discord between the swap definition and the workbook. Specifically, as an example, the appends [sic] in the swap definition for natural gas are cited, however, inconsistent, the workbook includes not only last day but penultimate natural gas as applicable futures to the limit paradigm. In the swap definition, the penultimate in the three other energy markets: crude, ULSD, and RBOB are not cited. However, the workbook includes penultimate in those three other energy markets. So my comment was the definition should be broadened to at least include expansion of the definition for “pens” for those three energies.

MR. BLAND: Hey, this is Trabue. Is there any economic study that shows the penultimate the same as last day?

MR. LASALA: Trabue, this is Tom. Are you directing that to me?

MR. BLAND: Yes, or to the rest of the panel.

MR. LASALA: I am not sure of an economic study.

CHAIR WIGGINS: Abigail, have we heard from any other Associate Members?

MS. KNAUFF: Yes. Jim Allison has been re-coded on the call-in line. I believe he has asked a question.

CHAIR WIGGINS: Okay. Jim, if you are on, please proceed.

MR. ALLISON: Let me know if I am, in fact, on.

CHAIR WIGGINS: Yes, you are. Go ahead.

MR. ALLISON: Oh, excellent. Thank you. First, let me note that I have been on the call since Abigail called the roll. And I think I was muted at the time. So if the recording secretary can note that?

A question for Tom. And I recognize that ongoing analysis may limit your ability to respond to this question, but to the extent you can speak, how might the May crude expiry have been different if the proposed rules had been in effect at the time? And what are the aspects in the proposal that have the potential to have altered that outcome?

MR. LASALA: Well, Jim, what I can say to you is this. It is premature for me to, frankly, be able to answer that. As you can imagine, we are doing a very deep dive into the activity that day. And while I would say we have gotten informed on a number of things, there is still more work to do. So, unfortunately, it is a bit premature for me to give you a good response to that.

MR. ALLISON: Can you speak to the second part of the question, the hypothetical of where in the proposal are there provisions that have the potential to alter outcomes like that?

MR. LASALA: I would say -- you are asking me to speak hypothetically. Is that correct?

MR. ALLISON: Yes, that is correct.

MR. LASALA: The new proposal would potentially -- and, again, I will say this again. It is hypothetical, not even -- it could apply to any market. But the new proposal would have exemption authority for pass-through swaps in a more limit (extraneous noise), meaning a swap entity seeking exemption who had an exposure on couldn't get an exemption if the counterparty didn't otherwise qualify as a bona fide hedge. So there is that hypothetical ability, albeit not counting in the definition cash-settled swaps still lead the universe for parties getting exposure synthetically pretty wide. Does that answer your question, Jim?

MR. ALLISON: I think so. And, again, I recognize that there is a tremendous amount of analysis ongoing, so we can't really speak to the first question.

MR. LASALA: Yes. Yes. That is the case.

MR. ALLISON: Thank you.

CHAIR WIGGINS: Any other questions from Associate Members?

(No response.)

CHAIR WIGGINS: Okay. Hearing none, thank you to the EEMAC Associate Members. At this time, I would like to open the floor to questions and comments from the EEMAC Members on the prepared remarks.

MS. KNAUFF: Dena, we have a question from Derek Sammann, CME Group.

CHAIR WIGGINS: Okay. Please proceed.

MR. SAMMANN: Hi, Dena. Thank you very much. Let me start by thanking Commissioner Berkovitz for the opportunity to serve on this committee; Chairman Tarbert, Commissioners Quintenz, Behnam, and Stump for the opportunity to join EEMAC. And I look forward to working with this group on an ongoing basis for a full range of issues facing the global energy market right now.

I do want to just take a moment to address some of the comments made at the top of the call, a very topical issue for all of us in the energy markets and the WTI market. As has been noted, we have certainly seen significant market disruptions from COVID-19. The oil market, as talked about, has been roiled by a number of fundamental drivers of significant reduction in demand, from 100 million barrels a day reduced down to 70 million barrels a day, we’ve seen significant oversupply issues. And that has pushed into questions and concerns around the storage capacity in global markets, not just in the U.S. but globally as well.

Certainly, as we looked at those factors going into the end of March and the first week of April, we had reached out to anticipate an opportunity for markets to continue to accelerate a downward move. We proactively engaged the CFTC, our client firms, and our clearing members to make some changes to our systems to enable should circumstances require it, the markets, to trade negative in any of the (extraneous noise) to expiration in the May WTI contract.

So we just wanted to note the extreme volatility we have seen in many markets right now between the cash and the basis, whether it is the gold markets, the livestock market, the “Hub” markets. In these unprecedented market circumstances, we have seen elevated levels of volatility. I think the physical delivery mechanisms of these contracts are proving exactly what they are built to do, which is to deliver X to the physical converged price on expiration.

And while we had extreme volatility in moves on April 20th, I would want to note for the Commission that we did see convergence successfully take place on April 24th for the physically delivered WTI contract at $10.01, where we saw approximately something just north of 2.4 million barrels of oil get delivered through. So yes, certainly, we have seen extreme levels of volatility. And we are continuing to work with not just the CFTC but our clearing firms, our clearing members, and EEMAC to make sure that we are able to apply lessons learned and move forward and understand the price action on the day but also reiterate that we are seeing well-functioning markets operated with physical convergence in these critically important markets.

So we look forward to continuing to work with the Commission and work with EEMAC to move forward as we continue to build robust markets for the global oil industry going forward. Thank you.

CHAIR WIGGINS: Thank you. Abigail, do we have any other Member questions pending?

MS. KNAUFF: I do not, but if there are any Members that would like to ask a question or comment at this time, please do so.

(No response.)

CHAIR WIGGINS: Okay. Hearing none, do we have any of the Commissioners who have a question or comment?

COMMISSIONER BERKOVITZ: Thank you, Dena. This is Dan Berkovitz. I thank all of the panelists for their comments on the spot market and all-month limits, very helpful.

I have a question, and it is a longstanding concern that I have had, and I alluded to it in my statement. When the Commission considered the rule, and recent events that have highlighted this issue -- they are not solely driven by recent events, but, again, it is an issue that has come up. And that is the role of exchange-traded funds and passive investments in commodities and how those are managed. And, again, I don't want to get ahead of the analysis here. We will do the analysis of May 20th along -- CME will do their analysis, and hopefully we will have a picture of what happened. But there has been a lot of public reporting on certain funds, their relative size in the market, these passive investment vehicles that enable retail investors and others to go in.

And under the proposal, the proposal would remove -- and this gets into some questions on the second panel as well, but the risk management exemption would (extraneous noise) certain market participants have been relying on to enable them to essentially offer these instruments, and then they use the cheapest market to hedge their customers' participation so the intermediaries can be even. And they use the futures markets to hedge. And there is a number of firms that have the risk management exemption that enables them to do that. In the proposal, the Commission would remove the risk management exemption, but basically the limits are -- analysis indicates, as the proposal stated, that the limits would be sufficiently high to accommodate current practices in the risk management exemption.

So there has been a lot of press recently about a particular fund and their activities in WTI. And one can debate or one can certainly say that the way this is handled currently under accountability levels, CME took action, and so the accountability levels regime works because it enables the exchange to take action as it sees under evolving market conditions.

On the other hand, what we saw potentially is going to be only one of the funds in the market and that there is not visibility or hasn't been a public visibility certainly into the aggregate effect of all of the funds and all of this activity. And I am wondering if anybody would like to comment on the role of these passive investment vehicles and the approach that the proposal took on this.

We have seen, both recently and in the past, that they could get too big and they can have an effect on the term structure as well as periodically close to expiration when they start rolling. These rules are becoming now -- one disadvantage of the way it is done is the rolls are very predictable. People know when the rolls are going to occur. And I guess there are possibly two ways of looking at that. Well, it is predictable. The market knows. The market can take into account. And, on the other hand, you hear they get front run. And on those days when there are rolls, there is visible -- you could sort of see it.

So I was just wondering if anybody would like to comment on this, whatever you call it, exchange-traded funds, passive investment vehicles, and the aggregate effect that we -- potential effect of -- the limits are going to be raised, but the risk management exemptions are going to be taken away. But I think it is going to enable more funds participation due to these higher limits. So if anybody wants to take that, I would be interested. Thanks.

(Pause.)

COMMISSIONER BERKOVITZ: If somebody would like to have a more detailed discussion, certainly I would love to have one of those offline as well with any market participants or any Members of the Committee or Associate Members that would want to handle this one offline. Thanks.

MR. BLAND: Commissioner Berkovitz, I will answer from the ICE part. This is Trabue Bland, President of ICE Futures U.S. And I am speaking to my markets, which is U.S. natural gas and power. We actually don't have a significant amount of ETFs or that type of investment in our markets. But I would say that a risk management exemption or something similar is very important to the operation of our markets. And what we do see is we see basically people doing a swap. And it will be a bank that does a swap with a smaller energy firm. And they lay that risk off in our market. And they will use the risk management exemption for that.

My colleague Vito will speak more to this, but, you know, we are looking at the pass-through exemption. And I think that that will probably work for these type of participants. But that type of activity, which is basically commercial activity coming into the market, is definitely necessary, and it is information that benefits our contracts.

COMMISSIONER BERKOVITZ: Thank you.

MR. LASALA: Commissioner Berkovitz, it is Tom LaSala. I would agree with Trabue. And, again, you have got the pass-through to work because those are legitimate exposures that third parties could be banks, could be other large oil companies take on. In thinking about your comment earlier about the passives, I do again want to stress -- and I think you said it -- that with regard to -- you gave USO as an example. It is a very, very public entity. Positions that it has in the market every day are public. So I am not speaking out of school and making something public that isn't.

I do think that the accountability structure worked well with regards to that circumstance and note to you that, again, it is supported by public information. USO was out of the May crude future a week before the activity that is the topic of folks' interest on Monday, the 20th. So they were out, but certainly accountability engagements of it had occurred. And I think, again, by virtue of public record, they have announced a revised methodology as to how they access the futures markets insofar as spreading exposure out multiple levels of the curve I think the first four nearbys. Thank you.

MR. McCOY: Commissioner Berkovitz, this is Bill McCoy for Morgan Stanley. I will just say and perhaps somewhat echoing some of the comments of Tom and Trabue from our experience, as I mentioned in my own remarks, we do believe that the exchanges' accountability-level regime has been effective and flexible in managing outside of the spot month. And I will be talking in greater detail with respect to the pass-through spot provision and the risk management exemption in the second panel this afternoon, but I will just point out that, again and generally, with respect to dealers that use the risk management exemption, they are not used exclusively. They are used with dealing with entities that have taken financial interest that may include the pass-throughs, but they are also used more broadly by dealers and will be used, had been used in the past in connection with a wide variety of the counterparties, which would include commercial end users. So I will be speaking more to this in the afternoon. Thank you.

COMMISSIONER BERKOVITZ: Okay. Thanks, Bill.

CHAIR WIGGINS: Does anyone else wish to respond to Commissioner Berkovitz?

(No response.)

CHAIR WIGGINS: If not, are there other Commissioners who wish to speak?

(No response.)

CHAIR WIGGINS: If not, thank you, Commissioners, for your questions.

MS. KNAUFF: Thank you, everyone. This concludes the beginning of the meeting. At this time, the EEMAC will take a break. EEMAC Members, Associate Members, guest panelists, and Commissioners, please keep your phone on mute doing the break to expedite a return at 12:30 p.m. sharp to begin the second position limits panel. Thank you.

(A lunch recess was taken at 11:42 a.m.)

A F T E R N O O N S E S S I O N

(12:33 p.m.)

MS. KNAUFF: Hello. This is Abigail. I would like to call the EEMAC meeting back to order at this time. Please ensure that your phone is on mute unless you are presenting. If you would like to be recognized during the discussion, please use the WebEx chat icon at the bottom of the screen to indicate that you have a question. With that, I will turn the agenda back over to Dena.

CHAIR WIGGINS: Thank you, Abigail. Our second position limits panel today will discuss the bona fide hedge exemptions and related procedures proposed within the Commission's January 2020 proposal. We will hear remarks from Vito Naimoli with ICE Futures; Tom LaSala at CME Group; Demetri Karousos from Nodal Exchange; Tyson Slocum, Public Citizen; Matthew Picardi, Commercial Energy Working Group; Dr. John Parsons, Special Government Employee; Jenny Fordham with the Natural Gas Supply Association; Matt Agen, American Gas Association; Dan Dunleavy, Ingevity Corporation; Kaiser Malik, Calpine Corporation; Lopa

Parikh, Edison Electric Institute; Jeffrey Walker, ACES; and Bill McCoy with Morgan Stanley.

Vito, would you like to lead us off?

MR. NAIMOLI: Sure. Good afternoon, Chairman, Commissioners Berkovitz, Quintenz, Behnam, and Stump, and the EEMAC members. And thank you for allowing me the opportunity to speak on behalf of ICE today.

ICE supports the Commission's commitment to ensuring well-functioning, efficient markets. Markets can and have functioned efficiently when position limits are set appropriately and calculated using accurate and current data. Position limits have been and most continue to be transparent, efficient, and principled; flexible to allow for the development and use of hedging practices; and reflective of unique underlying market conditions and trading characteristics. We encourage the Commission to take a reasoned approach to these issues and hope that the resulting structure will continue to promote well-functioning markets.

