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September 11, 2012

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

Re: *Petitions for Order Regarding the Reporting of Cash Market Commodity Activities if a Person Holds a Position in Excess of a Position Limit*

Dear Secretary Stawick:

On behalf of the Commodity Markets Council ("CMC"), Sutherland Asbill & Brennan LLP hereby submits this petition to the Commodity Futures Trading Commission pursuant to Section 4a(a)(7) of the Commodity Exchange Act.

CMC respectfully requests that the Commission take action on this petition as soon as possible. If you have any questions, please contact the undersigned.

Respectfully submitted

David T. McIndoe
Charity G. Allen
Counsel for the Commodity Markets Council

Enclosures

cc: Chairman Gary Gensler
Commissioner Jill Sommers
Commissioner Bart Chilton
Commissioner Scott O'Malia
Commissioner Mark Wetjen
Dan Berkowiz, General Counsel
Kenneth Danger, Division of Market Oversight

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

	)	
The Commodity Markets Council	)	**Docket: Not Assigned**
	)	

PETITION FOR

ORDER REGARDING THE REPORTING OF CASH MARKET COMMODITY ACTIVITIES IF A PERSON HOLDS A POSITION IN EXCESS OF A POSITION LIMIT

I. INTRODUCTION

Commodity Markets Council (the "Petitioner") hereby submits a petition to the Commodity Futures Trading Commission (the "Commission") pursuant to section 4a(a)7 of the Commodity Exchange Act (as amended, the "CEA").[1] The petition pertains to Part 151.5(c)[2] of the Commission's regulations (the "Regulations") which provides for reporting in connection with federal position limits for derivatives (Part 151 is referred to herein as the "Position Limits Rules").[3] Part 151.5(c) requires that any person holding a derivatives position in excess of a position limit must record and ultimately report information about such person's cash positions in the relevant commodity for *each* day that its derivatives position exceeds the applicable position limit (the "Daily Cash Position Recording Requirement").

The Petitioner respectfully requests that the Commission issue an order modifying the requirements of Part 151.5(c) such that a person with a derivatives position in excess of a position limit for Referenced Contracts (as such term is defined in the Position Limits Rules) on physical commodities (*e.g.*, agriculture, soft, and energy commodities)[4] report on Form 404 the cash positions such person held as of the last trading day of the month for the underlying Core-

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[1] 7 U.S.C. 6a(a)7.

[2] 17 C.F.R. § 151.5(c).

[3] *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71,626 (Nov. 18, 2011).

[4] The Petitioner believes that relief similar to that sought by this petition should be afforded to Referenced Contracts based on metals. However, such relief is not sought in this petition.

Referenced Futures Contract.[5] Accordingly, commercial firms would measure their respective cash positions on one day a month, as they currently do for Forms 204 and 304, and submit a monthly report, as currently provided in Part 151.5(c). Moreover, the Commission should specify that Part 151.5(c) requires a person to collect, organize, and retain information in a commercially reasonable manner, and not a more exacting standard, about its cash market positions and transactions in the relevant Referenced Contract's underlying commodity. Exhibit A is the requested order.

The Petitioner respectfully requests that the Commission take action on the petition immediately because the Position Limits Rules go into effect in less than 40 days.[6] The practical difficulties in gathering the detailed information required by Part 151.5(c) necessitate the implementation of new systems, often across several affiliated entities and multiple time zones. For market participants to complete the work necessary to comply with the requirements of the Position Limits Rules prior to the effective date of such rules, they must have sufficient notice of the full regulatory paradigm for position limits reporting.

While the Commission considers the petition, the Petitioner further requests that the Commission provide interim relief pursuant to section 4a(a)7 of the CEA from the Daily Cash Position Recording Requirement by a temporary order or other vehicle in the form of Exhibit A hereto. Such relief is necessary to prevent market participants from incurring significant costs in an effort to comply with the Daily Cash Position Recording Requirement.

Should the Commission, however, find that another course of action, such as the issuance of a regulation, is preferable and would afford the same degree of relief as the proposed order, the Petitioner supports the Commission taking such action quickly, *provided* that the Commission issues an interim order during any necessary notice and comment period. The Petitioner also requests that the Commission take any other actions that it deems necessary in furtherance of the relief sought under this petition.

