Christopher Kirkpatrick May 15, 2020
Secretary of the Commission
Commodity Futures Trading Commission ("CFTC" "Commission")
Three Lafayette Centre, 1155 21st Street NW
Washington, D.C. 20581

Proposed Rule: Position Limits for Derivatives[1] (PR 2020)
RIN 3038–AD99

Submitted electronically to CFTC Comments Portal: https://comments.cftc.gov

Dear Mr. Kirkpatrick,

The Institute for Agriculture and Trade Policy (IATP) appreciates the opportunity to comment on the PR 2020.[2] IATP first commented on the proposed position limit rule authorized by the Commodity Exchange Act (CEA), as amended by the Dodd Frank Wall Street Reform and Financial Consumer Protection Act of 2010 ("Dodd Frank"), on March 28, 2011.[3] IATP has continued to comment on the re-proposals and supplements to the re-proposals of the position limit rule, as well as on the proposals to aggregate positions.

To summarize and simplify our views: adequate speculation by non-commercial entities provides necessary liquidity to enable the commercial entities involved in producing, warehousing, transporting, processing and retailing of physical commodities to discover prices and manage price risks in those commodities. Excessive speculation by non-commercial entities provides a flood of capital that disrupts price discovery and inhibits effective price risk management.[4] The CEA authorizes the Commission to carry out the difficult tasks to prevent, diminish and eliminate excessive speculation, as well as different forms of market manipulation.

In PR 2020, the Commission concludes its extremely concise history of the position limit and position aggregation rulemaking struggle on this note: "After reconsidering the prior proposals,

[1] https://www.cftc.gov/sites/default/files/2020/02/2020-02320a.pdf
[2] IATP is a non-profit, 501 (c) (3) non-governmental organization, headquartered in Minneapolis, MN with offices in Washington, D.C., Hallowell, Maine and Berlin, Germany.
[3] https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33809&SearchText=Institute%20for%20Agriculture%20and%20Trade%20Policy
[4] E.g. Steve Suppan, "Phantom Liquidity and Agricultural Price Shocks," Institute for Agriculture and Trade Policy, May 11, 2016. https://www.iatp.org/blog/201605/phantom-liquidity-and-agricultural-price-shocks

2105 FIRST AVENUE SOUTH 110 MARYLAND AVE NE, SUITE 307
MINNEAPOLIS, MINNESOTA 55404 WASHINGTON, D.C. 20002
(612) 870-0453 (202) 543-8602

including reviewing the comments responding thereto, the Commission is withdrawing from further consideration the 2013 Proposal, the 2016 Supplemental Proposal, and the 2016 Re-proposal." (Federal Register ("FR") Vol. 85. No. 39, February 27, 2020) Notwithstanding this withdrawal decision, the CEA authorities, as amended by Dodd Frank, and market events and practices that result in opportunities for market manipulation and excessive speculation in physical derivatives contracts, dictate that the PR 2020 cannot and should not be analyzed in isolation.

When the Commission developed the term sheet for PR 2020, the regulatory and market environment appeared to be Business as Usual (BaU). Indeed, if you trusted conventional macro-economic and business indicators, the overall economy appeared to be "strong." The Commission will be deliberating this and other rulemakings during the National Emergency whose economic consequences are very unlikely to result in a return to BaU. The Commission is rightly extending COVID-19 related regulatory relief to market participants and issuing staff advisories to exchanges and market participants to mitigate disorderly market events, e.g., the May 13 advisory on the West Texas Intermediate (WTI) crude oil contract.[5] But these short term measures, however necessary, will not prevent an increasingly scale and frequency of disorderly market events unless the Commission regulates robustly contracts, market participants and exchanges. A rulemaking BaU likely will contribute to more frequent market events, some of them posing systemic financial and market risks. IATP urges the Commission not to treat this and other rulemakings during the National Emergency as items to be checked off on the schedule of a regulatory agenda.

General comment on the market and regulatory context of finalizing the position limit rule

In April, both the CFTC and the Securities Exchange Commission praised the computer infrastructure and market resilience in the ad hoc "stress test" of extreme price volatility in derivatives and equities markets.[6] "Circuit breakers" worked to prevent a repeat of the disastrous and disorderly 2010 Flash Crash price collapse. New margin collateral requirements reduced the impact of contract defaults on market stability. Nevertheless, at least four years after commodity traders in live cattle futures criticized the Commission over the impact of unregulated automated trading on the market's price discovery resiliency,[7] Chairman Heath Tarbert announced "a livestock markets task force that is monitoring in real time contracts such as Live Cattle, Feeder Cattle, and Lean Hogs" to determine if "traders are attempting to manipulate futures prices through disruptions caused by supply and demand shocks."[8] The takeover of cattle feedlots by financial assets managers in live cattle captive supply

[5] Gregory Meyer, "CFTC warns on the return to negative prices," *Financial Times*, May 13, 2020.
[6] Kadhim Shubber and Phillip Stafford, "US regulators praise market 'resilience' in March stress test," *Financial Times*, April 7, 2020.
[7] Meyer, "Cattlemen lock horns with futures exchange over market volatility," *Financial Times*, January 25, 2016.
[8] https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220

arrangements with meatpackers is one aspect of what IATP has called "New Beef Cattle (Derivatives) Math."[9]

If the Commission limits its livestock futures, options and swaps monitoring to searching for market manipulation based on supply and demand shocks from exchange supplied data, it is unlikely that the Commission will find market manipulation. Supply and demand are just two of many data points in the algorithms trading with other algorithms, designed without intentionality to manipulate markets. What disrupts cash and futures price convergence, commodity traders told the Commission at the 2018 and 2019 CFTC Ag Futures conferences, are algorithmic traders that preempt access to contracts needed by commercial hedgers to lay off risk.[10] Evidence from a 2018 Ag Futures presentation on "Market Concentration in the Wheat Merchandising Industry" showed that tinkering with Variable Storage Rates in the Chicago Mercantile Exchange (CME) wheat contract was insufficient to bring about price convergence, a critical factor in the forward contracting of agricultural commodities with grain elevators, stockyards and other first points of sale.[11]

IATP urges the Commission not to finalize a position limits rule before it has finalized an automated trading rule, so that commenters can advise the Commission on the interplay, synergy and overlap of the two rules. Joint deliberation would allow the Commission to incorporate the findings of the livestock markets task force and the CFTC investigation into the historic two-day price collapse and rebound of the WTI contract.[12]

"The Notice of proposed rulemaking: Aggregation of Positions" in 2014 states "the Commission's concern is that trading systems (in particular the parameters for trading that are applied by the systems) could be used by multiple parties who know that the other parties are using the same trading system as well as the specific parameters used for trading, and therefore are indirectly coordinating their trading." (FR, 68962)[13] Rather than finalize the position limits regime irrespective of its automated trading operational environment, this Commission should take into account the concern of the prior Commission about the impact of automated trading on the efficacy of the regime to prevent excessive speculation and market disruption.

