June 26, 2014

VIA ONLINE SUBMISSION
Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

RE: Position Limits for Derivatives and Aggregation of Positions, RIN 3038-AD99; 3038-AD82

Dear Ms. Jurgens:

By this letter, the Natural Gas Supply Association ("NGSA") respectfully submits these comments in response to the U.S. Commodity Futures Trading Commission's (the "CFTC's" or "Commission's") reopening of the comment periods on its Proposed Rule, Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 13, 2013) (the "Proposed Rule") and its companion Proposed Rule, Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013) (the "Proposed Aggregation Rule"). References herein to the Commodity Exchange Act ("CEA") refer to that statute as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or "Act"). Correspondence regarding this submission should be directed to:

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Established in 1965, NGSA represents integrated and independent companies that produce and market approximately 30 percent of the natural gas consumed in the United States. NGSA encourages the use of natural gas within a balanced national energy policy and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. customers.

Because of the potential for the Dodd-Frank Act to impede what is and has been a healthy, competitive, and resilient natural gas market, NGSA played an active role in the shaping

of the Act during its passage and wishes to continue such a role in ensuring the Act's successful implementation.

COMMENTS

I. The Position Limits Rule Must Preserve the Integrity of the Bona Fide Hedging Exemption.

If the Commission is to implement a new position limits regime, it is absolutely vital that it preserve the integrity of the bona fide hedging ("BFH") exemption. Though it has been oft-repeated by commenters throughout the rulemaking process, it has become no less true or relevant that preserving commercial market participants' ability to use derivatives to hedge risk without excessive regulatory burden was a central priority to Congress in enacting the Dodd-Frank Act. Accordingly, Congress provided exemptions for hedging activities from the position limits, mandatory clearing, and major swap participant provisions of the Act. With respect to position limits, the Act simply and strictly requires that:

> No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions[.]

As Senators Dodd and Lincoln stated, the Commission "must not make hedging so costly it becomes prohibitively expensive for end users to manage risk."[1]

A. The Commission Must Maintain the Availability of Non-Enumerated Hedges within the Bona Fide Hedging Definition.

To preserve the integrity of the bona fide hedge exemption, the Commission must maintain the availability of non-enumerated hedges within the definition of "bona fide hedging position" in Section 150.1 of the Proposed Rule. Congress mandated in the Dodd-Frank Act that:

> [T]he Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—
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> (A) (i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;
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> (ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and
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> (iii) arises from the potential change in the value of—

[1] Letter from Sen. Christopher Dodd and Sen. Blanche Lincoln to Rep. Barney Frank and Rep. Colin Peterson 1 (June 30, 2010).

(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(II) liabilities that a person owns or anticipates incurring; or

(III) services that a person provides, purchases, or anticipates providing or purchasing; or

(B) reduces risks attendant to a position resulting from a swap that—

(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

(ii) meets the requirements of subparagraph (A).

This explicit directive to the Commission provides detailed but flexible criteria regarding what constitutes a bona fide hedging transaction. Notably, it does not prescribe or authorize the Commission to limit what constitutes bona fide hedging to certain enumerated categories of transactions. Congress realized that the legitimate risk-mitigating activities of market participants, which Congress did not want to constrain or hamper by position limits, are too diverse and ever-evolving to fit into a handful of tidy boxes. This is quite plain in that Congress's directive regarding the definition of "bona fide hedging transaction or position" uses almost precisely the same language as the existing definition in Section 1.3(z)(1) of the Commission's regulations (except that Congress's prescribed definition is *broadened* to include pass-through swap offsets).[2] Importantly, the Section 1.3(z) definition that Congress obviously used as a model contains a list of enumerated transactions in subsection (2) but clearly recognizes that what constitutes bona fide hedging is ultimately governed by the model criteria in subsection (1)—explicitly recognizing that bona fide hedging "includes but is not limited to" the set of enumerated transactions in subsection (2).