By a little way of background, since 2012, ICE has had position limits on all energy futures contracts. And even prior to that, when there were energy swaps, we had submitted contracts that were also under that regime. So for the better part of a decade and a half, ICE has had a structure in place for position limits and exemption.

We believe the current position limit regime and the exchange exemption process functions well. Any final rule should retain as closely as possible the DCM's current process. We believe the exchanges are in the best position to process exemptions and to understand market participant strategy and hedging needs. We understand the market participants' businesses, assets, commercial needs, why they are requesting an exemption based on their assets. And this relationship has been developed from the last 10 years and based on the current process that exists today.

Market participants understand what the exchange needs when filing for an exemption: what they need to justify; how it relates to bona fide hedge or other exemptions; what is their risk-monitoring process for monitoring their positions. So to ensure continuing consistency, allowable enumerated exemptions at the Federal level must remain flexible and transparent and not too narrow that they cause a detrimental effect on the market.

A little bit more about market regulation within ICE and the energy sector. We monitor approximately 1,200 energy futures products that routinely trade. We process approximately 300 to 400 hedge exemptions per year across the entire energy suite. And exchange staff understands the dynamic of the market participants, which allows the exchange to efficiently process hedge exemptions related to commercial assets or activity.

In terms of how fast the process works, the receipt of a hedge exemption to the final approval by the exchange, it is typically between one and three business days. And during that one to three business days, if the exchange has questions about the application or the information provided in that, we have ongoing communications with market participants, asking them to clarify more information, asking them to provide more justification on why they put that in a specific bucket, and asking questions. So the dialogue is there. Market participants are comfortable with us communicating with them. And ultimately we grant an exemption based on our process and what can be justified by the market participants.

In terms of the newly proposed Federal position limits, the Commission did make several positive modifications in the new rule, such as expanding the list of enumerated bona fide hedge transactions, expanding the term available for anticipatory hedging, and the elimination of the 12-month rule, and delegating to exchanges the authority to grant non-enumerated hedge exemption. And ICE appreciates these positive modifications but urges the Commission to adopt several additional hedge exemption-related changes in the final rule. Specifically, ICE requests the Commission to expand the list of enumerated hedge exemptions even further. And as non-enumerated hedges come into play and are processed in accordance with the 150.9, that the Commission takes those into consideration and puts those in an enumerated bona fide hedge bucket. Modifying the enumerated hedge exemption for unfixed price purchases and sales to include unfixed price purchases or sales, in the energy sector, a lot of market participants like to hedge their risks tied to unfixed purchases or sales. They might not have both components. And if they don't have both components, they might not fall within the unfixed price purchase and sales bucket.

Some other things is kind of expanding the cross-commodity hedging and define more inter- and intra-market spreads that are commonly used in the market, such as arbitrage exemptions across DCMs or a OTC swap leg versus a core reference or a reference product that is being linked within the Federal limits. I know Trabue spoke about this earlier in Panel I, including risk management in the list of enumerated bona fide hedge transactions and as well as clarifying some of the contracts that are defined in the staff workbook, including the removal of index published by a price-reporting Agency or contracts that appear to be locational basis contracts.

And, lastly, just some clarification around the 10-day process, specifically related to what a market participant can put on during their 10 days. If you look at the process, it takes one to three days to get approved by the exchange. And then there is another 10-day process where it doesn't appear a market participant could put on any position. So you are talking about the better part of two weeks to two-and-a-half weeks where the market could be volatile and a market participant can't put on that risk or that hedge, so just some clarity around that.

With that, just in closing, ICE appreciates the opportunity to participate in this EEMAC. And I would be happy to answer any questions later.

CHAIR WIGGINS: Thank you. Tom, over to you.

MR. LASALA: Thanks, Dena. And, again, thanks to Commissioners Berkovitz and Stump, Behnam, Quintenz, and, of course, the Chairman.

Let me begin by stating that CME Group broadly supports the expansion of enumerated exemption types and the removal of the 5-day rule. We have been in consultation with CFTC staff and recommend clarifying and/or reviewing certain processes around the information needed to be provided by the market participants. Examples of this include, first, removal of the proposed guidance in Paragraph B of Appendix B, which seemingly creates a formal process, which requires all market participants utilizing spot exemptions to provide additional documentation to the DCM every time they use the exemption. We believe the Commission should allow DCMs to continue to rely upon their established market surveillance expertise and regular interactions to make decisions around exemptions.

We further suggest removal of the requirement that applicants for retroactive exemptions should be required to include an explanation of the circumstances warranting the sudden and unforeseen increase in the bona fide hedging needs. In our experience, position limit violations often occur unintentionally due to operational or administrative oversight. We have not seen the same firm consistently repeating this type of administrative error.

Further, in connection with this issue, proposed rule 150.5 provides that a DCM or the

Commission would not consider a person to have violated a position limit, even if the application for a retroactive exemption is denied. CME Group disagrees with this approach. Today, at the exchange level, we consider firms to be in violation of a position limit if they exceed the limit and the exemption application is denied. We believe that this handling is a complement to our position on retroactive exemptions and should be adopted by the Commission.

We would further recommend additional enumerated exemptions for single-sided unfixed exposure as well as spread exemptions for financial versus physical spread exposures before finalizing the rules. These exemptions exist today in energy and metals markets, and the underlying exposures certainly exist in the ag markets.

The proposed rule would establish a new Federal process for permitting and reviewing hedge exemptions. The CME Group supports exchange management of enumerated exemptions and further supports the proposed 10-day and 2-day review period with regard to non-enumerated exemptions based on the exchange’s determinations, and recognize a bona fide hedge. We believe the proposed process is manageable in terms of limiting the expanded process to non-enumerated exemptions.

With specific regard to timing, as proposed, we agree there should be no prescribed timeline for exchange review of an application given the exchange process often involves follow-up questions and the need to collect additional information. Some considerations for the Commission around the 10-day/2-day review include, first, should the Commission stay an application during the review period, we believe the period should be no longer than 30 calendar days. Secondly, the Commission should permit a participant to exceed Federal position limits during the 10-day/2-day Commission review period of an exchange-granted exemption.

The CME Group believes the proposed compliance date of 12 months after publication of the final position on its rulemaking in the Federal Register is broadly reasonable. However, concerns do exist that should be considered. The timeline will likely cause an influx of exemptions to the exchange around the end of the 12-month and create a unmanageable process every year around the same time frame.

I will note that CME Group processes over 500 exemptions annually, and the impacted contract and those exemptions are broadly distributed over a 12-month period. Processing all of these exemptions at a single time will be a burden on the DCM and with regard to any non-enumerated exemptions, CFTC staff, and Commissioners. Additionally, such delays would cause uncertainty for market participants.

CME Group would suggest that we collectively work to identify and explore possible solutions or alternatives in addressing this issue. Examples of how this could be managed includes implementing a rolling process where firms are grandfathered into current exchange-approved exemptions they hold today and file on the same annual schedule. This may mean starting the process either six months prior to the compliance date or extending the compliance date. We welcome working with the Commission and the Commission staff to find a workable process to avert disruption and uncertainty.

With that, I will conclude. And, again, thank you for the hard work conducted by the Commission and its staff in connection with the rulemaking.

CHAIR WIGGINS: Thank you. Demetri, the floor is yours.

MR. KAROUSOS: Thank you. I would like to express our appreciation again for the opportunity to speak here on the important topic of bona fide hedge exemption.

As with my previous statement, my comments on the hedge exemptions are aimed to be educational in nature and intended to inform the mindset of the Commission as they approach the broad topic of hedge exemptions. These comments are not intended to be solely focused on power markets but across the energy complex.

We appreciate that much of the focus today is on the core reference contracts. And while this is important to us as we also have a natural gas look-alike financial contract offering, we also take our responsibility to manage exchange-set position limits quite seriously and want to make sure any changes to the rules here are informed by our comments.

Throughout the proposal, there are articulations of evolving business practices and a desire to avoid interfering with legitimate risk management, which is well-appreciated. In thinking about the overall hedging regime, we wanted to highlight the particular role played by larger energy entities, including physical participants; large hedge funds that may or may not own physical assets; as well as largely financial entities, such as bank trading desks, which provide crucial services to smaller market participants, such as small oil and gas producers, power developers, smaller wholesale marketers, municipal utilities, cooperatives, small investor-owned utilities, and retail energy companies. These large entities typically have sophisticated origination teams that provide either fixed-price energy sales or purchases or price risk management without physical delivery.

For both examples, the underlying exposure of the firms conducting this business can, thus, change drastically as these deals are negotiated and finalized on a week-to-week and sometimes on a day-to-day basis. This is very different than the picture of a large grain farmer or a large grain consumer whose physical hedging needs are largely knowable and predictable over the course of a year and for which the hedge exemption procedures have always made the most sense.

In thinking about the new procedures, we think it is important for the Commission and other stakeholders to keep this power and energy hedging model, which is at least decades old, in mind. What this means is that for a large energy participant with significant physical supply assets; for example, power generation, hedging needs in a future space may actually be counterintuitive if, in fact, they have other arrangements in place that make them a large-load supplier at any moment in time.

For example, an energy participant may own power generation in a state but over time; *i.e.*, after a state-administered electricity load auction or as part of continuous origination activity, it could find that it actually has to serve more power to retail, commercial, and/or industrial customers than it has supplies from its own generation. That would mean that it would become a net buyer of electricity and seek to go long in futures markets, despite the large power generation asset on its books. And that might be true in some months or some days or may change back and forth as customers switch to other providers.

In short, the hedging needs for large energy entities are complex and ever-changing. And we hope the regulatory regime takes these conditions into account. We worry about the feasibility of constantly evolving business markets managing their needs with potentially static, inflexible hedging applications. In other words, the application itself needs to be able to accommodate a range of expected outcomes. As we articulate these concerns, we are again appreciative that the CFTC is, likewise, sensitive to this need for flexibility. Thank you.

CHAIR WIGGINS: Thank you. Tyson, the floor is yours.

MR. SLOCUM: Great. Thank you so much.

First, I just want to thank the Commission for adding additional transparency to the no-action letter process. It was an issue that I raised during the last advisory committee meeting about the no-action exemption relief to systemic risk regulations for major swap participant registration for an unnamed bank. And the CFTC has since added additional information, including a redacted copy of that application, which is something that we had asked for at Public Citizen. So I am appreciative of that level of transparency.

I would add that it has been publicly reported as to the identity of that bank, Capital One. And I think it would be great for the CFTC website to at least reflect that information. But, again, we are appreciative of the added levels of transparency. And so thank you.

So this is Tyson Slocum. And I run the energy program for Public Citizen. Public Citizen is a national consumer advocacy group representing the interests of household consumers on a broad array of energy market regulation issues. I wanted to focus my comments on the proposal that has a fairly significant change from previous versions in that it grants the for-profit exchanges the right to make the determination of granting non-enumerated hedge exemptions. And we have got a number of concerns about this aspect of the proposal.

What the CFTC proposal would do is it would say that a market participant only has to apply with the listing exchange in order to have its non-enumerated hedge recognized. And the concern we have with this is we believe that it is inappropriate for private for-profit exchanges to be making the frontline decision on whether or not to grant a non-enumerated hedge exemption from the position limits. This type of decision-making should initially rest with the CFTC and CFTC staff.

I believe I heard speaking before me an individual from CME who was noting that they process around 500 requests for hedge exemptions in their various markets and that some of those hedge exemption requests may be coming in constricted time periods and expressed concern that this might be a burden on the resources of the exchanges and asked for alternatives.

We have got a great alternative to relieve this burden on the exchanges. Don't allow the exchanges to make the call on the hedge exemption. Give that power squarely with the CFTC. Allowing the CFTC to come in after the fact, within this 10-day window period, I think that just raises a number of challenges and problems. We don't see any reason why the CFTC shouldn't be the entity making that hedge exemption call in the first place. It seems unnecessary and problematic to outsource this frontline enforcement activity to private companies that have a profit motive that at times is going to conflict with their responsibilities to oversee a hedge exemption process. And that is because, obviously, the for-profit exchanges make money based upon trading volume. And so there is an inherent business model incentive to encourage more trading volume. And position limits may in some instances curtail trading volume. And so there is a conflict of interest.

And I understand the exchanges point to their internal firewalls as being effective, but they are not enforced externally. And we at Public Citizen don't have a lot of faith in internally enforced firewalls. We do, however, have a lot of faith in the excellent and competent staff at the CFTC to make these determinations on non-enumerated hedge exemptions. And if it turns out that the CFTC requires more staff and financial resources perform these statutory functions, then we in this Energy and Environmental Markets Advisory Committee should be unified in a call to Congress to increase appropriations so that the CFTC can do the job that Congress requires of them.

Also, I wanted to touch on some of the spectacular issues that we have seen in commodity markets and particularly in crude oil recently. And I think that that extreme volatility and the role that speculation played in exposing some market inefficiencies, particularly in the WTI contract, those lessons that we are already learning do not appear to be reflected in this position limits proposal. And I think that we need more time to reflect on some of the lessons learned in the spectacular volatility and inefficiency that we have seen in oil markets and what the role of speculators and what the potential role of enhanced position limits could have played in making this market more efficient because, essentially, what we saw was there were so many speculators in the WTI contract that the financial speculators essentially purchased too much virtual oil and then rushed at the very last minute, one day before expiration, to not actually take delivery of that oil.