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[5] If the day of expiry for a Referenced Futures Contract does not fall in a particular calendar month, then a party would measure cash positions as of the last trading day of such calendar month. Thus, the Commission potentially would receive a report every month.

[6] *Id.* at 71,632.

The Petitioner does not request confidential treatment for this petition and requests that the Commission post a copy of this petition and all related letters from other market participants on its website in a manner that such documents may be readily found by the public.

II. QUALIFICATIONS OF THE PETITIONER

Commodity Markets Council is an association of commodity futures exchanges and their industry counterparts. Members of the Petitioner will be subject to the reporting requirements of Part 151.5(c) should they hold a position in excess of a position limit in a Referenced Contract that is based on a physical commodity. The Petitioner has been an active participant in the rulemaking process, submitting several comment letters with regard to the Position Limits Rules and meeting with Commissioners and Commission staff on multiple occasions about such rules.[7] The Petitioner is fully qualified to make this petition on behalf of its membership.

III. AUTHORITY OF THE COMMISSION TO GRANT PETITIONS

The Commission has the authority to grant the petition under section 4a(a)7 of the CEA which reads, in pertinent part, "by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, . . . from any requirement it may establish . . . with respect to position limits." This petition concerns a filing requirement created by the Commission with respect to position limits. Thus, the Commission would be well within its powers to issue the requested order.

Issuing the proposed order is in the public interest. The Daily Cash Position Recording Requirement will create a material administrative burden on companies that have large commercial operations but are also active users of futures and swaps. That burden will significantly outweigh the benefits to the Commission and the broader marketplace. The Commission and its staff will also benefit from the relief sought in this petition. The Commission will receive an unprecedented amount of information about the swaps markets, which it has not previously regulated. The Commission benefits in receiving information that is being organized and delivered in a consistent, accurate manner.

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[7] March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33889.

Part 151.5(c) meets the Commission's need "to determine a trader's daily compliance with position limits."[8] The order does not undermine this function. The relief provided for in the requested order would require delivery of information for the day in which position limits arguably are of most importance: the last day of trading for the applicable Core Referenced Futures Contract.

IV. DISCUSSION OF THE PETITION

This petition seeks procedural relief. It concerns the time and manner in which the Commission receives information about a commercial firm's physical business, specifically the physical commodities such firm owns. It is a petition that seeks a rational balance between the policies underlying the Position Limits Rules and the pragmatic considerations of commercial enterprises to comply with such rules. Commercial firms are willing to report the categories of information about their physical, futures and swaps positions that Part 151.5(c) currently requires. This petition merely seeks relief such that commercial firms measure and report in a manner and frequency that is (a) commercially reasonable, (b) realistic about the margin of error inherent in collecting such information across complex businesses, and (c) cognizant that Form 404[9] is an evolving form and the manner in which it will be reported electronically to the Commission has not yet been fully established or tested.

Commercial interests, the vast majority of which engage in hedging activities, largely bear the burden under the Daily Cash Position Recording Requirement. Yet, the core policy of the Position Limits Rules is to thwart negative market impacts caused by the trading of speculators. So, in effect, the Daily Cash Position Recording Requirement largely burdens a category of market participants that are not the true focus of the Position Limits Rules.

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[8] *Position Limits Rules* at 71,650.

[9] We note that Part 151.5(c) compels an entity to file Form 404 when (a) it holds a position in Referenced Contracts in excess of a position limit and (b) certain *bona fide* hedging transactions represent that excess. Not among the identified *bona fide* hedging transactions are anticipatory hedges. However, the instructions to Form 404 state that an entity should file a Form 404 when any part of an excess "constitute[s] bona fide hedging positions as defined in regulation § 151.5," without a distinction for anticipatory hedges. The Commission should clarify that, if the excess above a position limit might be composed entirely of anticipatory hedges, an entity need not file a Form 404 until any portion of such excess is a non-anticipatory hedge.

Several market participants, during the Position Limits Rules comment period, made the Commission aware of significant concerns with the reporting requirements in Part 151.5(c).[10] Commenters agreed that the daily recording and reporting requirements were overly burdensome to market participants, particularly to those who continually need to exceed the Commission's position limits in order to hedge their commercial activity. Additionally, some commented that the reporting requirements for federal position limits were unclear, as the Commission has yet to publish the relevant reporting forms for notice and comment or established protocols for the automated submission of reports and supporting data. The Commission did relieve a portion of the technical challenges by reducing the frequency of *reporting* to one day.[11] However, the Commission did not discuss or otherwise support the requirement to *measure* cash position for each day a person held a position in Referenced Contracts in excess of a limit. Thus, the Commission has not foreclosed further consideration of the Daily Cash Position Recording

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[10] Cargill. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33503&SearchText=cargill.

