

Derivatives Alert

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CFTC Finalizes Position Limits Rules

On October 15, 2020, the Commodity Futures Trading Commission (CFTC) voted 3-2 to adopt new rules on speculative position limits (the Final Rule).¹ The Final Rule will become effective 60 days after publication in the Federal Register, but compliance dates vary for certain rules:

- January 1, 2022, for:

- Position limits on 16 futures contracts (and any associated referenced contracts other than economically equivalent swaps) that are subject to federal position limits for the first time under the Final Rule.
- Exchanges' compliance with processes and procedures related to the establishment of exchange-set position limits, and exemptions from those limits, under CFTC Regulation 150.5.

- January 1, 2023, for:

- Position limits on economically equivalent swaps.
- Position limits on contracts for which market participants rely on previously granted risk management exemptions (*i.e.*, market participants will no longer be able to rely on such exemptions beginning on January 1, 2023).

As explained in our [February 18, 2020, client alert](#), the CFTC's Dodd-Frank Act position limits rulemaking efforts have spanned over a decade and provoked controversy. In 2011, the CFTC first adopted new position limits rules pursuant to the Dodd-Frank Act amendments to the Commodity Exchange Act, but a federal court vacated them the next year. The CFTC then issued a new proposal in 2013, a supplemental proposal in 2016 and a re-proposal in 2016, none of which were finalized. With the Final Rule, the CFTC aims to close an important chapter in the CFTC's Dodd-Frank rulemaking. Chairman Heath P. Tarbert remarked: "Today, we are removing a cloud that has hung over both the CFTC and the derivatives markets for a decade. Market participants, particularly Americans who need these markets to hedge the risks inherent in their businesses, will finally have regulatory certainty."²

We will provide details on how the Final Rule could affect market participants in a more comprehensive client alert to follow.

¹ See Press Release, "CFTC Finalizes Position Limits Rule at October 15 Open Meeting," CFTC (Oct. 15, 2020); see also CFTC, "Position Limits for Derivatives" (Oct. 15, 2019).

² CFTC, "Opening Statement of Chairman Heath P. Tarbert in Support of Final Rule on Position Limits" (Oct. 15, 2020).

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