You would expect an efficient market to figure out the storage problems more than one day ahead of the expiration and unwind those contracts in a more orderly, efficient manner, but that is not what happened. We had extraordinary volatility. And that is indicative of an inefficient, broken market. And I do think that we need more information to better understand how speculation and improved position limits could have made that situation less worse.

And, then, finally, I do think that as part of the position limits proposal, the Commission needs to be exploring ways to get more data into the public's hands. The Commission does have the regularly published commitment of trader reports, but that data simply isn't granular enough (audio drop).

CHAIR WIGGINS: Tyson?

(No response.)

SPEAKER: I think he exhausted the line.

SPEAKER: Yes. I am unable to hear the presenter.

CHAIR WIGGINS: I am as well. I didn't know whether it was me or Tyson who dropped off here. I suppose we should just proceed to the next presenter. And if Tyson comes back on, perhaps he can finish his thoughts. But at this point, let's go ahead. And, Matthew, would you please proceed?

MR. PICARDI: Yes. Thank you, Dena. This is Matthew Picardi. I am speaking today on behalf of the Commercial Energy Working Group. And I would like to thank the Commissioners, the respective staff, and the staff of the Division of Market Oversight for their efforts and continued commitment to developing the proposed rule on position limits.

The proposed rule represents the culmination of a long, hard, intense 9-year process that seeks to strike the appropriate balance between the Commission's statutory authority and regulatory objectives under section 4a of the Commodity Exchange Act to prevent excessive speculation in the commodity derivatives market in utilizing the expertise, experience, and resources of the designated contract markets and the swap execution facilities or exchanges, as we know them, to administer the new Federal regime for position limits.

The Commission objectives in preventing excessive speculation will be protected by its own rules and regulations, the proposed requirements to be placed on exchanges, the exchanges' own self-interest, and effective Commission oversight. Equally important, the proposed rule recognizes that the hedging practices in commodity markets, particularly when dealing with more complicated physical portfolios, are far too nuanced and complex to be subject to a one-size-fits-all approach to commodity risk management.

Recent global and economic events affecting energy markets reaffirm the need for an appropriately tailored framework that includes a coherent and coordinated approach to commercial hedging that draws upon the knowledge and expertise of the exchanges and provides commercial firms with discretion to use their business judgment for the purposes of identifying their exposures to price risk and managing those risks as it seems necessary. It also requires reassessing and adjusting their hedging strategies in response to dynamic changes in market conditions. And the rule also provides a framework that give them certainty with respect to hedging practices.

The Working Group is broadly supportive of the proposed rule. There are several features of the proposed rule that will help commercial energy firms with their hedging efforts. First, the Commission has proposed to delegate a substantial responsibility to the implementation and administration of the proposed Federal regime to exchanges. We support that. It also contains an appropriate limitation on the new Federal regime to spot-month energy markets. We support that.

A significantly expanded list of enumerated bona fide hedge exemptions will help as well. And the dual-track process to obtain approval of non-enumerated bona fide hedges is important in this framework. And we also appreciate the list of enumerated spread exemptions that have been given to us. Taken together, they provide a regulatory paradigm that avoids harm to commodity markets and leverages the platform already used by the exchanges and the commercial energy firms to manage the position limits. This approach, along with the recommendations we will be offering in our formal comments on the proposed rule, will minimize confusion from market participants and not impose excessive compliance burdens.

While the working group supports the proposed rule overall, we wanted to ensure there was internal consistency between the Commission's intent and objectives, as articulated in the preamble and the actual regulatory text contained in Part 150 of the CFTC regulations and the related appendices. Such consistency is important to avoid different interpretations of the proposed rule over the long term by the Commission, the exchanges, and market participants, as well as ensuring that commercial hedgers are able to fully utilize the flexibility provided them in terms of identifying, measuring, and managing their risks.

In his statement supporting passage of the proposed rule and as he announced today, Chairman Tarbert noted that this rule is interesting or important because the exceptions to the rule are as important as to the rule itself. And we certainly agree with that thinking. And, to that end, we do have a few additional items that we think should be included as enumerated hedges under Part 150.

Specifically, we are concerned that the proposed rule may not cover hedge practices related to the use of calendar month average pricing, the hedging of basis differentials related to the movement of energy commodities across the supply chain from production to consumption, and hedging of storage. It is also critical for commercial energy hedgers to be able to claim enumerated bona fide hedges for transactions related to unfilled anticipated requirements and anticipated merchandising that are used on a cross-commodity basis for certain industry-standard, highly utilized hedges practices in energy markets.

Let me offer a couple of examples of areas where we see this and we think need to be covered because the existing rule would carve them out and not allow them to be used on a cross-commodity basis. They include, for example, using NYMEX HO to hedge unfilled anticipated requirements of jet fuel or NYMEX RBOB contract to hedge gasoline components before blending.

Not only does it apply to many situations in the oil sector, also it could be an issue in the power sector. For example, in areas where there are binding bids and offers that have to be made for power supply, a lot of times on a cross-commodity basis, market participants will use natural gas futures to hedge these power supply transactions. In fact, the idea of a binding bid and offer has already been approved as enumerated hedge by the Commission. We would like to see it included on a cross-commodity basis because, as constructed right now, the rule would not allow it.

Also, out of an abundance of caution, we would like the Commission to clarify that the proposed enumerated bona fide hedge for anticipated merchandising applies to all commercial firms regularly engaged in merchandising activities and that meet the conditions of the enumerated bona fide hedge. The proposed rule is vague concerning the type of firm that can be considered a merchant. We do not think the Commission intends to create new restrictions with respect to the types of firms that can utilize the merchandising exception.

We also believe the Commission needs to clarify and revise guidance set forth in Paragraph A of Appendix B of the proposed Part 150 of the CFTC regulations to ensure that growth hedging can be utilized in both the context of enumerated and in non-enumerated bona fide hedges. As proposed, it appears that it only applies to non-enumerated bona fide hedges. We do support the proposed streamlined approach the Commission has proposed or the 10-day/2-day review process, but we believe it could render much uncertainty for hedgers if it is not shored up from a procedural perspective.

The provision also includes an element where the Commission can stay a particular process. And while we think that the Commission does need a safety valve like that, there is a concern that could render substantial uncertainty around the process intended to provide certainty to commercial hedgers if it is not applied at least in a reasonable and transparent manner. So in this other issue we have or concern, if the Commission rejects too many of the exchange-approved hedging practices in that process, it could lend more uncertainty to the markets. So certainly providing some clarity or articulating when the standards for applying the stay and maybe rejecting an application that has been approved would be helpful to the market participants.

The Commission has indicated that it does not expect market participants to utilize the non-enumerated process very often. The Working Group hopes this to be the case, but failure to include the enumerated bona fide hedges mentioned above will make that goal difficult to achieve, especially when you consider the way markets change and evolve. As we have recently experienced, we owe the market demand destruction to the COVID-19 pandemic and the market supply dynamics that occurred on top of that.

In addition, we have a couple of other

concerns I would like to address today. First, the Working Group appreciates that the proposed rule clarifies that strict application of the 5-day rule to request for exemption from exchange-set limits involving physically failed reference contracts for energy commodities is not appropriate given the unique operation of energy markets. However, it should be made clear that the 5-day rule does not apply on a case-by-case basis. And it should not be a mandatory requirement at the exchange level. The Commission clarification would apply to the guidance in Paragraph B of Appendix B of the proposed Part 150 related to waiver of 5-day rule from exchange-set position limits.

And, also, the Working Group has identified certain technical issues with the definition of reference contract and believes a list of certain commodity derivative contracts in the same underlying physical commodities that are viewed as linked for purposes of complying with the new Federal position limits needs to be reviewed and adjusted.

The Working Group has been an active participant throughout the duration of the position limits rulemaking process at the Commission and has continually worked to maintain a constructive dialogue in the development of appropriately tailored framework for Federal speculative position limits. The Working Group sincerely thanks the Commission for its dedication and continued efforts and respect and looks forward to working with the Commission toward the issuance of a final rule in this proceeding later this year. Thank you very much.

CHAIR WIGGINS: Thanks, Matt. I believe Tyson is now back on the line. Tyson, would you like to conclude your remarks?

MR. SLOCUM: Hi. Thanks so much. I am back. Sorry about that. I was pretty much at the end of my remarks. I just was saying that the commitment of trader report, while it is helpful, isn't extensive enough. And I think as part of this rule, I would like to see the Commission explore more opportunities to get more of the market data into the public domain in as timely a process as possible to help the public and academic researchers and other interested parties conduct the research needed to answer some of the questions about the role of speculation in these markets and the relative success of position limits in curtailing that excessive speculation. Thank you so much.

CHAIR WIGGINS: Okay. Thank you, Tyson. John?

DR. PARSONS: Hi. Good afternoon. Thanks very much for the opportunity to be here and speak. Thanks to the Commissioners and the staff for putting this on.

I want to speak about the distinction between speculative trading and hedging and the role of the CFTC as a representative of the public interest in making that distinction. It is an important distinction, and it is one that is too often muddled and sometimes outright denied. In my own professional career, I have come face to face with the importance of this distinction many times. I am going to quickly mention two cases before I then draw the conclusion that I wanted to draw.

The first case is of the old German firm Metallgesellschaft, which back in 1993 was the 14th largest corporation of Germany, a large conglomerate primarily involved in metal mining and engineering businesses, as its name would suggest. It also happened to own a small financial office in New York City. The parent company had sales of 16 billion and assets of 10 billion, while the New York office had equity capital of only 50 million.

During the course of 1993, the price of oil fell from $20 per barrel down to $14 per barrel, which at the time was quite a thing. And, surprisingly, by the end of the year, Metallgesellschaft learned that that little New York office had been running a book, a very large book, of oil futures contracts, which had by then incurred margin calls of more than $1 billion.

This enormous liquidity call was a great surprise to the parent corporation and nearly forced it into bankruptcy. As it happened, the company negotiated with its creditors a bailout and a restructuring but at a great cost. The company lost one-half of its equity value, and approximately one-sixth of the workforce lost their jobs. The parent corporation had hardly been aware of the oil futures trading on its books, on the books of its New York subsidiary, although they had become a very, very large fraction of the entire market at the time.

The company had internal procedures and limits on speculation. It forbids speculation within its business, so any futures had to be a bona fide hedge of a physical position. That was part of the company's business plans and practices. The New York office wanted to pursue its speculation. And so it constructed a portfolio of matching physical positions that would create the excuse for the speculation that it wanted to run. It was all right there, written down in the New York office's strategic plan, which came to light after the disaster. In Metallgesellschaft's case, the management's failure to successfully enforce the distinction between a speculative strategy and a hedge cost the company dearly.

Now I want to talk about a very different case, one of some East Texas natural gas producers. Back in November-December '95, there was a basis blowout between the natural gas price for delivery in Louisiana, where the Henry Hub futures contract quotes that price, and delivery across the Sabine River in East Texas. Henry Hub prices skyrocketed while East Texas prices languished. A set of East Texas gas producers found themselves losing money on their hedges big time but not making much in profits on their physical positions. What was honestly structured as a hedge happened to be performing terribly.

So I spent a few months in 1996 investigating the causes for this hedging failure, but that is not really the point that I am trying to make here. During the investigation, I visited the trading floor of one of the East Texas producers and had discussions with the head trader. His responsibility was managing the team that put on the hedges of the company's production. And, you know, as far as I could tell, it certainly looked to me like they had a good organization for their hedging with a clear mission doing its job well. But during my conversations with the head trader, I couldn't help but notice he repeatedly bragged to me about how much money he had made on this or that region of trade. Of course, it was not his job to be making that kind of profitable trade. His job was to reduce the company's overall risk of its financial positions. And those are two very different things.

Unlike the Metallgesellschaft example, this trader's confounding of his hedging responsibilities and his small speculative successes probably didn't cause any significant problems for the gas producer, but that is exactly what struck me so much about it at the time. Here was a company that was clearly a physical producer. Here was a trading unit with a clear mandate to hedge. And they seemed to be doing it in general very well. The trading unit was very well-integrated with the larger physical business. So the culture of the company was one single culture. But, nevertheless, the allure of the speculative trade showed itself, even in that context.

So the reason why I brought up these two vignettes is just really to highlight a regular experience that I have had in the industry going back to those two and for many years forward. On the one hand, the distinction between speculation and hedging is straightforward, should be relatively simple to understand. On the other hand, the distinction is constantly being blurred in this, that, or another business practice. Sometimes the blurring happens at the level of the individual trader. Sometimes it happens at the business unit level, where the localized culture of trading is too divorced from the goals and culture of the larger company making money from its physical business. Sometimes the blurring happens at the level of the larger society dominated by financialization and forgetful of the value of production of goods and services.

In the case of Metallgesellschaft, there were premier academics that sloganized MG's future trading as "synthetic storage." It rings to me very much like Enron's tragically proud claim of being an asset-like company running a gas tank. The distinction between hedging and speculation is an important one to a healthy economy in the industry and to a healthy polity. Good commercial businesses that want to pursue hedging need to be able to change that to be able to understand the difference. Senior management needs to be able to know the difference. At the broader level of the derivatives industry in society, the exchanges and the regulator need to be able to identify the differences.