Accordingly, since its inception in 1977, the Commission's list of enumerated hedges has not been used as an exclusive list of BFH transactions but rather to provide an efficient process for identifying common transactions accepted as satisfying the BFH definition.[3] The Commission must fulfill Congress's directive to define what constitutes bona fide hedging in a manner consistent with Congress's evident intent—not add criteria that do not appear in the Act and that are inconsistent with the regulatory precedent upon which Congress based its directive. Therefore, the Commission must revise subsection (2)(i)(D) of its proposed definition of BFH position to recognize that "bona fide hedging" includes, but is not limited to, the positions and transactions enumerated in subsections (3), (4), and (5) of the BFH definition.

[2] *Compare* CEA § 4a(c)(2) *with* 17 C.F.R. § 1.3(z).

[3] *See* Bona Fide Hedging Transactions or Positions, 42 Fed. Reg. 14,382, (Mar. 16, 1977) (enumerated transactions represent transactions that conform to the BFH definition "without further consideration as to the particulars of the case").

B. The Commission Must Maintain a Reasonable Process for Obtaining Assurance Regarding the Exemption of Individual Non-Enumerated Hedges.

To ensure the practical utility of non-enumerated hedges, the Commission must maintain a reasonable process for market participants to obtain assurances that their non-enumerated hedges satisfying the model criteria are deemed as bona fide hedges. The Commission has maintained such a process in Section 1.47 of its regulations since adopting the Section 1.3(z) definition of BFH in 1977, but its Proposed Rule would eliminate that process altogether. The Act provides no directive or suggestion to eliminate the process, and such elimination is contrary to Congress's manifest intent to preserve the BFH exemption and ensure its utility.

The Commission has proposed two mechanisms in Section 150.3(e) of the Proposed Rule for requesting exemption of a non-enumerated hedge: (1) requesting an interpretive letter from Commission staff under Section 140.99 of the Commission's regulations; and (2) requesting exemptive relief under Section 4a(a)7 of the CEA. Both mechanisms are grossly inadequate in addressing market participants' needs to obtain assurance of exemption of non-enumerated hedges in a clear, timely, and reliable manner. Neither process provides any timelines by which market participants can expect to receive relief, and the Section 140.99 process is not binding on the Commission. With respect to seeking a Section 4a(a)7 exemption, the Commission has not indicated whether such an exemption would require notice and comment procedures or not. Such procedures may be appropriate for expanding a (non-exclusive) list of enumerated transactions deemed to satisfy the BFH exemption but not for seeking assurance of exemption of individual non-enumerated hedges, for which notice and comment procedures would be unduly time-consuming, expensive, and administratively burdensome.

In summary, to ensure the utility of non-enumerated hedges, a Section 1.47-like process that is transparent, reliable, and time-limited must be maintained. NGSA recommends that this process:

(1) Require Commission action within 30 days of a request being made. Lack of Commission action within 30 days will result in the request being deemed approved;

(2) Provide for an expedited, spot month approval process that provisionally approves a request for exemption of a spot month instrument within five business days in order to allow for hedges in the current spot month;

(3) Provide for a right of reconsideration; and

(4) Require all approvals and disapprovals to be posted on the Commission's website, so long as the requesting party may seek confidentiality in which case the request and approval or denial would be made sufficiently anonymous so that confidential information is not disclosed.

Such a process would ensure the practical utility of non-enumerated hedges, consistent with Congressional intent.

At the June 19, 2014 CFTC staff roundtable on position limits, representatives of the CME Group and the Intercontinental Exchange indicated that they would be willing to accept Commission delegation of the responsibility for evaluating and determining the validity of non-enumerated hedges. Given the exchanges' administration of hedge exemptions today and the understanding exchanges have of the hedging needs of commercial companies, the Commission should consider using these exchanges to continue to facilitate valid hedging and ensure it is not barred.

C. The Commission Must Expand its List of Enumerated Hedges and Modify its Interpretation of Cross-Commodity Hedges to Appropriately Address Several Common and Important Bona Fide Hedging Practices in the Natural Gas Industry.