Coalition of Physical Energy Companies. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33833&SearchText=perlman.

Dairy Farmers of America, Inc. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33943&SearchText=dairy%20farmers.

Edison Electric Institute ("EEI") and Electric Power Supply Association ("EPSA"). March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33883&SearchText=eei.

Futures Industry Association, Inc. ("FIA"). March 25, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=34054&SearchText=fia.

Gavilon. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33679&SearchText=gavilon.

ICE Futures U.S. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33801&SearchText=ice%20futures.

Intercontinental Exchange, Inc. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33954&SearchText=trabue.

International Swaps and Derivatives Association, Inc. ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA"). March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33568&SearchText=isda.

The Utility Group. March 28, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33825&SearchText=utility%20group.

Working Group of Commercial Energy Firms ("Working Group") and Commodity Markets Council ("CMC") (collectively, "Commercial Alliance"). June 5, 2011 – Position Limits for Derivatives http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=48129&SearchText=cmc.

[11] *Position Limits Rules* at 71,650.

Requirement. The Petitioner further discusses the challenges in the Daily Cash Position Recording Requirement in an effort to work with the Commission to design and implement a regulatory scheme that is workable for both the Commission and commercial interests.[12]

A. Compliance with the Filing Requirement in Part 151.1(c) is Highly Impractical

The Daily Cash Position Recording Requirement found in Part 151.5(c) imposes upon commercial market participants a requirement to measure, keep records, and report that is largely unworkable. The Daily Cash Position Recording Requirement under Part 151.5(c) presents material and unprecedented logistical problems for commercial firms.

Simply measuring the cash positions is a significant challenge. Within any commodity portfolio, the underlying cash position is represented by thousands or millions of units that are constantly changing as a result of the buying and selling of physical commodities in moving products in commerce.[13] These portfolios experience high turnover or have very mixed composition. Moreover, positions may require manual or sophisticated measurements for accuracy. In some cases, volumes cannot be precisely quantified until monthly statements are provided by third-party transportation and storage providers. Companies that must aggregate the positions of multiple affiliates face an even greater burden, because information on physical stocks needs to be gathered from multiple independently-managed companies, some of which may have only partial common ownership.[14] For firms with operations in multiple time zones, a

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[12] The Petitioner notes that Part 151.6(c) also mandates that a market participant file Form 404 when it holds a net position in excess of a visibility level. Part 151.6(c) specifies that the information provided by the market participant is for positions held (a) as of the first business Tuesday following the calendar quarter in which the position exceeded the visibility level and (b) "as of the day, within the applicable calendar quarter, in which the person held the largest net position in excess of the level in all months." The Petitioner supports the limited measuring of cash market positions required in Part 151.6(c) as it strikes the proper balance between the policies underlying position limits and pragmatic considerations for commercial firms, as discuss above.

[13] For example, oil of various grades located in storage tanks, on board crude oil tankers and in pipelines is bought and sold every hour of the day around the world. Definitively quantifying physical stock levels of such energy commodities in an expeditious manner on a daily basis is not possible.

[14] The affiliates and their inventories may be located virtually anywhere in the world, and in many cases, there is no practical means for the physical inventory to be delivered to U.S. markets. One example of this occurs when natural gas is produced in Indonesia but owned by an independently managed affiliate, which transacts in Core Referenced Future Contracts due to its operations in another part of the world. Quantifying the volume of the Indonesian natural gas for purposes of submitting an aggregated Form 404 would be costly, with no offsetting benefit to the U.S. markets.

firm must design a process to coordinate many legal entities to measure physical positions at meaningfully similar times and convey and process that information on a daily basis.[15] These practical considerations are at odds with the Daily Cash Position Recording Requirement, which implies that such determinations must be done accurately and quickly enough to meet the stricture of daily cash position reporting.[16]

The technical challenge of implementing the Daily Cash Position Recording Requirement extends beyond the measurement and reporting of dynamic cash positions, but also includes adjusting to changes in the Referenced Contracts, which may also occur frequently throughout a day. The adjustments might occur among many different contracts, which may misalign a commercial firm's physical portfolio from its financial portfolio on a highly correlated basis in terms of specific durations.