For the United States to develop, maintain in advance a successful risk management culture, we need all of the institutions that define the risk management community to play a role. That includes the end user industry, includes the exchanges and the various businesses facilitating trading. It includes professional associations. But it also includes the leading government agencies engaged on these issues.

With the current proposed rule, the CFTC is stepping back from its responsibility to participate actively and constructively in advancing a successful risk management culture that knows the difference between a speculation and a hedge. Taking a back seat to the exchanges, as this proposed rule would encourage, is a mistake. When the CFTC is not an active participant in the conversation defining the distinction regularly, the CFTC's own capacity to know the difference withers. We need the CFTC to be vigorously, significantly, and substantively involved in these conversations about the distinction. There are lots of ways to structure them. When the regulatory Agency is not a part of the conversation, it opens up more opportunity for the distinction to be blurred, and ultimately that will be to the detriment of the economy. Thanks.

CHAIR WIGGINS: Thank you. Jenny, over to you.

MS. FORDHAM: Thank you. I am Jenny Fordham on behalf of the Natural Gas Supply Association. Between 2000 and 2009, the natural gas sought price averaged $5.81 per MMBtu. Then in the following 10 years, the average price dropped 40 percent to $3.29 per MMBtu. This visible change in the market stems from an investment fuel technological breakthrough. The market changed because of investment, and the U.S. natural gas market has nearly doubled.

Over the last decade, market participants have invested billions to accommodate increased natural gas use. As an example, during the time period 2015 to 2018, the U.S. industrial sector invested 50 billion to increase natural gas use. Looking forward, the pipeline sector expects to invest more than 400 billion in new natural gas infrastructure over the next 15 years. All of this investment is in addition to the billions in investments from natural gas producers, suppliers, and utilities.

The point of these statistics is simple. Investment is driven by sound market signals, competing ideas, capital market efficiencies, and the ability to affordably hedge ever-changing risk. We have seen this play out in energy markets over the last 20 years. Investments and hedging are the heart of rapidly evolving energy markets. The January position limits proposal put a viable path to the finish line on the table. Position limits rules that capture energy markets for the first time must get two key issues right: hedge exemptions and the limits themselves.

First, the hedge exemptions. The Commission must retain the definition of risk, instead of narrowing the definition to price risk. Commercial commodity endeavors are risky. Success depends on the ability to affordably and successfully manage risk in a rapidly changing environment. Illustrating the speed of change, a top concern among public company directors is that a company's corporate strategies will be obsolete in less than five years. Change is inevitable. We don't know what we don't know. However, we do know that investments in production or the consumption of a commodity include a variety of risks: price risk and also operational, liquidity, credit, and locational risk, just to name a few. Moving forward with rules that do not recognize a variety of risks may ultimately remove a vital signal from the market.

Managing risk is the market mechanism for pricing risk. Like a lock and key, the two cannot be delinked. It does not make sense that risk can be managed only as a bona fide hedge transaction once the risk is reflected as price risk. Wrapping up our thoughts on hedging, the enumerated hedges must accommodate risk management transactions that, one, retain an exposure to index; and, two, hedge storage. Both are common hedging practices in natural gas markets today.

Second, turning to the limits themselves, the

Federal limits for cash-settled natural gas futures should be higher than the Federal limit for spot-month physically-settled futures. The proposal recognizes this approach, appropriately focusing the regulations on speculative activity in futures contracts, where there is the greatest potential to influence the physical market and providing a transparent place for larger speculative positions to be held in the financially settled futures market. This issue, however, is this. Higher speculative positions in natural gas futures must not be conditioned on divesting of a spot-month physically-settled futures contract position. The condition that a trader hold no spot-month position in the physically delivered contract creates a non-market-driven signal for liquidation of a position in risk-harming market liquidity. Like forcing a consumer to choose either an apple or an orange, not both, conditionality creates a regulatory structure that supports one product over another and one exchange over another. The reality is that both tools, financially settled and physically-settled futures, offer important hedging diversity.

The Commission should eliminate the condition and address its underlying concerns using the more tailored measures provided by the enhanced anti-manipulation authority. Without compromising hedging diversity, the separate treatment of cash and physically-settled position limits will place laser focus on the contracts intersecting with the physical market and avoid new risk harm to liquidity.

Moving energy markets into settled speculative trading limits is a high-stakes complex endeavor. Today, natural gas market participants have an abundance of hedging options that include multiple futures exchanges, diverse physical commercial services, and bespoke bilateral over-the-counter transactions. The right regulatory framework is essential to affordable and effective risk management, and it is vital to future energy and industrial investment. If a few critical modifications, years of position limits, regulatory uncertainty can be put to rest with new rules that further promote natural gas market principles would help. We look forward to the discussion. Thank you.

CHAIR WIGGINS: Thank you. Matt, over to you.

MR. AGEN: Great. Thank you. Abigail, I think we may have some slides coming up. We are going to mix things up, but I have some slides for this presentation.

First off, my name is Matthew Agen. I am the Assistant General Counsel at the American Gas Association. I just want to thank Commissioner Berkovitz and all the rest of the Commission, Dena and Abigail and the rest of the CFTC staff for putting this meeting together and also for all of your efforts during this coronavirus crisis.

Next slide, please, Abigail.

I am just going to hit on just a few topics today regarding the position limits rule and specifically just talk about the exemption for bona fide hedges and also give a little context regarding AGA and gas utilities to kind of tie together why the bona fide hedge exemption is important for the industry.

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AGA represents more than 200 local natural gas distribution companies. They are the companies that provide retail gas service to customers and businesses throughout the country. These entities are generally and then more specifically heavily regulated by state utility commissions. And the best example I can give for those of you in the D.C. area here is Washington Gas. And Washington Gas is regulated at the D.C. level by the D.C. Commission. I just kind of point that out because, generally speaking, while their business interests are somewhat diverse, AGA represents the utility business in that. And they generally use the contracts for that specific purpose and to continue service to customers.

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Like I said a second ago, LDCs use financial contracts for various purposes. They do it mainly to mitigate risk and mitigate risk in this context for natural gas prices and as a way to continue to provide service to customers. Each LDC has an obligation to serve customers. And their actions are reviewed by the state utility commission. And they need to make sure that they can serve but also do that service at reasonable rates. And how they mitigate that risk is all tied into how they continue to provide service and how they continue to keep their rates low for customers.

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Basically, we are hearing from members that any position rule in the context of LDCs should continue to allow end users, such as LDCs, to enter into a bona fide hedge to continue to manage risk, needs to continue to be less burdensome and then permit cost-effective mitigation. And this is because -- this is their primary basis. They want to make sure that they are continuing to have access to the markets but also continue to serve customers.

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And one reason is, like the Chairman said earlier, it is both important to see what is in the rule and what is covered by the rule and what is not covered by the rule. One of the good things about the position in this proposal so far is that it has both good and robust exemptions for bona fide hedges. And, specifically, LDCs appreciate the proposed enumerated hedge for unfilled anticipated requirements. And, also, the inclusion of the utility resales in that exemption had to propose enumerated hedge.

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There is only one real concern that we see with regard to this particular exemption that is of critical importance to the utility industry. And that is some of the language in one of the footnotes regarding the fact that a utility must be required or encouraged by the public utility to hedge or entering into hedging transactions.

The reality on the ground really is that the PUC may not really get into that granular level. And so probably a better way to express it might be to say that state regulators permit or allow the hedge. The reality is the way different entities are regulated and different regulators work is the hedging -- they may not expressly state or give permission to hedge, but it may be bundled all into this obligation to serve and a requirement to keep utility rates at a reasonable level. So we may never get an actual express statement or requirement that you want from these hedging transactions. It may all be part of the whole process. And each utility commission is different. So it may become a little different in how it gets expressed. And they may actually not know what the CFTC might be requiring. So we would hope the Commission would kind of reconsider this and look at that language to kind of make sure it is not too narrow and allow different LDCs to participate in that hedge, even though their state commissions may not require them to hedge.

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One of the important aspects that AGA will be kind of commenting on later on in the final comments are the hedges for anticipated merchandising. We definitely appreciate that and the fact that it will include natural gas. We will also be commenting and are generally supportive of the recognition of enumerating hedges and that kind of general process put in place. And, secondly, we are also kind of commenting on the kind of importance of what is included in a reference contract and not.

And that concludes my presentation, and I am happy to answer questions during the discussion.

CHAIR WIGGINS: Thank you. Dan, over to you.

MR. DUNLEAVY: Okay. Thanks, Dena. And thank you again for allowing Ingevity to offer the industrial perspective. Naturally, Ingevity feels that as an industrial end user, we should be exempt from position limits. Beyond the natural argument that we use what we buy, industrials and other commercial entities are subject to governance aspects outside of the CFTC that limit their ability to hold too many contracts. First, most industrial companies have a board-approved hedging program that limits forward hedge ratios to consumption forecasts. A general rule of thumb is for a maximum 80 percent hedge ratio.

External auditors frequently check these forward hedge ratios versus the forecast consumptions. Auditors also test for hedge effectiveness guidelines as given by the FASB. Hedge effectiveness is a major qualification that is needed to receive FASB hedge accounting treatment. This backward-looking testing ensures that companies do not over hedge and that their hedging activity properly correlates to its consumption. As industrial output varies over time, we adjust our hedging ratios to remain within board-approved limits and to maintain eligibility for FASB hedge accounting treatment. Not all companies seek hedge accounting, but it is a prevalent practice that helps govern suitable futures and options contract volumes within our sector.

In closing, since we use the energy that we buy and have built in governance for hedging activity, Ingevity supports the hedge exemption for the C&I sector. I again would like to thank you for allowing Ingevity to participate today and look forward to taking any questions. Thank you.

CHAIR WIGGINS: Thank you. Kaiser?

MR. MALIK: Thank you. Again, this is Kaiser Malik, Vice President and Assistant General Counsel of Calpine. Calpine has a few comments on hedging issues raised by the proposed rule.

The Commission proposes to interpret the economically appropriate test in the definition of bona fide hedging transactional position as limiting bona fide hedges only to those transactions or positions that reduce price risk. Calpine believes that this proposed interpretation is too narrow and inconsistent with the text of the Commodity Exchange Act, which provides that bona fide hedges must be economically appropriate to the reduction of risk in the conduct and management of a commercial enterprise. Because commercial end users need to hedge many different types of risk in connection with their commercial operations, the Commission should remove the price qualifier in the proposed definition of bona fide hedging transaction or position.

Calpine supports the expanded list of bona fide hedging transactions in the proposed rules. We prefer, however, that the list appear in the definition section of the rule itself rather than in an appendix. That would ensure that the list cannot be modified other than through a public notice or comment process. Because the proposed rule would impose Federal position limits on natural gas core reference and reference contracts for the first time, we believe that it will be necessary to have a compliance transition period of at least one year. During this period, the Commission should permit exchanges to accept hedge applications on a rolling basis in order to facilitate a smooth transition to the new proposed position limits regime. A one-year transition period also will help commercial end users develop and implement compliance policies and procedures that address the new Federal and exchange position limits requirements.

Thank you again for the opportunity to discuss the proposed position limits derivatives rule. I appreciate it.

CHAIR WIGGINS: Okay. Thank you. Lopa?

MS. PARIKH: Thank you. Good afternoon, Commissioner Berkovitz, Chairman, and Commissioners. Thank you for the opportunity to participate today in this important discussion. I'm here today on behalf of the Edison Electric Institute, or EEI. EEI is the association that represents all U.S. investor-owned electric companies in the United States. Our members provide electricity to about 220 million Americans and operate in all 50 states and the District of Columbia who are regulated at the state and the Federal level.

As a whole, the electric power industry

supports more than seven million jobs in communities across the United States, and our members are committed to providing affordable and reliable electricity to customers now and in the future. EEI has been active in all the proceedings before the Commission related to implementation of Dodd-Frank Act, and has appreciated the opportunity to work with Commissioners and the Commission staff to develop rules that work for commercial end users. This includes the position limits proposed rule.

EEI has submitted comments in response to all of the previous position limit proposed rules as well as in response to the previous EEMAC panel on position limits. One of the primary themes in our comment has been the need to have a workable definition of "bona fide hedging" that takes into account all of the hedging activity in which EEI members and other commercial end users engage. EEI members are physical commodity market participants that rely on commodity derivative contracts primarily to hedge and mitigate their commercial risk. Our primary concern was ensuring that the Commission did not adopt a definition of "bona fide hedging" that was too narrow or inflexible as this would make important hedging activities more difficult for my members, which, in consequence, would result in increased prices and volatility for consumers of electric energy.

To help address this concern, in previous comments, EEI provided examples of the types of hedging activity that should be recognized by the Commission within its definition. In the current proposed rule, EEI appreciates that the Commission has considered EEI's previous comments and has developed a bona fide hedge definition that is not too narrow and that provides flexibility. EEI supports the expanded list of enumerated bona fide hedges for the core reference contract. EEI also agrees with the Commission that it would be difficult to maintain a list that captures all hedging activity across all commodity type, and that any list would inherently fail to consider future changes in industry practices and other developments. As such, we agree that in order to allow for flexibility, that this list should be contained in Appendix 8 of Part 50 and should be updated as necessary.

In addition to advocating that the Commission adopt a definition of "bona fide hedging" that was easily understandable and commercially practical, EEI had urged the Commission to integrate the exchanges' expertise and flexibility, and create a process that limited burdens on commercial end users by delegating authority to exchanges to grant additional exemptions. EEI appreciates that the Commission has considered this proposal and supports the Commission's proposal to delegate authority to the exchanges.