To ensure the utility of the list of enumerated hedges in providing regulatory certainty to market participants regarding the exemption of commonly used hedges as BFH positions, the Commission must expand the list to include several important and commonly used hedging practices in the natural gas industry. First, the Commission must remove the restriction on holding short anticipatory hedge positions in the spot month under subsections (4) and (4)(i) of the BFH definition. NGSA members routinely hedge natural gas production expected or "anticipated" to be produced during the spot month or delivery period by selling NYMEX Henry Hub Natural Gas ("NG") contracts. Future production hedged with forward contracts, with the passage of time, eventually becomes current month production hedged with spot month contracts, and there is no commercial rationale to disassociate them by forcing proper hedges beyond the spot month. Further, as discussed in detail in NGSA's February 10, 2014 Comments,[4] allowing such hedges promotes convergence of the cash and futures markets whereas disallowance of such hedges would disrupt price discovery.

Second, the Commission must recognize hedging of anticipated risk associated with owned or leased storage capacity as an enumerated hedge. As discussed in detail in the February 10, 2014 Comments,[5] locking in the spread between anticipated injections or purchases of natural gas and anticipated withdrawals or sales through the use of natural gas calendar spread hedges is a common industry practice and is often the most practical and economically appropriate hedge available. In addition, disallowing the hedge would artificially move transactions away from the derivatives market into more opaque bilateral forward contracts, negatively affecting price discovery.

Third, the Commission must recognize hedging of anticipated merchandising as an enumerated hedge. The Commission's enumerated exemptions for anticipated requirements and production appear broad enough to address anticipated owning, producing, manufacturing, and processing, but the Commission's regulatory preamble language suggests that hedging the "yet-

[4] Letter from NGSA to Ms. Melissa Jurgens, Secretary, CFTC (Feb. 10, 2014) (the "February 10, 2014 Comments") at 18.

[5] February 10, 2014 Comments at 19-20.

to-be assumed risk" of anticipated merchandising is not economically appropriate.[6] However, Congress's directive to the Commission regarding the definition of BFH explicitly includes transactions and positions that arise from the "potential change in the value of—assets that a person owns, produces, manufactures, processes, or merchandises *or anticipates . . . merchandising*."[7] NGSA's February 10, 2014 Comments identify several practical situations that demonstrate the importance of preserving the ability to hedge anticipated merchandising.[8] Merchandising is the key to ensuring efficient, cost-effective supply chain operations and minimizes midstream costs to the benefit of end users. The Commission should not artificially constrain the timing of hedges with respect to merchandising activities and investments in merchandising capability by ignoring the explicit Congressional command to define BFH in such a way as to include anticipated merchandising.

Finally, the Commission must refine its interpretation of "cross-commodity hedges." As explained in detail in NGSA's February 10, 2014 Comments, the Commission's suggestion that hedges of electricity prices using Henry Hub natural gas derivatives fail to satisfy the "substantial relation" test is overbroad and fails to consider liquidity costs and potential differences in correlation across different time periods and geographical locations.[9] In practice, Henry Hub natural gas derivatives can often provide a practical and sound hedge of electricity price risk that meets the statutory criteria for a BFH position when no other BFH alternatives are available. Therefore, the Commission should recognize that Henry Hub natural gas derivatives can be used as cross-commodity hedges of electricity prices.

In addition, the Commission should recognize that certain other hedges are same-commodity, not cross-commodity, hedges. Hedging LNG, which is typically imported into the United States with a price that references the Henry Hub price of natural gas, with Henry Hub derivatives is not cross-commodity hedging. The Commission should also recognize that using natural gas derivatives to hedge exposures relating to the pricing of "heat rate" power sales is not cross-commodity hedging, because the exposure associated with such sales is entirely based on the quantity of the power sales, multiplied by the heat rate (quantity of gas required to generate such quantity of power), multiplied by the relevant gas price. These hedging practices are not "cross-commodity" and, as such, should not be subject to the additional restrictions placed on cross-commodity hedges in subsection (5) of the BFH definition.

D. The Proposed Bona Fide Hedging Definition Would Impose Unreasonable and Unnecessary Compliance Costs on Market Participants.