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[9] https://www.iatp.org/blog/201801/new-cattle-math

[10] https://www.iatp.org/blog/CFTC-goes-to-heartland and https://www.iatp.org/blog/201905/regulating-agricultural-futures-markets-benefit-producers-processors-and-consumers

[11] https://legacy.farmdoc.illinois.edu/nccc134/conf_2016/pdf/Bekkerman_Taylor_NCCC-134_2016.pdf and https://www.k-state.edu/riskmanagement/agcon2019/Taylor.pdf

[12] https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement050720

[13] http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-27339a.pdf

A revolutionary challenge to the Commission's authority: the claim that the Commission must provide an antecedent empirical finding to show the "necessity" of each position limit prior to setting the limit level

The narrative order of PR 2020 is radically unorthodox. Rather than present, as is customary[14], the statutory analysis in which the Commission's rulemaking authority is grounded at the outset of the proposed rule, the PR 2020 statutory analysis is presented near the end, just before "Related Matters." This peculiar narrative order allows the Commission to invoke throughout the PR its interpretation of CEA section 4(a) to require an antecedent empirical finding of the "necessity" to initiate a rulemaking on position limits. However, PR 2020 does not demonstrate how an antecedent finding would be determined and how such a determination would be used in setting spot and non-spot month position limits for each referenced contract in the proposed rule.

IATP agrees with Commissioner Dan Berkovitz's dissent to releasing PR 2020 for comment, particularly regarding the Dodd Frank amendments to CEA Section 4(a):

> In light of the run up in the price of oil and the financial crisis that precipitated the legislation, it is unreasonable to interpret the Dodd-Frank amendments as creating new obstacles for the Commission to establish position limits for oil, natural gas, and other commodities whose significant price fluctuations had caused economic harm to consumers and businesses across the nation. The Commission's interpretation is revisionist history. The Commission's necessity finding that follows its legal analysis is sure to persuade no one. Unless substantially modified in the final rulemaking, it will likely doom this regulation as ''arbitrary, capricious, or an abuse of discretion'' under the APA [Administrative Procedures Act]. The necessity finding for the 25 core referenced futures contracts selected for this rulemaking boils down to simplistic assertions that the futures contracts and economically equivalent swaps for these contracts ''are large and critically important to the underlying cash markets." (FR 11744)

IATP, as a non-profit organization without a consumer or agricultural producer membership base, would not have the standing to challenge PR 2020's statutory analysis in U.S. federal court. However, as an organization that works with agricultural producer groups and is a member of membership based groups, such as Americans for Finance Reform, TransAtlantic Consumer Dialogue and the National Sustainable Agriculture Coalition, we do have an interest in showing to our membership groups that price discovery in Commission regulated contracts is not vulnerable to market manipulation or excessive speculation because of legal vulnerabilities in Commission rulemakings and impediments to effective trade data surveillance and enforcement that follow from those vulnerabilities.

[14] E.g. as in the 2016 proposed position limit or indeed, the 2020 proposed rule on the cross border application of swaps requirements, https://www.cftc.gov/sites/default/files/2020/01/2019-28075a.pdf.

When the CFTC reached a settlement with Kraft Mondelez in March 2019 concerning position limit violations and excessive speculation in the Chicago Board of Trade's (CBOT) soft red winter wheat contract,[15] we applauded. But then we wondered how could the CBOT position accountability monitoring have failed so egregiously to warn Kraft Mondelez that it had exceeded its exchange set position limits? Did the settlement, sealed by a U.S. federal judge in Chicago, include any penalties for the CBOT for failing to enforce its CFTC delegated position limit authority? How can the terms of a $16 million settlement with no "bad actor" reporting and recordkeeping requirements persuade other market participants not to follow Kraft Mondelez' bad example, if those terms are sealed by court order? [16] Will the CFTC pull from its website future Commissioner statements about its enforcement actions, as it did with Commissioner Berkovitz's and Rostin Behnam's statements in the Kraft Mondelez case?[17] These are not merely questions about a single case, but about whether the Commission will be able to enforce effectively, i.e., with sufficiently dissuasive penalties and public comment by the Commission, the much higher spot month and non-spot month position limits proposed in PR 2020.

PR 2020 argues that the CEA, as modified by Dodd Frank, requires the Commission to demonstrate *a priori* the "necessity" of setting a federal position limit in each referenced contract. In effect, the Commission would adopt the legal argument of the plaintiffs in ISDA (International Swaps and Derivatives Association) and SIFMA (Securities Industry and Financial Markets Association) v. CFTC. For example, according to Judge Robert L. Wilkins, "Moreover, Plaintiffs do not appear to contest that the CFTC may impose position limits prophylactically, 'so long as it makes an informed determination that there is a reasonable likelihood that excessive speculation will pose a problem in a particular market, and that position limits are likely to curtail it without imposing undue costs.' (Dkt. No. 45 at 2)."[18]

ISDA/SIFMA would require the Commission to "make an informed determination" about estimated deliverable supply data that it cannot require Designated Contract Markets (DCMs) to submit prior to a rulemaking process. Furthermore, the Commission would have to determine the likelihood that a specific limit would curtail excessive speculation in a specific market before the federal position limit was set and implemented by the exchanges in their position accountability monitoring. And even if it were empirically and logically possible to establish this likelihood, the Commission would be allowed to exercise its position limit setting authority if and only if it did not impose "undue costs" on market participants. These are such extreme restraints on the Commission's authority to set position limits prophylactically as to make the Commission's implementation and enforcement of that authority nigh to impossible.

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[15] Meyer, "CFTC settles market manipulation against food groups," *Financial Times*, March 25, 2019.
[16] Shubber and Meyer, "US judge slams CFTC over market manipulation case, *Financial Times*, February 14, 2020.
[17] Meyer, "US regulator pulls disputed public statements from its website," *Financial Times*, August 19, 2019.
[18] https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv2146-69 at 23.