Any assumption that market participants have the monitoring and trading systems in place that can capture and compile information with the requisite granularity on a daily basis is unfounded. To capture and collate such information on a daily basis, commercial firms will have to design, test, and implement systems that would access multiple entities for futures, cleared swaps, bilateral swaps, and physical positions. This will require the development of technology that does not currently exist sufficient to meet the requirements of Part 151.5(c). In the absence of such technology, the assimilation of information as required by the Daily Cash Position Recording Requirement must be done manually, with associated costs and risks of errors.

B. The Daily Cash Position Recording Requirement Applies to Information of Uncertain Regulatory Value

In application, the Daily Cash Position Recording Requirement will force commercial firms to expend significant resources to record and report information that is of uncertain value to the Commission in monitoring position limits. The most important information regarding position limits is found in the final days of trading of a Core Referenced Futures Contract. This

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[15] The Petitioner acknowledges that the Position Limits Rules permit a firm to designate a specific time at the end of their business day to facilitate reporting when a firm has a global footprint.

[16] Commercial firms typically do not track physical stocks on a daily basis with a high degree of precision. Such information is simply not needed to manage their businesses. Many firms quantify and reconcile their inventories at month end, and are accustomed to small differences between "book" and actual volumes.

is the point at which the futures contract price and the cash commodity price are expected to converge. Thus, information about derivatives positions or cash positions away from the final days of trading is of uncertain value.

Often, the Daily Cash Position Recording Requirement provides that a firm must submit information about cash positions held well in advance of the last days of trading. Moreover, due to the definition of spot month, a firm effectively must record and report cash positions for each day in an entire month for certain Referenced Contracts. For example, the CME Class III Milk contract, which settles monthly, has a spot month that starts on the first day of trading in the contract month and terminates on the last day of trading, which traditionally falls at the end of the month. Thus, if a party held a position in Referenced Contracts in excess of the position limit during the initial days of the month, perhaps because the firm hedges a large physical position, that firm would have to record and report its cash positions in those early days. Yet, the value of such information to the regulator, or the markets generally, is uncertain.

The low utility of information about cash positions away from the last days of trading for a derivatives contract is even more apparent when put in the context of any and all-month position limits. The Daily Cash Position Recording Requirement might potentially apply even though the applicable Core Referenced Futures Contract does not settle until several months, or possibly years, later. For certain firms that are highly dependent on the futures markets and the broader swap markets to hedge large cash positions, and who may continually hold hedge positions in excess of the position limits, Part 151.5(c) effectively would require recording of cash positions for every business day of the year.

Even if the Commission grants this Petition and limits cash record keeping to one day per month, the Commission will lose no visibility with respect to derivative positions in the markets. The Commission will receive information about such swap positions from DCMs, SEFs, and SDRs. Under current regulations, the Commission may at any point request to see the data to support the listed futures or cash market positions. This structure mirrors the well-known reporting requirements for Forms 204 and 304, as discussed below. Thus, if the Commission has a question about large positions in the markets, it will still have access to information about a firm's related cash position. However, under the proposed order, instead of market participants submitting information that the Commission may not need, the Commission should exercise its existing authority to receive only the information it truly can use.

C. The Order Addresses the Absence of Technical Reporting Standards in a Commercially Reasonable Manner

The new requirements of the Daily Cash Position Recording Requirement contemplate an automated process for reporting. Yet, to date, the Commission has not proposed a detailed process for the collation and electronic submission of the data required by Part 151.5(c). In fact, the Commission has not finalized the format, content or manner in which Form 404 is to be submitted in electronic form to the Commission. Until such time the Commission establishes a uniform reporting standard, commercial firms are unable to commence with designing, testing and implementing the necessary systems to properly comply.

Compliance requires firms immediately begin manual reporting processes (to be run daily). To meet this requirement, commercial firms must expend resources to design, build and test systems to unspecified requirements. Manual submission of a report as contemplated by the proposed order ensures that the Commission is not inundated with a plethora of data varying in content, presentation and calculation basis that is of limited utility to the Commission, while still providing essential information as to the physical market position relating to the position held in excess of a Position Limit in a Referenced Commodity.