To promote regulatory certainty, there will be a few areas that the Commissioner may want to consider providing additional guidance or clarity on in the final rule, which we'll identify in our comment. One of these, for example, is that if a new enumerated hedge is created by either the Commission or by an exchange, that the Commission may want to consider providing notice and then adding that bona fide hedge to the appendix so to provide equal treatment and notice to all market participants. While most -- in addition, while most EEI members are participants on the exchanges, some are not, and, as such, we would ask that the Commissioner consider providing additional clarity on the process that would be used for commercial end users that would seek to go directly to the Commission to seek an additional bona fide hedge.

EEI appreciates the Commission's efforts to develop regulations that largely address the concerns of commercial end users on these and other issues. Going forward, from our perspective, regulatory certainty will be the key, and, as such, once this rule is finalized, EEI asserts that any changes going forward should seek to make the regulatory certainty has been provided to date. Thank you so much, and I look forward to participating in the discussion.

CHAIR WIGGINS: Thank you. Jeffrey, over to you?

MR. WALKER: Thank you. I would like to thank the Commissioners for the opportunity to speak today. ACES is an agent and a registered commodity trading adviser to not-for-profit electric utilities who buy natural gas and fuel oil and produce electricity to serve load obligations. As commercial end users of gas, oil, and related futures and swaps, we agree that unfixed, anticipatory, and cross-commodity hedging are important bona fide exemptions, and we appreciate that the exemptions in the proposal are self-implementing.

Our common hedging activities align with the three baseline elements of the bona fide hedging definition as they are temporary substitutes, economically appropriate, and are changes in value. Two of the proposed enumerated hedges are closest to our management of forward price risk, namely anticipated requirements and cross-commodity hedging. I have some slides, and they include our most activities -- common activities in the energy commodities covered by scope of the proposal.

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Many of our electric utilities buy spot physical gas and fuel oil to run some of their electric generators. Step one on this slide for them is forecasting their electric consumers' load three to five years forward. From that, they use a forward dispatch model to predict their anticipated requirements of fuels. Step two, they lock in forward fuel prices by hedging ahead with derivative contracts that are often referenced contracts. Third, once the derivative contracts have expired, the consumption month begins, and the utilities buy physical in the day ahead market to generate electricity. The quantities of fuel vary widely from day to day, and fuel consumption is generally zero on the days a generator is not needed to serve load or support system reliability. In step four, the utilities deliver and sell the electricity generated to residential, consumer, and industrial loads in real time on demand.

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The good news for electric utilities is this unfilled matched commodity fact pattern is enumerated as unfilled anticipated requirements. It would be nice if everything electric utilities with these fuels were this simple.

Slide four.

Electric utilities also have to be concerned about physical reliability of electricity delivered to their customers. Some utilities even have generated performance obligations and penalty risk under their particular RTO tariff at FERC. So added in step three on this slide, electric utilities sometimes secure a reliable flow of fuel supply in an annual or seasonal forward term agreement, typically with a sole fuel supplier who's willing to accept the daily delivery risk of its fuel. However, due to the constant variability in the market demand for electricity and the impact of that on prices, the cash commodity fuel supplier is not willing to accept the price risk of the fuel it delivers. And so the purchase price of fuel to our utilities is unfixed and unpriced. It's an unpriced-forward arrangement.

Later in the consumption month at step four, fuel will be scheduled for delivery daily and will be purchased at a differential to a daily fuel price index, or the fuel price location nearest to the electric generator. Now, in the unfilled anticipated requirements exemption, the word "unfilled" has no definition in the proposal, so at face value, it could be perceived as too limiting for these unpriced, unfixed supplies. However, the same unpriced fact --

supply fact pattern has a longstanding history of bona fide hedge approvals in agriculture commodities within an unfilled context. So as part of enumerating this exemption, we ask the Commission to clarify the full meaning of the word "unfilled" in the final order to include unpriced supplies of cash commodities, by defining the word "unfilled" accordingly, or to extend the exemption named to include both unfilled or unpriced anticipated requirements.

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I also have one more ask related to fuel hedging. Natural gas is removed from this fact pattern at step two and three, so here we're generating electricity with just fuel oil this time. Also different in step two, instead of using fuel oil derivative contracts here, we're using crude oil derivatives to forward hedge the price of physical fuel oil. Our ask here is that the scope of the cross-commodity hedges exemption include the unfilled anticipated requirements exemption. Using crude oil derivatives to forward price hedge anticipated requirements in fuel oil is a common fact pattern for electric utilities.

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Wholesale electric utilities also commonly enter into bilateral forward electricity transactions that are price linked directly to natural gas fuel, similar to our gas generation price exposures. These transactions with independent generators, like Kaiser's employer, Calpine, lock in a forward efficiency rate for converting natural gas to electric energy, and often satisfy forward electric capacity reliability requirements of the utility. Natural gas derivative contracts are used to forward hedge the electric energy price exposures since at the time of electric delivery and end-use consumption, the electric energy is priced directly to a daily natural gas indice.

These transactions would also benefit from the two identical enhanced hedge exemptions that I've discussed for generation fuel hedging, namely including unpriced in the anticipated requirements exemption and including unfilled anticipated requirements hedging in the scope of the cross-commodity hedges exemption.

Next slide.

Lastly, beyond enumerated hedging concerns, I ask the Commission to consider the additional burden the proposal creates for commercial end users when it drafts the final rule. Commercial end users will have compliance requirements under this proposal regardless of whether their hedges qualify for hedge exemption when not exceeding the position limits as a commercial hedger. Federal compliance involves linking the related futures and swaps to the core reference futures contracts, aggregating all the link positions at least daily, monitoring the aggregate positions to the limits at least daily, and classifying forward hedging activities according to the 11 bona fide hedge exemptions when they do apply. When hedging above the limits as a commercial end user, Federal compliance also involves maintaining records of commercial activities being hedged, validating any cross-commodity relationships, and being prepared to properly respond to any special calls for information from the Commission.

Finally, I would like to thank the Commissioners for requesting comments on the concept of an entity-based exemption from Part 150 for not-for-profit electric and natural gas utilities that are prohibited from speculating. These entities serve an essential public service obligation, and are prohibited by the governing body or risk management policies from speculating in commodities, whether that be in financial or in non-financial transactions. Hedging activities are a valuable tool in providing stable electric rates to consumers and protecting them against volatility from the energy commodities markets.

We are assisting the NRECA and APPA with drafting comments in support of this exemption concept. So thank you again for that, and thank you for time this afternoon.

CHAIR WIGGINS: Thank you, Jeff. We'll turn it over to you, Bill, to conclude the presentations for our second panel today.

MR. MCCOY: Okay. Well, thank you. And as I stated in Panel I, Morgan Stanley is pleased to support in substance the proposed rule. We applaud the Commission's and staff's efforts to analyze and recognize varying hedging practices across the spectrum of market participants as bona fide hedges. We do have a few recommendations with certain aspects of the proposed rule to address the potential risk of adverse impacts on price discovery and liquidity in the core reference futures contract, which, in turn, may make it more difficult and expensive for commercial end users to hedge the risk they incur in their businesses. I will focus today on two aspects of the proposed rule: the pass-through swap provision and the elimination of the risk management exemption.

Morgan Stanley supports the proposed inclusion of pass-through swaps and pass-through swap offsets as bona fide hedging transactions. However, the provision should be clarified to make it more commercially practical. As proposed, a dealer must demonstrate, upon request, that the pass-through swap qualifies as a bona fide hedging transaction for its counterparty. The proposal indicates that the Commission expects that counterparties will provide a representation that a swap is the bona fide hedge. The focus of this required demonstration being not of a dealer's own position, but of a third party's position, will create some unique challenges. Although many commercial end users will be able to provide a bona fide hedging representation, some practical issues may inhibit them from doing so.

When commencing a trading relationship, an end user may be unwilling to represent in advance that all of its swaps will be bona fide hedging transactions. Absent a prior blanket representation, a dealer must rely on the pass-through swap provision on a swap-by-swap basis. At the moment of entering into a swap, an end user's representative may be uncomfortable making the representation without counsel or compliance present, or may be unwilling to share with the dealer the purpose behind a particular transaction. If a dealer enters into a swap relying on the representation being in the confirmation, what are the consequences if the end user fails to sign the confirmation?

These practical considerations warrant a more flexible pass-through swap provision. It should be sufficient for a dealer to demonstrate that it had a good-faith basis to believe that, based on the facts and circumstances, the swap qualifies as a bona fide hedging transaction. For example, a dealer could rely on the fact that the counterparty is the commercial end user, and that the swap appears to be consistent with hedges entered into by end users in the same line of business. By allowing for greater flexibility in how a dealer may demonstrate eligibility for the pass-through swap provision, the Commission would increase the likelihood that dealers will be able to rely on provisions, and thereby enhancing liquidity for bona fide hedging counterparties.

The second aspect of the proposal I wish to address is the elimination of the risk management exemption. While acknowledging that its elimination may result in a decrease in liquidity, the Commission preliminarily determined that risk management exemptions are unnecessary given the proposed limit increases, the spread exemption, and the pass-through swap provision. It is unclear to what extent these elements of the proposal will actually mitigate against the potential loss of liquidity due to the elimination of the risk management exemption.

Because of the limited ability under the proposed rule to net futures and swap exposures, the lack of a risk management exemption may create artificial constraints for liquidity providers, such as dealers, that try to manage their price exposure to maintain a flat position. This risk of artificial constraint for liquidity is especially present for energy contracts. Unlike agricultural and metals contracts, which trade through the delivery month, energy contracts trade up to, but not through, the delivery month. Thus, price convergence takes place as the contract goes off the board. This market structure makes energy contracts particularly exposed to the risk of bifurcated liquidity pools.

When managed at pool exposure on a portfolio basis, dealers often switch their hedges of OTC derivatives between financially- and physically-settled futures contracts. This risk management activity increases the overall pool of shared price risk available to meet the evolving hedging needs of a broad, diverse range of market participants. Given the inability to net physically- and financially-settled contracts, dealers may need to switch their exposure from physically- to financially-settled futures contracts earlier that prudent risk management would normally indicate.

This new regulatory constraint on trading behavior may bifurcate the risk pool, leading to a lack of convergence among physically- and financially-settled futures contracts, the OTC derivatives market, and the underlying cash market. Under these circumstances, bona fide hedgers with underlying physical price exposure may find reduced liquidity and less precise price discovery in the spot month of some of the physically-settled futures contracts.

Because it is difficult to predict which futures contracts may experience a bifurcated liquidity pool, the Commission should preserve for itself and the exchanges the ability in the future to grant risk management exemptions for appropriate risk-reducing transactions. The Commission could implement such exemptions on a targeted basis as a tool to quickly and efficiently address situations where a particular reference contract is suffering an impairment of liquidity and price discovery. Alternatively, even if the final rule does not authorize risk management exemptions and all existing exemptions are to be rescinded, the Commission should explicitly acknowledge that the new rule does not restrict its existing exemptive authority under the Commodity Exchange Act section 4a(a)(7), to grant risk management exemptions and to delegate to the exchanges the authority to do so well.

Thank you. I'd be happy to respond to any questions.

CHAIR WIGGINS: Thank you, Bill, and thank you very much for all of the presenters. At this time, I would like to open the floor to questions and comments from the Associate Members on the presentations. Abigail, do we have anyone who's asking a question?

MS. KNAUFF: Yes, we do. Jim Allison has a question for Dr. Parsons.

CHAIR WIGGINS: Jim, please go ahead.

(No response.)

CHAIR WIGGINS: Jim, we can't hear you. You're muted.

(No response.)

CHAIR WIGGINS: Abigail, is there anyone else while we wait for Jim?

MS. KNAUFF: Paul Hughes as a question.

CHAIR WIGGINS: Paul, would you go ahead and proceed, please?

(No response.)

CHAIR WIGGINS: Is it possible that they're all muted?

MS. KNAUFF: That may be the case. We'll just give it a moment.

CHAIR WIGGINS: Okay.

(Brief pause.)

MS. KNAUFF: Paul and Jim conveyed that they are able to speak, but we can't hear them. Is it possible to unmute them? Paul or Jim, can you hit "star-1," please?

OPERATOR: As a reminder, to ask a question, please press "star-1."

(Brief pause.)

CHAIR WIGGINS: Jim or Paul, are either of you able to --

MS. KNAUFF: I think we're still having a technical issue.

CHAIR WIGGINS: Okay.

MS. KNAUFF: They tried pressing "star-1."

(Brief pause.)

MS. KNAUFF: Please also feel free to use the chat function to send your question, and I can share it with the group.

(Brief pause.)

OPERATOR: Excuse me, James. Your line is now open.

CHAIR WIGGINS: Go ahead, Jim.

MR. ALLISON: Okay. Thanks.

CHAIR WIGGINS: Yeah, we can -- go ahead, please.

MR. ALLISON: So I have a comment and then a question for John Parsons and also a question for Tom, so I would suggest let me make my comment and then ask John the question, and if I may then get the floor back after John responds, I can ask my second question if that works for everybody.

CHAIR WIGGINS: Mm-hmm.

