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## THE CFTC (FINALLY) ADOPTS SPECULATIVE POSITION LIMITS

*The CFTC's new Position Limits Rule will impose speculative limits on a broader class of futures contracts, modify the exemptions from applicable limits, and, for the first time, apply limits to swaps. In this article the author discusses key aspects of the rule, including important implementation challenges that market participants may face in developing the necessary compliance infrastructure.*

By Neal Kumar \*

On January 14, 2021, the U.S. Commodity Futures Trading Commission's ("CFTC's") final rule adopting position limits for derivatives was published in the Federal Register ("Position Limits Rule").<sup>1</sup> The Position Limits Rule will impose CFTC-set speculative position limits on certain physical commodity futures contracts and swaps that are economically equivalent to those futures contracts. The finalization of the Position Limits Rule marks the long and tortured journey of a rule that started as a proposal in January of 2011.<sup>2</sup> After adopting a final rule in November 2011, the District Court for the District of Columbia overturned the November 2011 final rule on procedural grounds.<sup>3</sup> Thereafter, the CFTC proposed and re-proposed several iterations of a new

speculative position limits rule until finally landing on the present rule.

Depending upon the basis for comparison, the difference between the Position Limits Rule and prior iterations of the rule varies significantly. When compared to the November 2011 final rule, the Position Limits Rule differs in numerous and material aspects. However, there are relatively minor differences between the most recent proposed position limits rule in February of 2020 and the Position Limits Rule.<sup>4</sup> This article summarizes the key aspects to the Position Limits Rule, including important implementation challenges that market participants may face in developing the necessary compliance infrastructure.

### I. HISTORICAL PERSPECTIVE FOR POSITION LIMITS

Prior to the Position Limits Rule, both the CFTC and the U.S. futures exchanges (hereinafter "exchanges") imposed speculative position limits. The CFTC and exchanges imposed "hard" position limits that equate to a strict liability offense for exceeding a limit. That is, if

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<sup>1</sup> *Position Limits for Derivatives*, 86 Fed. Reg. 3236 (Jan. 14, 2021).

<sup>2</sup> *Position Limits for Derivatives*, 76 Fed. Reg. 4752 (Jan. 26, 2011) (proposed rule).

<sup>3</sup> *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); see also *Int'l Swaps and Derivatives Assoc., et al. v. U.S. Commodity Futures Trading Commission*, Civil Action No. 11-cv-2146, Mem. Op. 5-6 (D.C., Sept. 28, 2012).

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<sup>4</sup> *Position Limits for Derivatives*, 85 Fed. Reg. 11596 (Feb. 27, 2020) (proposed rule).

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