Even after automated reporting system for reporting cash positions under Part 151.5(c) has become operational, the Commission should provide a transitional process by which firms might build and test their systems to interface with the Commission's system. Because the Commission is moving the market from what historically have been manual processes to automated processes, meeting the automated reporting standards will be a significant undertaking. For example, many of the market participants use more than one information system to record physical and derivative positions. It will take some time for firms to ensure they report timely and accurately. The Commission should provide for this transitional period, particularly to the extent that the Commission's other rules under the Dodd-Frank Act require certifications as to compliance with the position limit regulations.

D. The Daily Cash Position Recording Requirement Represents a Drastic Departure from Current Market Practice in the Agricultural and Energy Markets

Agricultural firms have experience with cash position reporting. Largely, such firms would be comfortable with a close analog to such reporting requirements under the new federal Position Limits Rules. However, the Daily Cash Position Recording Requirement is not such a close analog and represents a significant new paradigm for reporting cash market positions.

(i) Agricultural Markets

Currently, all persons (a) holding or controlling reportable positions in the grain (including soybean) or cotton markets, any part of which constitutes a *bona fide* hedging position, or (b) holding or controlling reportable positions in the grain or cotton markets and who have received a special call from the Commission, are required to submit data to the Commission on Forms 204[17] and 304,[18] respectively, pursuant to Part 19. These forms convey information about a person's cash market positions on *one* day of the relevant data collection month.[19] In addition, for a trader holding or controlling a reportable futures or option position in a commodity, the Commission may also make a special call for "any pertinent information concerning" all positions and transactions in the cash commodity, its products and byproducts, and all commercial activities that the trader hedges in the futures or option contract in which the

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[17] A person filing Form 204 is required in Part I thereof to identify, in terms of the futures market used for hedging, its entire quantity of cash stocks owned and open fixed-price cash purchases and cash sales of the underlying commodity (and its products and byproducts), as well as any additional cash commodities for which any "cross-hedging" has been undertaken, each in 1,000-bushel equivalents. Where "cross-hedging" of an additional cash commodity has taken place, Part II of Form 204 requires the reporting of the entire quantity of cash stocks owned and open fixed-price cash purchases and cash sales of the commodity "cross-hedged" in terms of the actual commodity.

[18] A person filing Form 304 is required in Part I thereof to identify its total cash position in certain enumerated categories of cotton, including the quantity of its open fixed-price cash purchases and cash sales of cotton and cotton products. Where "cross-hedging" of another commodity has been undertaken in cotton futures, the entire quantity of stocks owned and open fixed-price purchases and sales of that other commodity must also be reported having been converted into a cotton futures equivalent. Where "cross-hedged" commodities are included in Part I, Part II of Form 304 also requires the reporting of the entire quantity of stocks owned and open fixed-price purchases and sales of that other commodity, but in terms of the actual commodity. Part III of Form 304 requires the reporting of unfixed-price cotton "on-call" held by cotton merchants and dealers holding or controlling reportable positions.

[19] 17 C.F.R. § 19.01 (Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.) and § 19.02 (Reports pertaining to cotton call purchase and sales.).

trader is reportable in a form acceptable to the Commission.[20] The current reporting practices on Forms 204 and 304 are not automated processes, and firms often prepare the reports through a manual process.

In stark contrast to the prevailing practice in the agricultural markets that focuses on the reporting of such person's cash market positions and which has allowed the reporting of hedging activities on a portfolio basis, Part 151.5(c) requires the reporting of the quantity of long and short Referenced Contracts in the nearby contract month that are being used to hedge the long and short cash market position. Part 151.5(c) also requires reporting of the total number of long and short Referenced Contracts that are being used to hedge the long and short cash market positions. Furthermore, where any cross-hedging has occurred in that Referenced Contract, the reporting person must also provide on the first occasion such a cross-hedge is claimed, a detailed description of the methodology adopted for converting the actual commodity used in the person's course of business to the Referenced Commodity being used for hedging (the "conversion ratio").