MR. ALLISON: A comment. I wanted to respond to Tyson's comments, in particular to his concerns about the role of the exchanges in granting certain exemptions and the potential risk of intemperate granting of exemptions. And I agree with Tyson that it would be bad for the market to have intemperate granting of exemptions. I do not agree with him about the concerns of the role of the exchanges. Three reasons.

First, from my perspective, the exchanges do, in fact, have the best nexus of expertise and data for evaluating those requests for exemptions, and that is the most efficient place to have that decision taken. Second, again, from my experience, within the exchanges, the separation of duties that protect the risk in compliance function from the business side are -- that separation of duties is both real and effective. Third, even if you look at the narrowest definition of the business interest, I don't think the effect that Tyson described is the way it works. I think his explanation was too simple. When participants choose to deal with an exchange, there are various things participants want: efficient matching of bids and offers, convergence, good data. But one of the things participants want from an exchange is good risk management, maybe even state-of-the-art risk management, and I can use a metaphor from the current virus.

When you're participating on an exchange, you want to be sure that the exchange is not inviting contagious people to the party, and that means that participants don't want exchanges be intemperate in how they grant exemptions. So if it became known to participants that an exchange was granting exemptions willy nilly, the participants would start to back away from the exchange, which would be bad for the exchange's business. So, yes, exchanges are for-profit businesses, but the business model means they need to maintain best-in-class risk management, and we have competing exchanges, which is very good because competition will increase the skill level of all the exchanges.

Now, to my question for John. John was talking about the distinction between hedging and speculating. John, could you say some more about the process to keep the Commission involved in that definition? And how should we think about the residual risk that exists whenever the hedging instrument is not perfectly correlated with the instrument that creates the risk? And when we look at risk increases arising from reductions in that correlation, are those risk increases more properly viewed as spec or hedge?

(Brief pause.)

MR. ALLISON: And I hope people could hear that speech. I'd hate to try to repeat all of that.

CHAIR WIGGINS: We can hear it. We can hear it, Jim.

MR. ALLISON: Oh, thank you.

(Laughter.)

MR. ALLISON: There was silence after I finished.

SPEAKER: Jim, you're looking for John to respond to that, correct?

MR. ALLISON: Yes, John Parsons.

SPEAKER: Yeah.

MR. ALLISON: If he's still on the phone.

CHAIR WIGGINS: John, if you're responding, we're not hearing you.

MR. LASALA: John is maybe trying to respond -- this is Tom -- that I potentially have the opportunity to comment on Jim's point?

CHAIR WIGGINS: Please, go ahead.

MR. LASALA: Jim certainly understands the exchange landscape, and I think correctly assesses processes around exemptions, meaning we commit significant resources, and it's in our best interest to administer those -- to administer those exemptions with great care. The commercial users on the phone that have dealt with CME Group understand that the examination in connection with an exemption is rigorous, and when we grant exemptions, just to be clear for those who are unfamiliar, this is not a blanket do as you please. There are underlying exposures that need to be brought to the table, quantified, and we then grant a number, a finite number.

It is usual -- not unusual, usual -- for us to grant numbers that are lesser than those desired in the marketplace, and why is that? Even if the exposure is there, we're sensitive to matters of strong hands and concentration. And furthermore, not only do we take pride in administering this paradigm, this is not done blindly. As may have been intimidated or stated earlier, we are subject to rule enforcement rules by the Federal regulator. Furthermore, every month, we send a file to the Federal regulator about giving every exemption, any changes to every exemption. There's a healthy engagement with the CFTC about activity in our market and those that are conducting the activity.

So I can assure you there is a rock-solid wall between business and the granting of exemptions. For that matter, there's a rock-solid wall between business and regulations in general. Just as a note, last year, we brought in excess of 150 different actions and sanctioned $7-and-a-half million. We are actively policing the market, actively bringing actions to those that inappropriately violate rules, and, frankly, actively and on a level better than we (extraneous noise) many, many years' engagement with the enforcement division of the CFTC of areas of common interest.

So I'm hopeful that it's helpful, and, again, appreciate the time to follow up. Thank you.

CHAIR WIGGINS: I understand that John may be back on the line. John, if you heard Jim's questions and would care to comment, please do so. And I just want to remind everyone, if you're not speaking, could you please put your phone on mute? We're picking up some background noise there. John?

DR. PARSONS: Yes. Can you hear me now?

CHAIR WIGGINS: Yes, we can.

DR. PARSONS: Well, great. So, sure, I did hear Jim's questions. Always very good questions. I think there were two basic issues there. One was a question about how would I imagine the CFTC playing a role in the distinction or being more actively involved, and I think the answer is really just being more actively involved, a larger scope of engagement.

I heard a number of people, including Jim, talk about how the right expertise is good for the exchanges, and I guess part of my point is we need a significant amount of the expertise to be at the CFTC, especially under the current proposed rule where the CFTC is sort of a kind of backstop and eventually able to review it. If the CFTC is not regularly reviewing, if the CFTC does not have the expertise, is not familiar with the data and the kind of familiarity and expertise that comes from regular participation in the decisions, then when it comes time to occasionally be reviewing something as a backstop, it doesn't have the capability to do the proper job.

So, as I said in my remarks, there are many ways you can structure it. You could have periodic reviews. You could have samples of decisions that are regularly being done. But you need a very significant amount of decision making happening on a regular basis by CFTC staff, who have the expertise comparable to what the exchanges have, who have data access comparable to what the exchanges have on things like this. So that was one question.

I believe the second question was really more of a technical question, that there are a variety of hedges where you may be a basis hedge, other things, and they're complex, and have you defined the distinction between speculation and hedging. So I guess I'll answer it in two ways. One is, there's a very simple definition, and that's a reduction in the overall risk. And I think for the vast majority of problems that we have, as long as you can document that you're substantively reducing risk, you're going to have solved most of the problems, and a basis hedge reduces risk. Even if it exchanges one risk for another, it nevertheless reduces overall risk, and that's why it's done.

But I guess one reason why I told the Metallgesellschaft example was I think in all of these things, I work in an institution where we like to be very technocratic and quantitative in things. So I think one of the important things is judgment, and it's a very complex thing to look at a company's business and see that the way the hedge is being structured and managed is a hedge of that company's business. And I think that's a much broader problem than simply a technical calculation of the risk going down. So those are my answers.

CHAIR WIGGINS: Abigail, do we have anyone else in the Associate Members who is --

MS. KNAUFF: Yes.

CHAIR WIGGINS: Okay.

MS. KNAUFF: Mr. Hughes has a question. We're going to see if his line is going in and out. We're going to see if he can speak, and, if not, I can share -- he texted his question to me.

CHAIR WIGGINS: Paul?

MR. HUGHES: Can you hear me now? Can you hear me now? EEMAC, Abigail, can anybody hear me?

CHAIR WIGGINS: yes, we can. Go ahead, please.

MR. HUGHES: Excellent. Well, thank y'all. The EEMAC -- I thank the Commissioners and -- for sponsoring this. This is always beneficial, both educational and just the chance to exchange some ideas. And it's always a pleasure to be able to participate.

A couple of things. One, I guess, initially would be when Jeff Walker spoke of the unfilled, unpriced exemption in the enumerated hedges; I just want to say, hey, we would support a clarification on that. We think that while that -- I think he mentioned that historically the Commission has looked at contracts that were in place, but unpriced, that they've looked favorable -- that includes -- that definition of "unfilled," although it's not explicitly defined, includes those unpriced contracted agreements. I think any clarification on that, or he said even changing the title a little bit, I think that would go a long way.

One thing we've experienced over this last six or seven years is a little bit of a language barrier as the energy industry tries to adapt to CFTC speak, and the CFTC has tried to adapt to the energy industry lingo, and I think we've been pretty successful for that process. But I would encourage the Commission to perhaps add some just plain language around that unfilled, unpriced exception. I think that would be beneficial, as Mr. Walker mentioned.

The other item I wanted to ask about and maybe ask -- and maybe CME may want to give a little bit of color, but it was around the mechanics of the exemption process, and it's really kind of two parts. One, not all entities are active participants on an exchange, and I think Lopa mentioned this as well. The gentleman from CME mentioned that they're a little concerned that they might have a mass of requests for exemptions all at one time, and so I was hoping he might explain if he had any particular ideas, or maybe explain again if I missed it how he would suggest we avoid that from happening. And then number two, just to clarify that there is still a direct path to the Commission to ask for an exemption. And that's all I've got, and I'll be quiet and just listen.

MR. LASALA: This is Tom LaSala. Let me try to deal with the front side of that. So, and I maybe didn't do a good job in relaying the story when I spoke earlier. What I was referring to is if you have -- we've got 500 exemptions in the affected markets, and, I mean, all the CME Group markets are affected by this rulemaking. And so every asset class, every commodity, there's 500 in there. Broadly speaking, these exemptions are laid out over the -- evenly over the course of a 12-month period, and exemptions are presently good for a period of one year. So people come in and renew, so you might say there's an equal distribution every month over the course of the year covering 500 individual actions.

The concern I was trying to raise, and I think some preliminary -- I shouldn't say "think. We had some preliminary discussions with the CFTC staff that I think the Agency is open-minded. I would hate the circumstance that, well, everyone is sitting on an effective date, and because there could be components where the rule lands of exemptions that are non-enumerated, would be subject to the 10- or 2-day proviso, there could be a rush all at once. And we're trying to manage 12 months of activity, or a function of that, in a very short period of time. We have no problem in managing the 500 over 12-month period, so things that we talked about were maybe, we start six months early.

I liked that, meaning if the Commission is willing to effectively act as if the rule was in effect, meaning if there is a non-enumerated that comes up on its normal cycle in that six-month period, we would go through the process. If there is a non-enumerated component to it, we would, per the rulemaking, send that over for the 10- or 2-day review, realizing that, technically speaking, we're still in like a safe harbor period as it precedes the effective date, and the Commission would respond to that.

I think that that would be an effective way to, I'll say, to get in front of this, because it would begin to illustrate where there might be disparate views as to what we think would be appropriate on a non-enumerated versus what the Commission and Commissioners might think should be non-enumerated. And I'd like to think that -- I hate to use the term "front running the process" or starting that process early -- to get us to sort through some of those circumstances and get some certainty. I agree with earlier statements, and especially if some of the suggestions are taken about getting further items and strategies enumerated. I think the non-enumerated bucket, if you will, be fairly small, and I think that, again, with some type of a structure that gets us moving earlier or a grandfathering into the effective period for regular cycle, we can sort through it.

So that's my thinking. I think that this is certainly something that through engagement between the Agency, and certainly CME Group, and I'm sure ICE would be interested in that also, we can get sorted out in terms of process. And there is -- it's a process, that we don't deploy now, but we're going to sort through, that this, I'm confident, can be solved for.

CHAIR WIGGINS: Paul, I understand --

MR. HUGHES: Thank you very much. That was helpful.

CHAIR WIGGINS: I'm sorry. Paul, I understand that you have a comment to make as well.

MR. HUGHES: It was really just in support of what Jeff Walker mentioned earlier. I think a clarification around the definition of "unfilled" or at least a change in the title to just make it very clear that that also would include unpriced contracts, and that that doesn't lead to any confusion. A plain reading potentially leads to some confusion. I think historically unpriced is included, but I think perhaps just adding a little bit to that in the description, as Jeff suggested, would be very favorable. So that's really it. That's all I've got, Dena.

CHAIR WIGGINS: Okay. All right. Thank you. Well, we're going to go now to Jim Allison, who I understand has a question for Tom LaSala, and then Delia has a question, and then we are going to proceed to open it up to the EEMAC Members. So, Jim, would you like to go next?

MR. ALLISON: Sure. Thanks. Tom, this question goes back to Jenny Fordham's presentation and relates to the higher limit for the financial natural gas contract and the conditioning to that higher limit on the absence of a holding of the physical contract, and two related questions. First, how do we think through how that conditionality might affect liquidity in the physical contract during the expiry? And second, how might we think about whether the users of the higher exemption on the financial side are different from those who remain in the physical contract in a way that the conditionality might have the effect of biasing the price that is set in the physical contract during expiry?

MR. LASALA: Okay. So on the first part of the question, the condition has been in place for a long time. I can say we've commented in the past that if a conditional structure is to be maintained, we prefer that if there was greater room extended to the cash, you'd still be able to trade the physical. What that -- you need to get to the origins of the conditionality, and it goes back, frankly, to Amaranth. And there's a concern obviously that someone can do something -- have excessively larger positions in a cash-settled instrument, and then use the physically-settled instrument, whether let's call it, banging the close, to effectuate losing on the smaller amount and winning on a great -- significantly larger amount of positions. That's a a bone fide concern.

Is there a way to police that? There would be, but we have to -- again, I'm speaking practically. My opinion, the only one that would be able to see all of that would be the CFTC, or we'd have to have some kind of an organized task force between the physical exchange and other cash exchanges. So could it be done, Jim? It could. It's tricky. You'd need to commit significant resources to be able to look across those origins to see what is being -- what can be done by this prohibition effectively, is seemingly shutting down. So that's the issue at hand there.

On the second part of your question, are the entities different, my experience is there is some difference. But people that seek the, generally-speaking, that seek the extra head room in the -- by using the conditional limit tend to be less commercially oriented. So there might be folks that are doing OTC, balancing OTC books in that space, otherwise speculating. So they're, in my experience, the types of exemptions that we've crafted that the demographic, there is a big difference, and that's the best -- my observation. I can't speak for that of ICE, which also administers those kind of exemptions, Jim.