The Commission's undue concern about cost to market participants of complying with PR 2020 extends to the costs of non-compliance:

> The Commission preliminarily acknowledges that there may be costs to market participants if the Commission revokes the hedge recognition for federal purposes under proposed § 150.9(f). Specifically, market participants could incur costs to unwind trades or reduce positions if the Commission required the market participant to do so under proposed § 150.9(f)(2). However, the potential cost to market participants would be mitigated under proposed § 150.9(f) since the Commission would provide a commercially reasonable time for a person to come back into compliance with the federal position limits, which the Commission believes should mitigate transaction costs to exit the position and allow a market participant the opportunity to potentially execute other hedging strategies. (FR 11693)

If a market participant's use of a Commission recognized bona fide hedging exemption is so unrelated to the participant's demonstrable commercial hedging that the Commission revokes the exemption, the Commission's first concern must be to ensure that the market participant reduces the positions taken through the use of the non-compliant exemption. The transaction and other costs to the market participant of non-compliance are the price of non-compliance and not costs that the Commission should prioritize for reduction. The Commission must not consider the market participant costs of non-compliance or, indeed, of compliance as ISDA/SIFMA's et al. "undue costs." These costs are the price paid for the benefits of an orderly market capable of absorbing, rather than amplifying, endogenous shock to the financial system, as well as exogenous shocks, such as climate change and COVID-19.

CEA Sec. 4 a), as amended by Dodd Frank, is a categorical injunction that gives the Commission the mandate and the discretion about when to set a position limit with the cooperation of the relevant DCM that provides the Deliverable Supply Estimate (DSE) from which the position limit is derived. Judge Wilkins wrote in 2012, "The plain text of the statute requires that position limits be set "as the Commission finds are necessary to diminish, eliminate, or prevent [excessive speculation]." [USC] § 6a(a)(1). The text does not state (nor has it ever) that the CFTC may do away with or ignore the necessity requirement in its discretion."[19] The Judge's careful grammatical and semantic parsing of the statute does not rule on the temporal order and process according to which the Commission sets a position limit level. The Commission cannot establish a priori the necessity of a specific position limit for a referenced contract nor, indeed, revise a prior specific limit before it receives and verifies the DCM's DSE from which both spot month and non-spot month limits are calibrated. That was the case in 2012 for the 28 proposed referenced contracts, 19 of which had never been subject to federal spot month limits: That is the case in 2020 for the 25 proposed referenced contracts, 16 of which have never been subject to federal position limits.

[19] Ibid., at 17.

Federal position limits: what is not counted and why it matters

On April 28, the Commitment of Traders reported that Commodity Index Traders (CITs) held more than one-third of the long CBOT Soft Red Winter Wheat open interest (156, 299 of 482,802 contract positions).[20] Yet in the PR 2020, CITs positions are explicitly excluded as a referenced contract. (FR 11598) Public interest groups, led by Better Markets, have long called for CIT positions to be defined as referenced contracts in the position limits regime. Better Markets has also provided the Commission with analytic papers justifying why CITs must be subject to position limits, just as non-index speculators are.

For example, one paper analyzing CIT positions in six referenced contracts stated, "CIT activity and the activity of speculative market participants trading ahead of this activity, which is large, recurrent, and motivated primarily by investment mandate, is precisely the type of trading which could minimize the effectiveness of arbitrage forces that are supposed to act to restore the relationship of futures pricing to supply and demand-based fundamentals."[21] Because CITs have the strategies, technology and weight of money to reduce the efficacy of price discovery arbitrage based on market fundamentals, the Commission must define CIT positions as a referenced contract. Otherwise commercial hedgers without the resources to pursue CIT like strategies will be legally disadvantaged to the detriment of producers and consumers, who depend on commodity markets to efficiently and effectively manage price risks in both referenced and associated contracts.

PR 2020 provides two rationales for excluding CIT positions as referenced contracts. (Neither rationale explains why the Commission continues to collect CIT open interest data, if those positions are irrelevant to referenced and associated contracts.) First, the Commission states,

> [T]he proposed exclusion of commodity index contracts from the referenced contract definition would help ensure that market participants could not use a position in a commodity index contract to net down an outright position that was a component of the commodity index contract. If the Commission did not exclude commodity index contracts, then speculators would be allowed to take on massive outright positions in referenced contracts, which could lead to excessive speculation . . .. This would have the effect of subverting the statutory pass-through swap language in CEA section 4a(c)(2)(B), which is intended to foreclose the recognition of positions entered into for risk management purposes as bona fide hedges unless the swap dealer is entering into

[20] https://www.cftc.gov/dea/options/deaviewcit.htm

[21] David Frenk and Wallace Turbeville, "Commodity Index Traders: Boom and Bust in Commodity Prices," Better Markets, 2011, at 15. https://bettermarkets.com/sites/default/files/Better%20Markets-%20Commodity%20Index%20Traders%20and%20Boom-Bust%20in%20Commodities%20Prices.pdf

positions opposite a counterparty for which the swap position is a bona fide hedge. (FR 11620)

Such is the CIT swap dealer weight of money in an index fund contract that market participants can net positions in one or more fund component contracts and still be able to take massive outright positions in other fund component referenced contracts and associated contracts. Given the proposed vast expansion of bona fide hedge exemptions in PR 2020, a swap dealer will have little difficulty in circumventing the statutory pass-through swap language.

The second rationale is in a footnote: ”The Commission would be comfortable with this outcome [exclusion of CIT positions from the definition of referenced contract] because the commodities comprising the index would themselves be subject to limits, and because commodity index contracts generally tend to exhibit low volatility since they are diversified across many different commodities.” (FR 11620, footnote 159) As we explain through this comment, the doubling and more of limit levels in referenced contracts; the exchange granted exemptions of limit levels; the expansion in the number and definition of bona fide hedge exemptions to position limits in referenced contracts — all of these provisions are very likely to weaken the efficacy of the position limits regime to prevent excessive speculation. Price volatility in the CIT contracts may be relatively low, but depending on the index fund formula, price volatility within one or more of the component contracts in the index fund, e.g., oil and gas contracts, is likely to be very high.

CIT activities, whether in futures, options or swaps, and now conducted via trading algorithms, are price influential and most likely to be price formation disruptive because “Commodity Index Funds have a unique structure in which large volumes of futures market trading occurs at specific times *without regard to price considerations*.”[22] (italics in the original) The econometric studies that claim to show that CIT positions are irrelevant to price discovery do so only within an equilibrium framework whose proof is to correlate “the notional positions of index fund investors rather than the number of contracts or related measures” with daily futures returns in a referenced contract.[23] If you exclude the number of contracts controlled by CITs and “related factors,” such as the fund formula, trading strategy and the impact of the CIT weight of money on price volatility, you can “prove” what the econometric model, in all its theoretical simplicity and assumptions, sets out to prove. But commodity derivatives trading does not operate in the simplified world of econometric equilibrium theory. The Commission ill serves commercial hedgers, non-index speculators and the public if it claims that econometric studies “prove” that no regulation of CIT activities is necessary, particularly regarding the inclusion of CIT positions in the position limits regime.