These new requirements represent a significant departure from the tailored approach to reporting cash market positions and hedging activity that is the current practice in the agricultural markets and which is well known to market participants. Moreover, while the methodology applied to reporting cash positions in the grain and cotton markets set out in Forms 204 and 304, respectively, provides some basis for determining whether the futures positions of traders that exceed the Commission's speculative limits qualify as *bona fide* hedging positions or transactions, the complexity of the reporting requirements in Part 151.5(c), the methodology for determining futures equivalence, and the delegation of responsibility for articulating the rationale underpinning the conversion ratio in relation to cross-hedges to the person reporting, suggests that the resulting reports will lack sufficient homogeneity—be this the result of differing calculation methodologies or the inaccuracies or insufficiencies in the underlying data—to be of real utility to the Commission.

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[20] 17 C.F.R. § 18.05.

(ii) Energy Markets

While the energy markets have no equivalent of Form 204 and From 304, energy market participants have long been required to respond to inquiries by Designated Contract Markets ("DCMs") with respect to positions held in energy-related futures contracts traded on the relevant exchange and file Form 40 with the Commission.[21] These forms do not require the reporting of daily cash positions for multiple days. In responding to such inquiries, market participants must justify the nature and size of their futures position and do so by referencing their hedging position to their overall underlying physical position and trading strategy. There is no requirement to tie the hedging position on a one-to-one basis with the underlying physical position, which would be impractical. Instead, DCMs' inquiries are focused on assessing whether the futures position held is appropriate given the underlying book. Where the DCM is not satisfied, it can direct the market participant to reduce its position. This process, which seeks to assess the futures position in the context of the overall book of underlying physical positions and not solely the spot-month position, has worked well.

E. The Daily Cash Position Recording Requirement Exposes Market Participants to Potential Liability for Reporting Errors

Part 151 contains no indication of the legal standard to be applied to the collection, maintenance, and reporting of the data required to be filed on Form 404 with the Commission pursuant to Part 151.5(c). Arguably, any person required to file Form 404 is held strictly liable for the information contained therein. Given the complexity of and logistical difficulties involved in collating the requisite data, the Petitioner believes that it is unreasonable to apply such an onerous standard. As a result of the quantity of data involved, the multiplicity of

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[21] *See, e.g.*, NYMEX Rulebook, Rule 560-Position Accountability Levels that states, in pertinent part:

> [NYMEX] may, at any time, require a person who owns or controls positions in contracts traded on or cleared by the Exchange and which are subject to position limit or position accountability rules to provide information relating to such person's position. . . . Upon request . . . , such person shall provide information relating to the positions owned or controlled by that person including, but not limited to, the nature and size of the position, the trading strategy employed with respect to the position, and hedging information, if applicable. If the person from whom such information is requested fails to provide the information as directed, [NYMEX] may order the reduction of such position.

reporting entities and the technological difficulties involved in collating such information, it is likely that the resulting data will contain inaccuracies and insufficiencies.

The Petitioner therefore respectfully suggests that the collection, maintenance, and reporting of daily cash positions and the additional data required under Part 151.5(c) should be held to a "commercially reasonable" standard only. Such a standard is in accordance with existing technological standards, and reflects the inherent difficulties of collating information across multiple time zones, legal entities, and trading books. Rather than strict liability attaching to filings under Part 151.5(c), persons required to report thereunder would instead be liable for inaccuracies or insufficiencies in the data recorded and reported only where there is a showing of lack of commercial reasonableness on their part.

V. REQUEST FOR ORDER AND INTERIM RELIEF

The Petitioner hereby petitions the Commission to issue an order in the form of Exhibit A. The Petitioner also requests that the Commission provide market participants with interim, temporary relief from the requirements of Part 151.5(c) while it considers this petition.

VI. CONCLUSION

The Petitioner respectfully requests that the Commission grant this petition as set forth herein. The Petitioner would welcome any inquiries or opportunities to assist the Commission in advancing this petition.

Respectfully submitted,

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Commodity Markets Council

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Exhibit A

Order regarding the reporting of cash market commodity activities if a person holds a derivatives position in excess of a position limit

If a person holds a position in a Referenced Contract (a) that exceeds a position limit established pursuant to Part 151.4 in such Referenced Contract and (b) which Referenced Contract refers to a physical commodity (*e.g.*, agricultural, soft or energy commodities), then such person shall report the information identified in Part 151.5(c)(1)(i)-(viii) on form 404 for the cash market positions the person holds on last trading day of the month for the underlying Core-Referenced Futures Contract. A person shall use commercially reasonable efforts to collect, keep records and report of the information set forth in Part 151.5(c)(1)(i)-(viii) and retain such records in accordance with Part 1.31.