MR. BLAND: Jim, this is Trabue Bland, and I just wanted to add in there, even though the question wasn't directed at me. We've had this conditional limit in for 12 years maybe, maybe even 13 years, in the contract, and all the associated natural gas contracts have performed well. The converge, there is liquidity in the NG contract. There's liquidity in our cash-settled Henry contract. So I think we've had enough evidence that this conditional limit helps this market sell and has made NG and Henry generally as one of the best products discovery contracts out there.

CHAIR WIGGINS: Okay. I want to jump in here and ask Delia to ask -- to submit her question and, if we could, please be succinct both in questions and in answers. We're running a little bit behind time, and I want to try to keep us as on track as we can. So, Delia, over to you.

MS. PATTERSON: Thank you. Delia Patterson, again, from APPA, and these panels have been great so far. Of course I appreciate comments by, you know, Jeff Walker because he represents APPA and NRECA. And I just had a question as we were talking through on this panel that came to mind, I was wondering is the Commission is still considering an ombudsman type office for building and maintaining a dedicated page on the CFTC's website for commercial end users and whether that would be supported by the panelists.

CHAIR WIGGINS: Anyone want to jump in on that?

(No response.)

MR. DUNLEAVY: Yeah, this is -- excuse me -- this is Dan. I'm not aware of anything that we're doing to a dedicated website like that. I don't know if the staff is -- I'm not aware of it. It may be being considered somewhere. I'm just not aware of -- that we're -- we've got any plans for doing that.

CHAIR WIGGINS: Matt, did you have a question?

MR. PICARDI: Yes, thank you. This is Matt Picardi, a Working Group question and a -- and comment kind of combined. First one, comment, is lending some support to the previous commenters about an enumerated exemption for the unfilled, non-priced hedging practice. Not only is it something that could be an issue in the power markets, but in the oil markets. It's something that the Working Group has been asking for, and we think in the recent events, if we didn't have it, it might've been a problem given the way markets function. So we would want to lend our support to that one being considered by the Commission, or a clarification would help use that.

And the second comment I wanted to make was more kind of in support -- continued support for the fast-track process. At the beginning of our comments, we alluded to the fact that, and certainly Mr. LaSala went over in detail of how the Commission does have oversight authority over the exchanges. But make the point, and if anybody could comment on it, that if we don't have access as firms to do commercial hedging practices to -- the ability to get responses promptly to our request, there's a price for that. We then have to look at the market and add premiums to what we do because we're not sure or we don't get these exemptions.

So there's a balance that has to be struck there, and I think the Commission has tremendous supervisory authority and gets involved in a lot of these processes already, and the proposal helps streamline that. And so if others have any questions or, at least, could consider providing thoughts on how we can meet our needs in terms of getting prompt responses so that we can manage our exposures and reduce costs to consumers along the way. Thanks.

CHAIR WIGGINS: Does anyone on the panel care to respond to that?

(No response.)

CHAIR WIGGINS: If not, I'll thank the EEMAC Associate Members for participating in that part of our discussion, and I'd like to open the floor to questions and comments from the EEMAC Members on the presentations. Abigail, has anyone indicated that they have a question or a comment?

MS. KNAUFF: I have not seen any, but if anyone does, please share at this time.

(No response.)

CHAIR WIGGINS: Okay. If not, do any of the Commissioners have a question?

COMMISSIONER BERKOVITZ: Yes. Thank you, Dena. This is Dan. I've got a few. I'll ask one and then defer to my colleagues, and maybe go another round if we have time. So let me address one of the points that was made -- has been discussed by several participants. This goes to the role of the Commission in the non-bona fide hedge exemptions.

So we've taken about 10 years now to get this rule right, and we spent 10 years trying to figure out what's a bona fide hedge. Proposals back and forth, many, many pages come to the Commission. I personally have spent a lot of time since I've been back there trying to get this right, and I've worked with a lot of the folks who are on this call, and I want to get it right. I said at the outset, I think we have to get effective limits on speculators, and we have to get the bona fide hedging right so that commercial market participants can manage their risks.

And I think the proposed rule and the feedback that we've gotten on the proposed rule, I think we've gone a long way -- it goes a long way towards doing that. And the comments that are starting to come back, as we've heard today, and I appreciate those, in terms of how to get it right may be refinements, I think is how I'd describe some of the comments. But characterize it as you may, I think this has been a very helpful process, and we're going to get it right, and I think that's very important, and we're getting input from all the affected parties.

So after that 10-year effort, we define the universe of bona fide hedges as we know it, and I think the Chairman stated it at the meeting, I think Tom just mentioned it today, that it's pretty much going to be the universe. And if there's actually that we don't grant that it's in the universe of things granted today -- if there is. I'm not saying there even will be, but let's just for argument's purposes that either we grant 100 percent of current bona fide hedging practices and we make that permissible under the rule. Everything that the exchanges are granting today, we're going to say is a bona fide hedge through the rule. That's one possibility, or there's another possibility that there will be a limited subset of what the exchanges are now granting that we won't recognize, and then there will be an affirmative definition -- affirmative decision by the Commission not to recognize that limited subset. I don't know how it's going to turn out. I think either of those possibilities are out there.

And then we'll go to a process as it's set up and we've been urged to adopt, where anything anybody else proposes, the exchanges will get -- the exchanges will determine everything else from now, and we'll have 10 days on the Commission to decide whether that's okay. After this 10 years of rulemaking, anything going forward, the exchanges will determine, and we'll either have 10 days or two days for the Commission to make its decision. It seems to me we have to have an appropriate balance here between authority of the exchanges and authority of the Commission.

Frankly, I'll just be honest on this call. I'm not -- I don't think that is the right balance where it's drawn. All that's been said on the call about the expertise of the exchanges and they're close to the market, all that is correct, and I don't question the -- any of the bona fides of any of the participants in this process or the motivations of any of the parties, or their expertise, or anything like that. At the same time, it's not as if the Commission can't do it because we don't have the expertise, and if we don't, if market participants don't -- if have the expertise or the ability to respond, or the capability to do it, or how to understand the market, or to make an intelligent decision on whether to grant a bona fide hedge exemption, well, we need maybe perhaps more funding and more expertise to do it. But I think we've got that capability, and I have confidence in our staff and in the process.

We've had a process now -- maybe Tom can comment on it. We've had a process now in the ag sector where they come to us for the bona fide hedges. And so we have a process where we make -- excuse me -- the non-enumerated. We have a process where we do non-enumerated. People come to us, and if there's problems with that, if we've been too slow, or non-responsive, or whatever, my understanding is there hasn't been really that many people coming to us on non-enumerated bona fide hedges in the ag sector. It hasn't been issue, that the Commission hasn't been a stumbling block or an obstacle to getting appropriate hedges in a timely manner. And if there examples where we have, I'd certainly be interested, but that would be in ag commodities, not necessarily ours.

Another point was raised, which I think is a valid one, that -- and a valid concern is if one exchange grants a bona fide hedge to somebody, well, what's the process for other market participants to learn about that and also be able to take advantage of it? And is that going to be something that other people can do, or is that just going to be that one party, and maybe they have counsel or lobbyists or whoever who tells their clients and we have certain entities getting a bona fide hedges and others not. How is there going to be transparency into that process?

Frankly, I think it's very difficult if you have an exchange-driven process to make that work because then it looks like -- then it really looks like the exchanges are making the regulatory decisions that what they decide is precedential for other exchanges and other market participants. And that's really our role, so I think there has to be a balance here.

We have a system, and it's worked really, really well, of where we do have exchange primary authority, but we have Commission regulatory authority over that. And it's not just to say disagree and to say, well, that's contrary to the Commodity Exchange Act in a very limited timeframe. Frankly, it's a very, very high legal standard, and, frankly, the process for the Commissioners to be involved in a decision like that is extraordinarily limited. We'll get the paperwork maybe on one of these at some time, and then we'll have 10 days to make a decision whether this violates the Commodity Exchange Act or not.

And really, our function historically for the last, let's see, going back to 1936, so 84 years, we're the ones who say what bona fide hedges are, and we make affirmative determinations, I think, to what John Parsons was saying. There's a -- you know, what's hedging? What's speculation? Everybody certainly in this business has a view on that and is entitled to their view, and there's varying views, and that's part of the process, and the exchanges have views. But ultimately, at the end of the day, it's the Commodity Futures Trading Commission who decides what's hedging and speculating. That's what Congress has said. The statute says the CFTC shall define what's a bona fide hedge. Ultimately, it has to be our decisional authority under the system that we have set up where we have exchanges and a regulator.

So I think we've got to get the balance right on this process. I can understand from the market participants' point of view, but two questions, and I'm going to ask these to Tom. Tom, I'm going to put you on the spot on these.

MR. LASALA: Go ahead.

COMMISSIONER BERKOVITZ: What's the experience, or Trabue too. I'll ask Tom and Trabue. I don't want to limit to one exchange, or, Demetri, if you've got experience that's Nodal in this, too, feel free to answer. What's been your experience with Commission determinations on non-enumerated hedges, and what do you think, at the end of the day -- you've heard the discussion here. At the end of the day, when we consider all that's presented in the proposal and in the comments, how much -- what's the universe of what we're talking about? How often is there going to be a request for a non-bona fide hedge at the end of the day where we have to have -- where this process is going to be relevant?

So those two questions, I could if the exchanges. And then -- and then certainly anybody else who would want to chip in, feel free to do so. Thanks.

MR. LASALA: Commissioner Berkovitz, it's Tom. I would concur with you that I certainly have not heard of many asks for non-enumerated, but I -- certainly as of recent, I think that that the Commission had granted some in the past, and also pulled back on some of those. Those might've been index-related exemptions that were granted personally to the non-enumerated authority. In the ag space, the exemptions are, I would say we -- when the exemptions come to us, we approve them. And I'd almost call them more self-effectuating on the Commission level, so, I mean, the applications are coming into us.

The Commission staff, I'm, frankly, not sure if we even would generally send those over. We certainly, as I said earlier, we give -- there's communication. We send a monthly notice, but the applications and the legacy ag space come in through us. Again, I think I said earlier, depending on how the rules move forward, depending on what is in the enumerated bucket, what is non-enumerated would be small.

I'll also say in comment to something you said earlier, just to be clear, and I've had this question come up in talking with trade organizations, there are certainly things that we could grant today that we don't because we might not think for that market it's appropriate. I mean, I've had it posed to me, well, if it's enumerated, I've got it, right? No, you don't have it. I have to maintain the authority as the operator to make the right decision for the market. And, furthermore, the notion that, well, if a competing exchange, if someone comes to me and says in a competing exchange to prove this strategy and they come to me, I might not agree with that strategy.

So, I mean, I'm just saying that from a CME Group perspective that province of, at least to date -- let's talk about today -- is ours. We surveil that space, what we think is appropriate. We make what we believe are appropriate -- the right decisions on granting the existence of the exemption at all or an appropriate size. And I wouldn't honestly be influenced if I fundamentally felt that something, whether it be enumerated or non-enumerated, was inappropriate for our markets. I wouldn't lose any sleep at night about saying no to it.

COMMISSIONER BERKOVITZ: Thank you.

CHAIR WIGGINS: Thank you.

MR. BLAND: And just to follow up, yes. I agree with Tom, and I just want to say, I mean, just so there's no misconception. The CFTC staff is very capable and very knowledgeable about all these markets. We set, and this is -- I think people lose track of this. You know, as an exchange, both CME and ICE, we don't just administer a position limits for these core reference contracts. We have position limits, and we've had them for a decade now, on all energy derivatives. So the basis contracts, which were referenced earlier, I think the contracts that Mr. Cota referenced earlier. We have position limits on those, and those are set to CFTC specifications and the rules.

The reason that we have core reference contracts is because these are the benchmark energy products. When we do that, our staff does have a lot of expertise across the energy business, but, I mean, the CFTC watches, you know, all of energy as well. You know, but we take this very seriously, and there's no conflict there.

I mean, just to give an example of where there's not a conflict, just last month, I took down a position limit from 1,000 to 50 because I felt that because of COVID-19, there wasn't enough deliverable supply there. If I was concerned about volume, or profit, or something like that, I wouldn't have made that decision. So we take this very seriously, and we take it seriously because we want to make sure, and this is CME and ICE, and I say this because I try to hire as many people away from CME as I can when they get tired of working for Tom.

(Laughter.)

MR. BLAND: But, including Vito, who's on this call. You know, we want to make sure that our markets function, because if they don't function, no one shows up, and that's the simple thing.

COMMISSIONER BERKOVITZ: Yeah, that's helpful, and let me clarify just something. And I've been supportive throughout this rulemaking of delegation to the exchanges, and I think the points you make -- you and Tom have made are -- gives me the confidence where I can support delegating to exchanges the determination of whether somebody is meeting the bona hedge definition, and even whether you at the exchange would recognize it, granting that we provide a definition. But you can be more restrictive, and it may be appropriate for you to be, just like on the limits, and that came through in the comments as well.