[22] Ibid. at 8.

[23] E.g., James Hamilton and Jing Cynthia Wu, “Effects of Index Fund Investing on Commodity Futures Prices,” National Bureau of Economic Research, Working Paper 1989, February 2014, at 3. https://www.nber.org/papers/w19892.pdf

PR 2020 provides insufficient detail about the rationales for its position limit levels

The Commission provides an insufficient factual basis to explain how it concluded that the DCM recommended spot month position "Limit Levels Are Low Enough to Prevent Excessive Speculation and Protect Price Discovery" and "Limit Levels are High Enough to Ensure Sufficient Market Liquidity for Bona Fide Hedgers." (FR 11626) The Commission verified the DCM DSEs without explaining the verification process: "The Commission hereby verifies that the estimates submitted by the exchanges are reasonable." (FR 11626) Because there is insufficient detail, IATP finds it difficult to ask good questions about apparent inconsistencies among the different limit levels. We will try here to ask questions following from our rudimentary analysis of two DCM DSE reports.

The Commission did not make a "necessity finding" public prior to initiating rulemaking to determine each or any of the spot month limits for the 25 referenced contracts. Instead, as part of the rulemaking process, the Commission received both in *ex parte* communications with DCMs and in DCM submissions its methodologies and data for calculating the DSE for each of the referenced contracts for the proposed spot month limits. For example, the CBOT Kansas City Hard Red Winter Wheat (CBOT KC HRW Wheat) DSE for August 2018 (updated annually) concludes its analysis as follows: "the Exchange estimates the monthly deliverable supply over the past three years to be 88.02 million bushels or **17,604** contract equivalents (contract size: 5,000 bushels). The current spot month limit of 600 contracts represents **3.4%** of this estimated monthly deliverable supply."[24] (**bold** in the original) Per PR 2020, "The following proposed spot month limit levels, summarized in the table below, are set at or below 25 percent of deliverable supply, as estimated using recent data provided by the DCM listing the core referenced futures contract, and verified by the Commission." (FR 11599) The table would double the CBOT KC HRW Wheat spot month limit level from the current federal and exchange limit level of 600 contracts to 1200 contracts. The 1200 contract limit level is far below 25% of 17,604 contract equivalents, i.e., 4,401 contracts.

The Commission has the mandate and discretion to set federal spot month positions "as necessary," but it cannot do so arbitrarily without violating the APA. Five of the nine legacy agricultural contracts double the proposed federal spot month position limit from the existing 600 limit to 1,200 contracts. Do all these referenced contracts have a similar DSE that allows for uniform spot month limits in the five referenced contracts?

Consider the CBOT Corn DSE. "CBOT Corn futures are the global price discovery and risk management benchmark."[25] Following a detailed analysis of delivery points, seasonality, storage capacity and other factors, "the Exchange estimates the monthly deliverable supply

[24] https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62309&SearchText= at 4.
[25] https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62308&SearchText= at 1.

over the past five years to be 65.10 million bushels or **13,020** contract equivalents (contract size: 5,000 bushels). . . The current spot month limit of 600 contracts represents **4.61%** of this estimated monthly deliverable supply."[26] The proposed 1,200 contract federal spot month limit level for CBOT corn is well below 25% of 13,020 contract equivalents or 3,255 contracts. Therefore, CBOT Corn and CBOT KC HRW Wheat receive the same spot month limit levels although the wheat DSE exceeds the corn DSE by more than a thousand contracts.

The Commission does not provide any explanation for the proposed doubling or near doubling of the federal spot month limit level in the nine agricultural legacy contracts. Why is the spot month limit level set still not yet higher? Why are referenced contracts with significant differences in the DSEs assigned the same spot limit levels? The Commission does not explain the levels of the spot month limits for the 16 referenced contracts newly subject to position limits, although they double, triple, quintuple or, in the case of the ICE frozen orange juice pulp futures contract, increase by seven-fold existing exchange set spot month limit levels. (FR 11599) It appears that the Commission simply accepted the DCM recommendations for the new spot month limit levels.

Where are the non-spot month limits for the new referenced contracts in PR 2020?

The Commission's explanation about why it maintains or increases the level limits of single month and all month combined ("non-spot month") federal limits for nine agricultural legacy contracts is "to promote market integrity." (FR 11628) However, the 16 referenced contracts subject for the first time to federal position limits lack non-spot month limits. Would these contracts likewise not benefit from the "market integrity" of having non-spot limits and an explanation of their limit levels? The Commission explains the decision not to apply non-spot month limits to the 16 reference contracts by trusting both the DCM accountability regimes for those contracts and the Commission's experience in monitoring those regimes.

The Commission summarizes the DCM and market participant argument: "Layering federal non-spot month limits for the 16 additional contracts on top of existing exchange-set limit/accountability levels may only provide minimal benefits, if any, and would forego the benefits associated with flexible accountability levels, which provide many of the same protections as hard limits but with significantly more flexibility for market participants to exceed the accountability level in cases where the position would not harm the market." (FR 11629) Given the recent notable failures of exchange accountability regimes and resulting position limit violations, IATP hopes, but doubts, that in aggregate, the Commission's agreement with the DCMs is well founded.

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[26] Ibid at 5.

Commissioner Dawn Stump provides an explanation for increasing the non-spot month limit formula in the nine agricultural legacy contracts:

> Open interest has roughly doubled since federal limits were set for these markets, which has made the current non-spot month limits significantly more restrictive as the years have gone by. Nevertheless, I appreciate that such a change to established limits may raise concern. I am therefore pleased that the proposal includes a question asking whether the proposed increases in federal non-spot month limits should be implemented incrementally over a period of time, rather than immediately at the effective date. (There is additionally a question seeking input on the impact of increases in non-spot month limits for convergence that is of great interest to me.)
> (FR 11739)

Before asking whether to phase in the proposed non-spot month limits over time or allow them to go into effect immediately after the finalization of the proposed rule, there are other questions to ask:

1. Did the open interest roughly double in each of the legacy agricultural contracts or in those contracts in aggregate?
2. Did the open interest roughly double because of commercial hedger participation, traditional speculator participation or CIT participation?
3. For whom were the non-spot month limits "significantly restrictive"? Did commercial hedgers complain to the Commission that the non-spot month limits restricted liquidity to enable them to hedge in specific agricultural legacy contracts?
4. If CIT liquidity is required for price discovery and effective price risk management for commercial hedgers, why are CIT positions not included as a referenced contract subject to spot month and non-spot limits?
5. What empirical testing did the Commission undertake to determine that it could rely on the exchange determined non-spot month limits and exemptions to those limits, e.g., in the position limit associated WTI crude contract, to prevent, diminish and eliminate excessive speculation?

When these and related questions can be answered to justify the proposed non-spot month agricultural legacy contract limits, then we can better answer Commissioner Stump's important parenthetical question. For the moment, IATP can only opine that it is prudent to phase in new non-spot month limit levels so that the Commission can acquire data and experience with how the new federal non-spot limits are working for the commercial hedging of those legacy contracts.

Commissioner Stump's question regarding the impact of doubling the non-spot month limit for the agricultural legacy contracts on futures and cash price convergence is a difficult one to answer unless you believe, as IATP does not, that current convergence failure in live cattle and wheat futures will be resolved simply by more tinkering with the contract design, e.g., by changing the Variable Storage Rate (FR 11676, footnote 575) or by incorporating optional delivery points into the contracts. Instead, the Commission should consider the convergence impact on price discovery of doubling (and more) the spot month limits for all 25 contracts; increasing the non-spot limit for the agricultural legacy contracts and vastly expanding bona fide hedging exemptions to both federal and exchange set position limits (discussed below).

Position limit setting in PR 2020 emulates sound methodology in past position limits proposals but then deviates inexplicably from applying that methodology to other referenced contracts. For example, the Commission wisely continues the "step down" procedure in the CME Live Cattle referenced contract and initiates "step down" in the NYMEX Light Crude referenced contract to prevent market manipulation at the expiration of the contract. (FR 11599, footnote 20) But PR 2020 inexplicably discontinues in the federal spot month limit the exchange limit "step down" for the CME Wheat and CME Rough Rice contracts. The lack of explanation for not continuing the exchange limit "set down" in the federal position limit leaves the Commission open to the charge that its limit level calculations are arbitrary.

Regarding position limit setting by the exchanges for contracts not referenced in the position limit regime, the Commission offers only the most general guidance: "the proposed provisions addressing exchange-set limits on contracts that are not subject to federal limits reflect a principles-based approach and include acceptable practices that provide for non-exclusive methods of compliance with the principles-based regulations. The Commission would therefore provide exchanges with the ability to set limits and grant exemptions in the manner that most suits their unique markets. Each proposed provision of § 150.5 is described in detail below." (FR 11644) What is described below are not principles for setting exchange position limits, but principles for exchanges to grant exemptions from their own established limits. (also FR 11600)

In sum, will the expansion of position limit levels, exchange or Commission granted exemptions to those limits and the bona fide hedging exemptions improve price discovery and price risk management for market participants, above all commercial hedgers: or will the referenced and associated contracts receive a flood of capital that not even the most sophisticated CIT contract rolling strategies can prevent from causing market disruption and price volatility that drives commercial hedgers away from these contracts? This is not a rhetorical question. At a time when the economic impacts of COVID-19 and extreme weather events exacerbated by climate change are damaging the market value of the underlying assets of Commission regulated contracts, perhaps the questions we pose in this section and elsewhere are easy for the Commission to answer. But if not, how will market participants, even aided by machine learning, respond to the price disruptions and market disruptions of these major non-linear shocks to the financial system?

Deferring to the exchanges regarding CFTC authority to oversee non-enumerated bona fide hedge exemptions

In IATP's March 9 letter to the Commission regarding the proposed rule on cross border swaps activities, we remarked on the extraordinary arguments used to subordinate the Commission's authority to that of foreign regulators, the Securities Exchange Commission and the Federal Reserve Bank.[27] The PR 2020 likewise reduces to a bare minimum the Commission's authority to determine whether exchange granted exemptions from those federal position limits are exemptions based on demonstrable bona fide hedging.

The euphemism for eroding the Commission's effective authority over exchange granted bona fide hedging exemptions is "streamlining." For Commission enumerated bona hedges "such exemptions would be self-effectuating for purposes of federal speculative position limits, so a person would only be required to request the bona fide hedge exemption from the relevant exchange for purposes of exchange-set limits." (FR 11601) No exemption is more streamlined than one that is self-effectuating: you ask for the exemption and it shall be granted. For exemptions from federal position limits not enumerated by the Commission, the process of "ask the Commission and ye shall receive" takes a bit longer but is still very streamlined.

Given the proposed process to apply to the Commission for non-enumerated bona fide hedge exemptions, it is difficult to imagine why any market participant would choose the Commission over the exchanges as the source of authority on granting bona fide hedge exemptions. PR 2020 states: "A market participant seeking to exceed federal limits for a non-enumerated bona fide hedging transaction or position would be able to choose whether to apply directly to the Commission or, alternatively, apply to the applicable exchange using a new proposed streamlined process. If applying directly to the Commission, the market participant would also have to separately apply to the relevant exchange for relief from exchange-set position limits." (FR 11601) The proposed new streamlined process puts the burden on a woefully under-resourced Commission to have 10 days at the most or "(or two business days in the case of sudden or unforeseen bona fide hedging needs)" (FR 11602) to decide whether the exchange granted non-enumerated bona fide hedge complied with CFTC rules. If the Commission were unable to review the application for exemption within 10 business days, the exemption from position limits would go into effect immediately.

For the market participant, there is no downside to applying for a bona fide hedge exemption, no matter how tenuous the exemption claim may be relative to the bona fide hedging needs of the applying market participants: "Further, if, for purposes of federal position limits, the Commission determines to reject an application for exemption, the applicant would not be subject to any position limits violation during the period of the Commission's review nor once

[27] https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3067

the Commission has issued its rejection, provided the person reduces the position within a commercially reasonable amount of time, as applicable.” (FR 11602) Under the “streamlined process,” the default is to allow the proposed non-enumerated bona fide hedge exemption if the Commission cannot agree on whether the proposed exemption is for legitimate hedging needs, or if that exemption and others are steps on the slippery slope to excessive speculation. And if one exchange rejects the application for a bona fide hedge exemption, the market participants can always apply for the exemption at another exchange for an economically similar contract.