So I'm fully supportive of delegating, to -- whether you meet the standard to the exchanges, because we don't have the ability to grant all these bona fide hedges. We can't be -- we do not have the resources to do that, and so I'm fully supportive of that. The question is, what I believe will be a small subset of potential non-enumerated hedges, whether those are bona fide hedges, to whether a generic category meets the statutory definition or should be recognized as meeting the definition is something that I certainly the exchanges would have an input on it, but we have to be the ones, I believe, to make that determination. But certainly, the day-to-day implementation of this, I'm comfortable and supportive of delegating to the exchanges. But ultimately, whether in the future there may be something new that we're not considering and that we haven't considered in the last 10 years, something new pops up, I think that ought to come to us, and I'm also comfortable with a, like, a 30-day time frame on it.

And presumably, just like, I think, one of the commenters -- maybe somebody mentioned under the existing process, if these things -- even however the process is structured, they don't just magically appear and the timeline is all of a sudden turned on. The market participants will work with the exchanges. The exchanges will work with us. So by the time the official document is filed, which officially starts the clock, presumably people have had some knowledge of it, and so I think we could do it in that time frame. The situation where there might be some emergency bona fide hedge, that'll even be a rarer occasion.

An emergency non-enumerated bona fide hedge, if there ever were to be such a thing, I think it would be an extremely rare situation, but nonetheless, it could arise, and we want to be prepared for it, so we could take that in to account, too. So, I thank you for those responses.

CHAIR WIGGINS: Are there any other

Commissioners who had a question?

COMMISSIONER QUINTENZ: Dena, this Brian Quintenz. I just wanted to clarify something for either Tom or Trabue, too, I guess. If the exchange grants a bona fide hedge, whether or not it's enumerated or not, is there oftentimes a lower margin rate associated with that position?

MR. LASALA: The margin rate is nothing from a CME standpoint. We don't in Market Reg administer margin, so margins are administered out of the clearinghouse and their risk team. So no decision, so to speak, around what the appropriate margin would be for the instrument is driven out of Market Reg. We're making a decision around an exemption, Commissioner, around the appropriateness of the exposure and what's appropriate for the market, what the market can tolerate.

COMMISSIONER QUINTENZ: Yeah, go ahead.

MR. BLAND: It's a good question, and what I believe you're referring to is the spec hedge distinction that was in Part 39. In the last version of Part 39, which I think is finalized now, that distinction between spec and hedge is gone, and I think, and don't -- but I'm speaking for my clearinghouse colleagues -- we know it now from CME is that was made independent of whether someone got a hedge exemption or something like that. I think that's what you're referring, but that rule is -- I think, is gone in the last version of Part 39.

COMMISSIONER QUINTENZ: Okay, yeah. I just wanted to clarify that. Okay. Thanks. Thanks so much. No other questions. Thanks so much to all panelists.

CHAIR WIGGINS: Any other questions from Commissioners?

COMMISSIONER STUMP: This is Commissioner Stump. I just had a really quick question, and I believe I know the answer, but I think it would be helpful for the Committee maybe to hear from the exchanges relative to the core principles that you as a designated contract market comply with, have a position on the requirement. And the Agency is in constant communication with you all with regard your administration of those position limit obligations.

And I'm just curious to hear you all maybe describe the engagement that you have with the Agency relative to core principle compliance specifically, the position limit core principles compliance. I think that would be of interest to the Committee.

MR. BLAND: Tom, do you want to start, or do you want me to start on that?

MR. LASALA: Go ahead, Trabue. Go ahead.

MR. BLAND: So, Commissioner Stump, that's a great question. Like I said, we've -- because we're a designated contract market, we set position limits on all of our energy derivatives. And when we set a new -- so a new contract comes out. The discussion with the CFTC for the most part is actually pretty extensive, and we get a fair amount of questions. And, in fact, if you look back at it, I think it's probably eight or so years ago, we were setting our limit on an electricity contract. We disagreed with the CFTC, so we actually took it out to public comment. The CME commented on it.

So there is a pretty vigorous debate on the limits that we set and how we set them and the methodology, and we have to do an extensive amount of research before we do that. So a lot of consultation there. My colleague, Vito, could probably speak more to the day-to-day interactions with CFTC staff, but it's -- we always appreciate the ability to talk through these things with CFTC staff. And, again, just like I said before, CFTC staff is very knowledgeable about our markets. I know that from working there, and I know that from being a regulatee [sic], and so in no way would I think that there's any lack of expertise at the Commission.

MR. NAIMOLI: Just to add a little bit to Trabue's comments. When we file for a new product, we have to file with the Commission. It goes within the 2-day or 10-day review period. During that time period, we could have ongoing conversations with them about why we structured the contract like that, why we put the position limit at that level, and how we set it compared to deliverable supply. And then we have quarterly meetings with the Commission to routinely discuss how the market fundamentals are operating, and any concerns with market participants and the positions that they're holding.

So it's a fluid conversation, and it's ongoing, and like Trabue said, they're fully capable and understand the nuances of the product, and help and assist when we're filing for the product if they have questions.

MR. LASALA: So this is Tom. I'll just follow on that. Broadly, I agree with the points made by both Trabue and Vito. One the front end, there's active engagement with new products. And, Commissioner Stump, just to be clear, everything that was subject to this rulemaking, I can very much assure you the -- I'll use the term, "the methodology," that was deployed in calculating the deliverable supply for all of these relevant markets was significantly interrogated, and appropriately so, by the DMO staff. So, again, not only with launching new contracts, but especially with a critical rulemaking like this, there was critical engagement making sure that they were comfortable with the methodology, which we deployed.

These markets are -- although you might say there are similar characteristics in determining deliverable supply, supply at the market center, production, flows, storage, crop yields, we had similar concepts. They're all different where it's appropriate to take haircuts. These were frankly, vetted, vetted very, very thoroughly as it pertains to this rulemaking, and as ongoing circumstance with new contracts, the Commission staff definitely dedicates resources to that, and we have active engagement and ongoing engagement with regard to open contracts.

We have position limit violations that are active. Echo the words. I mean, we've got some really good experts within the Agency who understand how the underlying markets work, and it's a complement to have that engagement with us when we're talking about what's happening in the markets we're monitoring.

COMMISSIONER STUMP: Thank you. I don't have any other questions.

CHAIR WIGGINS: Okay. Thank you. Any other comments or questions from our Commissioners?

COMMISSIONER TARBERT: This is Chairman Tarbert. I just -- before we leave the call, I just wanted to thank everybody for the outstanding contributions today. As Chairman Berkovitz noted, many aspects of this rule are -- effectively call for a balance, whether it's the balancing how much speculation is extensive speculation. Where should we put the limits? What constitutes the definition of a "swap?" If it's too narrow, it won't capture things that are economically equivalent, but if it's too broad, it'll include things that can offset positions and actually facilitate corners and squeezes. The same is true with how do we divide up the duties between the exchanges and the CFTC itself, and how do we get that balance right?

So I feel like in every aspect of this rule, there's a balance, and in order to achieve the right balance, at least for this point in time and into the foreseeable future, we really count on the input from market participants and other concerned stakeholders, like all of you. And so this has been incredibly helpful for me personally as we go and think about finalizing this rule later this year. And I would encourage everyone to submit your comment letters in as best you can and include many of the comments that you've raised today. So I just want to thank everyone. Really appreciate it. It's really invaluable for me personally and, I'm sure, for the rest of my fellow Commissioners and the staff. So thank you so much.

CHAIR WIGGINS: Thank you, Chairman, and thank you all, Commissioners, for your comments and questions. Thanks also to all of the Members, the Associate Members, and the guest panelists, for all of the thoughtful comments and the thoughtful presentations today. We look forward to the ongoing work of the EEMAC and our next meeting date, which will be determined at some point in the future. I'll turn it back over to Abigail for closing remarks. Abigail?

MS. KNAUFF: Thank you, Dena. Chairman Tarbert, did you have any additional comments to close?

COMMISSIONER TARBERT: No. Just one thing, and that's that the really helpful I found was that I'm not sure anyone raised any issues that weren't raised in the rule in our proposal. So that's -- it's a least a good sign that while we haven't necessarily resolved all the issue, I feel as if we've got all the issues on the table. And, again, very grateful for everyone's contributions.

MS. KNAUFF: Thank you, Chairman Tarbert. I'll now recognize Commissioner Quintenz to give his closing remarks.

COMMISSIONER QUINTENZ: Thank you, Abigail. I don't have any closing remarks, but just thank everyone for their participation today. The comments were very helpful. The questions were very interesting. The discussion was very thought provoking. So thanks for making the time spent worthwhile.

MS. KNAUFF: Thank you, Commissioner Quintenz. Commissioner Behnam, would you like to give any closing remarks?

COMMISSIONER BEHNAM: Thanks, Abigail. No, no formal remarks, but I do want to thank you, of course, and Dena, and the Committee members, and the speakers. Really helpful day, as I said in the opening remarks. Tremendously important rule, challenging rule, and one that we all take very seriously, and trying, as has been said before, to balance both our statutory obligations, which are well known, but also the flexibility that we need to provide the market to enable both the DCMs, but also the commercial end users and the speculators to create these marketplaces that work effectively.

So looking forward to the comments in the next couple of weeks. Looking forward to more communication and getting this through the finish line. So thanks again to everyone for their participation, and a special thanks, Commissioner Berkovitz, as Sponsor of EEMAC. Thanks.

MS. KNAUFF: Thank you, Commissioner Behnam. Commissioner Stump, do you have any closing remarks?

COMMISSIONER STUMP: Thank you, Abigail. I thought it was a very great conversation. It highlighted a number of things that we have been discussing inside the Agency for quite some time. And I think it highlighted, once again, the complexity of applying a new Federal position limit regime for energy commodities, and that is, after all, what we're considering, an entirely new Federal position limit regime that does not today exist.

I think for those of us who've worked on this for quite some time, we take up where we left off in every conversation, and for the general public's benefit, I do think it's worth pointing out that this is a new regime of Federal position limits for energy contracts. And it's been a process that's taken over a decade, and we should acknowledge, too, the progress that has been made, whether it's the prior proposals or the experience from the exchange-administered position limits, we, as the current Commission, benefit from all of those iterations and discussions that have occurred to date. And we have built upon them, I believe. I think we are in the process of refining what we've learned through that process in an attempt to once and for all finalize this rule that has taken quite some time and many Commissioners to get to the point that it is today.

But the folks who really deserve the credit and the acknowledgement are the folks from the Division of Market Oversight. And so I just wanted to take the opportunity to thank them for having worked on this for over 10 years. And, again, I appreciate you all holding the discussion. I think it was quite worthwhile and extremely helpful, and I look forward to ongoing dialogue. Thanks again.

MS. KNAUFF: Thank you, Commissioner Stump. I now recognize Commissioner Berkovitz to give his closing remarks.

COMMISSIONER BERKOVITZ: Thank you, Abigail. I'd like to thank all my colleagues on the Commission -- Chairman Tarbert, Commissioners Quintenz, Behnam, and Stump -- for their participation and their support for the EEMAC. That's incredibly helpful for the success of the Committee that we have such great support on the Commission and the staff to support our activities. I also obviously thank all the folks on today's call. We've been on -- including the lunch break -- five hours, and I just thank everybody for your commitment in preparing the remarks and presenting them today.

As my colleagues have said, it's really, really important. We want to get this right. I want to get it right. We need to get it right for you and for the markets to work properly. So I express my commitment to getting it right, to getting the limits right, to getting the hedge exemptions right, to getting the process right, and, as a number have said, to get that appropriate balance, so going forward, whenever the thing is finished, we won't have to do it again for a while.

In other times, I would've reiterated my open-door policy, but these days, I have an open phone line policy. So I look forward to reading your comments when they're filed, and feel free to pick up the phone, and look forward to really understanding many of the nuances that were raised today.

One thing about the Commission's jurisdiction, since really recently, it's a reflection of Dodd-Frank, but really a reflection of the markets, too, the breadth of the markets that we oversee. I think as one of the -- as Trabue mentioned, like, the exchanges, it's really tremendous the various commodities. Each market has its own dynamics and energy and ag and metals, and even within any broad sector, each commodity within that sector has its own dynamics. It includes buying or selling, where it's delivered and all that, so it's very complex. Electricity and natural gas, oil, they all have different dynamics, and we're writing -- trying to write a rule that applies across the board that lends tremendous amount of complexity, and it's only through your expertise that we can get it right. But I believe we have the ability to get it right, and we have the commitment to get it right. And so we'll work towards that end.

So enough said by me, and I just want to thank you all, and thanks again to Dena, and Abigail, and the technical folks who made this possible. Be safe.

MS. KNAUFF: Thank you, Commissioner Berkovitz. As an amendment to the roll call earlier in the meeting, I am stating for the record that EEMAC Member Jackie Roberts and the following Associate Members are in attendance today: Matthew Agen, James Allison, Lael Campbell, Paul Cicio, Sean Cota, Daniel Dunleavy, Erik Heinle, Paul Hughes, Kaiser Malik, Robert Mork, Dr. John Parsons, Delia Patterson, Matthew Picardi, Michael Prokop, Malinda Prudencio, Dr. Richard Sandor, and Russell Wasson.

Thank you to all of the EEMAC Members and

Associate Members and guest panelists for your participation at today's meeting. Please stay well and keep an eye out for a survey for dates for the next EEMAC meeting.

The meeting is now adjourned. Thank you.

(Whereupon, at 2:57 p.m., the meeting was adjourned.)