One of Commissioner Stump’s three principles for evaluating PR 2020 is whether its provisions are “workable in practice — both for market participants and for the Commission.” (FR 11736) IATP agrees with Commissioner Stump’s conclusion: “I do not believe this ‘’10/2-Day Rule’’ is workable in practice for either market participants or the Commission because it is both too long and too short. It is too long to be workable for market participants that may need to take a hedging position quickly, and it is too short for the Commission to meaningfully review the relevant circumstances and make a reasoned determination related to the exchange’s recognition of the hedge as bona fide.” (FR, 11739) However, we do not agree with Commissioner Stump’s preferred solution: allowing the exchanges to determine which non-enumerated hedges are bona fide and worthy of position limit exemption. The Commission’s oversight would be limited to monitoring exchange granted non-enumerated hedges as part of its “routine ongoing review of the exchanges.” (FR, 11739) If exchanges were public utilities bound by strong public interest regulations, outsourcing the oversight of non-enumerated bona fide hedges might be a viable solution to the hundreds of exemptions granted by the exchanges. However, exchanges are competing for-profit entities with fiduciary duties to maximize shareholder returns by maximizing transactions and fees.

Weakening the definition of “bona fide hedge exemption” by eliminating the orderly trading requirement for granting Commission recognized hedging exemptions

The Commission must have a comprehensive and categorical role in reviewing market participant applications for hedging exemptions so that exchanges do not compete over which of them can offer the most extensive array of non-enumerated hedging exemptions as a marketing tool to attract more business. Particularly because the Commission proposes to eliminate the orderly trading requirement for determining enumerated bona fide hedges due to the explicit absence of that requirement in statute (FR 11607), IATP urges the Commission to reconsider the role of the orderly trading requirement in preventing market disruption and retain that requirement.

If the Commission decides to delete the requirement, then it is yet more important that the Commission urge Congress to appropriate consistently a budget that is adequate to fund a regularly scheduled review of exchange granted non-enumerated hedging exemptions from position limits. Alternatively, the Commission should ask Congress to approve prior proposed legislation that would make the CFTC a self-financing agency. Although market participants may believe that each of their exemption requests constitutes an emergency that the Commission must respond to urgently, the Commission has a prudential duty to ensure that such exemptions in aggregate do not result in excessive speculation in referenced and associated contracts.

The duration and frequency of review of Commission recognized bona fide hedge exemptions

IATP does not agree with the Commission's rationale for extending the duration of the exemptions from 12 to 24 months for hedges of anticipatory production:

> The twelve-month limitation may be unsuitable in connection with additional contracts based on agricultural and energy commodities covered by this release, which may have longer growth and/or production cycles than the nine legacy agricultural commodities. Commenters have also previously recommended removing the twelve-month limitation on agricultural production, stating that it is unnecessarily short in comparison to the expected life of investment in production facilities. [footnote 79] The Commission preliminarily agrees. (FR 11608)

It is true that the storage of physical commodities may last beyond 12 months before delivery. It does not follow that the Commission should allow market participants to build into the anticipatory "hedge" "the expected life of investment in production facilities." Obviously, the expected life of cold storage facilities, grain and oilseed processing facilities, oil depots, natural gas storage facilities etc. is far longer than 24 months. The proper way to manage risks in those facilities is with insurance policies and not to bundle, in effect, the hedged commodity with the relevant production facility in the hedging exemption definition.

If the Commission decides to extend the duration of enumerated hedges for up to 24 months, it must retain the discretion to require market participants to show that there is a production level proportionate to the position limit level throughout the duration of the enumerated hedge exemption. Energy and agricultural production levels will become chronically, and not just occasionally, less stable under climate change. For example, according to the *Fourth National Climate Assessment:*

> Overall, yields from major U.S. crops are expected to decline as a consequence of increases in temperatures and possibly changes in water availability, soil erosion, and disease and pest outbreaks. Increases in temperatures during the growing season in the Midwest are projected to be the largest contributing factor to declines in the productivity of U.S. agriculture. Projected increases in extreme heat conditions are expected to lead to further heat stress for livestock, which can result in large economic losses for producers. Climate change is also expected to lead to large-scale shifts in the

> availability and prices of many agricultural products across the world, with corresponding impacts on U.S. agricultural producers and the U.S. economy.[28]

Oddly, the *Fourth National Climate Assessment* does not include a chapter on energy production, delivery, cost and price impacts of climate, but IATP will assume that climate change will be disruptive to energy production, storage, delivery and derivatives markets.

Review, grant or revoke, as necessary and appropriate, Commission recognized bona fide hedge exemptions in the same cycle as the review of federal position limits

The duration of Commission recognized enumerated hedge exemptions to position limits should have a proportional relation to the duration of the federal spot month and non-spot month position limits. IATP does not find in PR 2020 a proposal for the frequency or terms of revising position limits. Given the greater volatility of DSEs resulting from climate change, IATP recommends a shorter Commission review cycle of federal position limits and Commission granted enumerated hedging exemptions than the two-year cycle proposed for the anticipatory production hedge exemptions from position limits.

The Commission should review its recognized enumerated hedge exemptions in the context of reviewing position limit levels to which the exemptions apply. How frequently should these position limit levels be reviewed, revised and as necessary and appropriate, revoked? A 2017 Better Markets comment letter stated, "the CFTC is in the midst of a major overhaul of its data regime, and the capacity to record, analyze, and quickly react to market data has never been greater and continues to expand. The vast data collected from Derivatives Clearing Organizations, Swap Data Repositories, and exchanges will for the first time allow the Commission to make adjustments to regulatory measures almost on demand. There is no justification for not taking full regulatory advantage of new data resources that can enable more timely and market-appropriate limits."[29]

IATP agrees that the Commission now has a far greater technological capacity to monitor and analyze trade data to determine whether position limits and other regulatory measures are compliant with CEA objectives, particularly if swap trading data is reported in real time, as futures and options data are reported. However, commercial hedgers have proposed an annual review of position limit levels to give them legal certainty over that period. IATP believes the Commission should adopt this proposal, but with the proviso that it retains the authority to revise position limits in specific referenced contracts if data monitoring and analysis show that those annual limit levels are failing to prevent excessive speculation and/or various forms of

[28] *Fourth National Climate Assessment*, Vol. II: Impacts, Risks and Adaptation in the United States, Summary Findings: Agriculture. 2018. https://nca2018.globalchange.gov/

[29] https://bettermarkets.com/sites/default/files/CFTC-%20CL-%20Position%20Limits%20for%20Derivatives-%2020170228.pdf at 11.

market manipulation. The Commission would retain similar authority to review and revise Commission recognized enumerated bona fide hedge exemptions out of the review cycle, if Commission data surveillance and analysis shows that market participant use of specific enumerated hedge exemptions was resulting in non-compliance with CEA requirements.

The proposed expansion of the definition of the bona fide hedge exemption to include "hedges of anticipated services", although apparently an exemption commonly granted by exchanges, merits more Commission review before being included in the bona fide hedge exemption definition. "Hedges of anticipated services" are presumably connected to hedges of anticipated production. And like those anticipated production hedge exemptions from position limits, they will be, if anything, more vulnerable to DSE disruption. Absent a stronger argument for their inclusion than "such exemptions are granted by exchanges", IATP urges the Commission not to include the services hedge in the revised definition of the bona fide hedge exemption from federal position limits.

PR 2020 would greatly expand the number and variety of hedging exemptions to position limits in the bona fide hedge fund definition. There is no analysis of how such proposed Commission recognized exemptions, together with the exchange granted exemptions, would affect the ability of the position limit regime to comply with CEA requirements. At the May 7 meeting of the CFTC's Energy and Environmental Markets Advisory Committee, Thomas LaSala of the CME Group said that the CME granted more than 500 bona fide hedging exemptions last year.[30] How many such exemptions were granted by other DCMs? Did the DCMs report the exemptions to the Commission, and did the Commission recognize them as compliant with CEA position limit requirements? The Commission could issue a Special Call to the CME and to other DCMs and SEFs for data on exchange granted bona fide hedge exemptions. The result of a CFTC staff study using the Special Call data could inform the Commission on the likely impact of those exemptions on the total position limits regime.

Do not eliminate the "five-day rule" in the application of the bona fide hedge exemption

In the don't-fix-what-isn't broken rulemaking category, IATP opposes the Commission's proposal to eliminate the "five-day rule" during the expiration of a referenced or associated contract. The Commission concedes the five-day rule has worked to foster convergence between futures and cash prices as the referenced contract expires. The Commission explains, "The enumerated hedges currently subject to the five-day rule are either: (i) Anticipatory in nature; or (ii) involve a situation where there is no need to make or take delivery. The Commission has historically questioned the need for such positions in excess of limits to be held into the spot period if the participant has no immediate plans and/or need to make or take delivery in the few remaining days of the spot period." (FR 11608) Consistent with our remarks

[30] https://www.cftc.gov/PressRoom/Events/opaeventeemac050720

on anticipatory hedging, it is not prudent for the CFTC to delegate its authority to the exchanges to allow them to determine to apply or withdraw the five-day rule.

Consider a recent failure to apply the five-day rule. The United States Oil Exchange Traded Fund (USO ETF) holding WTI crude ultra-long positions didn't plan to liquidate its positions until the day before the expiry of the CME May WTI contract.[31] The global oil storage shortage was not a secret to institutional investors in the WTI contract and particularly not to CME. Nor was it unknown to CME that USO's trading strategy was positioned ultra-long, trying to drive a price increase despite dire supply demand fundamentals. But the retail investors who generated transaction fees for CME and other exchanges by piling into equity like shares of USO and other commodity ETFs weren't told how futures markets could make their investments worse than worthless. CME failure to reduce USO positions in the WTI contract is not just another case of CME position accountability failure, but also failure to use Commission delegated authority to apply the five-day rule. Why would the Commission wish to eliminate the five-day rule and give the exchanges authority about its use?

On April 21, the CME announced its was changing its pricing model for existing contracts to "accommodate negative pricing in the underlying futures."[32] The CME consulted with the CFTC about the consequences of that pricing model change for the contracts. But did CME consult with the Commission about its decision not to apply the five-day rule on hedging exemptions from position limits in the May WTI contract? If the Commission is going to defer to the DCMs' "experience and capacity" on so many provisions in PR 2020, the function of the Commission becomes merely to monitor DCM decisions and their consequences for market participants and the public after the fact.

Extrapolating the 2016 position aggregation rule and aggregation exemptions for agricultural legacy contracts to all referenced contracts in PR 2020

In the preamble to PR 2020, the Commission writes, "In a companion proposed rulemaking, the CFTC also proposed, and later adopted in 2016[33], amendments to rules governing aggregation of positions for purposes of compliance with federal position limits. These aggregation rules currently apply only to the nine agricultural contracts subject to existing federal limits and going forward would apply to the commodities that would be subject to federal limits under this release." (FR 11597) There is no empirical analysis about the impact of extrapolating the position aggregation rule for legacy contracts to all 25 referenced contracts. In a February 10, 2014 letter to the Commission on the proposed position aggregation rulemaking, IATP wrote, "If exemptions to aggregation are pervasive, position data will be inadequate to determine

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[31] Harry Dempsey, Phillip Stafford and David Sheppard, "US oil prices tumble as world's largest ETF cuts stake," *Financial Times*, April 27, 2020.

[32] https://www.cmegroup.com/content/dam/cmegroup/notices/clearing/2020/04/Chadv20-171.pdf

[33] Aggregation of Positions, 81 FR 91454 (Dec. 16, 2016) (''Final Aggregation Rulemaking''); see 17 CFR 150.4

compliance with the position limit rule. The aggregation pillar will collapse and with it the efficacy of the position limits regime to prevent, diminish and if possible, eliminate excessive speculation."[34] (The Commission had described aggregation as one of three pillars of the position limit regime.)

Observing that the Commission had been generous in granting time exemptive relief from aggregation to litigants against the Commission's proposed position limit rule, IATP recommended in 2014 that the Commission "publish a study on the effect of aggregation exemptions on the efficacy of the position limit regime. The study should be produced no later than two years after the promulgation of the aggregation rule."[35] Because the Commission now has four years of experience with exemptions from aggregation in referenced contracts, it has still more data to determine the impact of the exemptions on compliance with the nine legacy agricultural contracts under the current position limit rule.

Rather than simply applying the generous and numerous exemptions in the "Final Aggregation Rulemaking" to the 25 referenced contracts in the PR 2020, the Commission, informed by such a study as we have recommended, should deliberate whether and how much these exemptions will expand non-commercial speculation beyond that permitted in the proposed federal position month limits. Such a study could help the Commission determine whether it should propose to narrow the aggregation exemptions. The Commission could issue a Special Call to the CME and to other DCMs and SEFs for data on exemptions from position aggregation and for exchange granted bona fide hedge exemptions. The result of a CFTC staff study using the Special Call data could inform the Commission on the likely impact of PR 2020 before it is finalized.

"Economically equivalent swaps" in the position limits regime

It is not clear to IATP why swaps deemed to be economically equivalent to futures and options contracts are included in the position limit rule. First, "The Commission also recognizes that physical commodity swaps are largely bilaterally negotiated, traded off-exchange (i.e., OTC), and potentially include customized (i.e., ''bespoke'') terms, while futures contracts are exchange traded with standardized terms." Because most physical commodity swaps are not traded on the DCMs, their contract defined contribution to position limits in referenced contracts is likely to be small even when characterized as "economically equivalent" to future and options in referenced contracts. (FR, 11615)

Narrowing the legal definition of "economically equivalent swaps" to harmonize it with that of the European Securities Markets Authority and other foreign regulators, to prevent putative

[34] https://www.iatp.org/sites/default/files/CFTC_position_aggregation_2.10.14_FINAL.pdf
[35] Ibid.

migration of trade in those swaps to foreign boards of trade, does not greatly increase the contribution of “economically equivalent swaps” to federal position limits. (FR 11616) Furthermore,

> The Commission is unable to publish a list of swaps it would deem to be economically equivalent swaps because any such determination would involve a facts and circumstances analysis, and because most commodity swaps are created bilaterally between counterparties and traded OTC [Over the Counter]. Absent a requirement that market participants identify their economically equivalent swaps to the Commission on a regular basis, the Commission preliminarily believes that market participants are best positioned to determine whether particular swaps share identical material terms with referenced contracts and would therefore qualify as ‘‘economically equivalent’’ for purposes of federal position limits. (FR 11618)

Once again, lacking data on physical commodity swaps, the Commission will leave it to market participants to determine a critical feature of PR 2020: In this case, whether their swaps are economically equivalent or not to futures and options positions in the referenced contracts.

The Commission proposes to delay swap dealer and major swap participant compliance with this part of PR 2020.

> Further, the proposal to delay compliance with respect to exchange-set limits on swaps will benefit exchanges by facilitating exchanges’ ability to establish surveillance and compliance systems. As noted above, exchanges currently lack sufficient data regarding individual market participants’ open swap positions, which means that requiring exchanges to establish oversight over participants’ positions currently could impose substantial costs and also may be impractical to achieve. As a result, the Commission has preliminarily determined that allowing exchanges delayed compliance with respect to swaps would reduce unnecessary costs. (FR 11680)

Since the exchanges lack sufficient data about market participant physical commodity swap open interest, why not wait until they have sufficient data before considering whether to include economically equivalent swaps in the position limit regime? Delaying compliance with position limit requirement to avoid imposing costs on market participants makes it appear that the Commission is serving as a swap dealer booster, although swaps dealers are amply resourced to provide the necessary data to the exchanges and to the Commission. The Commission is bending over backward to avoid requiring swaps market participants from paying the costs of exchange trading.

IATP urges the Commission to separate out the “economically equivalent swap” provision and develop it as a separate rule that would develop more rigorous criteria for when a swap may be traded bilaterally and when it must be exchange traded. The Commission should not merely rely on the ISDA Master Agreement to develop a robust physical derivatives swaps rule.

Furthermore, the Commission is proposing a rule on the real time reporting of trading data from Swaps Execution Facilities (SEFs) to Swaps Data Repositories and to the Commission that will allow a delay in block trade swaps reporting of up to 48 hours.[36] This reporting delay will give swaps dealers and major swaps participants a huge competitive advantage because they will be able to benefit from price and other information on futures and options transactions that exchanges must provide to the Commission within 15 minutes.[37]

If the real-time reporting rule for swaps is finalized as proposed, it will make the issue of whether a swap is economically equivalent to a referenced futures or option contract or not irrelevant in terms of compliance with CEA requirements on transparent price discovery. Since there is little technological justification for delaying swaps data reporting so far beyond what is required of futures and options trading, the Commission should either abandon the swaps reporting rule as proposed or provide compelling reasons about why swaps trading should enjoy such a huge competitive information advantage over futures and options trading.

Conclusion

PR 2020 is designed to prevent old-fashioned market manipulation, not excessive speculation in an increasingly automated physical commodity derivatives trading universe. If the Commission's plan for regulating automated trading is to delegate its authority to the exchanges, as it has delegated most of its authority in PR 2020, the Commission may fail to exercise its authorities under CEA Section 9 Disruptive Trading Practices, as well as the CEA Sec. 4 a) authority that is in dispute in the PR 2020. Here we summarize our recommendations to the Commission on PR 2020.

- Do not finalize PR 2020 before the Commission has completed and published its investigations into livestock futures price movements and into price movements in the WTI crude oil contract. Do not finalize PR 2020 before the Commission has proposed and finalized a robust automated trading rule, so that commenters can remark on the interplay and synergy of the two proposed rules on market participants;
- Abandon the "necessity finding" argument in the Legal Analysis and elsewhere to avoid litigation under the CEA and the APA and further postponement of a robust position limit regime the implementation of which is practicable for market participants and DCMs and whose enforcement is practicable for the Commission;
- Do not consider the costs of compliance or non-compliance with PR 2020 as "undue costs." Affirm the costs of compliance and non-compliance as the price of ensuring that markets remain orderly;

[36] https://www.cftc.gov/sites/default/files/2020/02/2020-02721a.pdf

[37] "CFTC Proposes to Gut the Real-Time Trade Reporting Requirements, Plunging the Markets into Darkness but Giving Wall Street Dealers a Flashlight," Better Markets, February 20, 2020.

- Include CIT positions in the definition of “referenced contract” and establish federal position limits for CIT positions both in the spot month and non-spot months;
- Provide greater detail for the Commission’s rationales for setting limit levels for spot month and non-spot months in the 25 referenced contracts;
- Include non-spot month limits for the 16 new referenced contracts in PR 2020;
- Ensure that applications for Commission recognition under the “bona fide hedge exemption” definition demonstrate quantitatively that the enumerated exemptions allow market participants to comply with position limits in the referenced and associated contracts;
- Do not weaken the Commission’s authority over granting non-enumerated hedging exemptions by applying the “streamlining” provisions;
- Retain the orderly trading requirement for granting Commission recognized hedging exemptions;
- Review and grant or revoke as necessary Commission recognized bona fide hedging exemptions in the same cycle as the review of federal position limits;
- Do not eliminate the “five-day rule” in the definition and application of the bona fide hedging exemption;
- Conduct and publish a study of the impact of position aggregations exemptions in the 2016 “Final Rule: Aggregation of Positions” on compliance with position limits on legacy agricultural contracts and associated contracts prior to finalizing PR 2020;
- Remove the “Economically equivalent swaps” section from PR 2020 and develop it as a separate rule once the Commission and DCMs have adequate data and information about physical commodity swaps to develop a robust rule. A real time data reporting rule that puts swaps reporting on par with futures and options reporting is also a requisite for this new proposed rule.

IATP thanks the Commission for its consideration of these comments and recommendations. We hope that they will assist the Commission in finalizing a rule that is well-informed by the results of current CFTC investigations into livestock futures, the WTI crude oil contract and by the development of a robust automated trading rule.

Respectfully,
Steve Suppan
Senior Policy Analyst