Failure to revise the Proposed Rule's definition of BFH consistent with the changes discussed above would impose unreasonable and unnecessary compliance costs on market participants without any commensurate benefit. Simply put, Congress intended the various BFH

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[6] *See* Proposed Rule, 78 Fed. Reg. at 75718.

[7] CEA § 4a(c)(2)(A)(iii)(I).

[8] February 10, 2014 Comments at 22-25.

[9] February 10, 2014 Comments at 26-27.

transactions and positions described above to be exempted from position limits, and there are no recognizable benefits in failing to exempting them. On the other hand, failing to recognize the legitimate hedging nature of the commonly used transactions and positions discussed above will result in substantial price exposure for market participants by hindering their ability to effectively hedge and will ultimately increase costs to consumers.

First, some NGSA members will face the obvious cost of having to forego economically efficient transactions because legitimate risk-reducing hedges that would best offset such transactions are not recognized as BFH under the Proposed Rule. Second, NGSA members with positions near the limits would have to create entirely new systems to track transactions and positions that qualify only under the narrow definition of BFH under the Proposed Rule. In this respect, the required intra-day calculation of positions and overbroad aggregation of affiliates (discussed below) would further complicate the tracking requirements. Third, the unavailability of the BFH exemption for many swaps would reduce the number of counterparties willing to enter into such swaps as pass-through swap counterparties, generally harming liquidity and price discovery in the relevant market. In general, such distortions would lead to market inefficiencies, increased transaction costs (including the use of forward contracts where derivatives would be more suitable), and increased risks. The Commission should avoid such inefficiencies, costs, and risks by revising the definition of BFH in the Proposed Rule to maintain the availability of non-enumerated hedges, provide a reasonable process for obtaining assurance of exemption, and expanding its list of enumerated hedges and revising its interpretation of cross-commodity hedges.

II. The Commission Must Exclude Trade Options from the Position Limits.

The Commission should revise its Proposed Rule, and make conforming changes to Part 32 of its rules governing trade options, to recognize that trade options are not subject to position limits. In Section 4a of the CEA, Congress authorized the Commission to establish position limits on derivative commodity contracts for the express purpose of diminishing, eliminating, or preventing "excessive speculation" in such contracts. Accordingly, imposing position limits on derivative commodity contracts that are not used for speculative purposes is inconsistent with Congress's intent and outside of its authorization.

A. Trade Options Should Not Be Subject to Position Limits Because They Are Not Speculative Contracts.

Trade options, by their very nature, are not speculative contracts and thus should not be subject to position limits. The Commission's rules define "trade options" as commodity options in which (1) the offeree is either an eligible contract participant or a "producer, processor, or commercial user of, or a merchant handling the commodity . . . [and] is offering or entering into the commodity option transaction solely for purposes related to its business as such;" (2) the offeree is a "producer, processor, or commercial user of, or a merchant handling the commodity . . . and is offered or entering into the commodity option transaction solely for purposes related to its business as such;" and (3) the commodity option is "intended to be physically settled, so that, if exercised, the option would result in the sale of . . . commodity for immediate or deferred shipment or delivery." The business purpose, offeree, and physical delivery requirements in this

definition means that trade options cannot be entered into by speculators or investors but, rather, must be transacted by commercial participants as part of their businesses as such.

Accordingly, trade options are used by commercial entities to manage their physical supply or consumption needs, provide for a mechanism to sell production or inventory, or serve other merchandising functions. Offerors of commodity trade options must have access to the underlying physical commodity and must be able to transport or otherwise acquire the commodity at the delivery location specified in the contract in the case of a call, or be prepared to take delivery in the case of a put. Offerees of commodity trade options must have takeaway capacity and some means of consuming, storing, or reselling the quantity of commodity that they elect to strike in the case of a call, or be prepared to make delivery in the case of a put. These characteristics strongly distinguish trade options from futures and swaps used for speculative purposes. Trade options are not speculative financial instruments, and, therefore, the Commission should expressly exclude them from the position limits rule.

B. Natural Gas Trade Options Should Not Be Subject to Position Limits Because They Do Not Meet the "Economically Equivalent" or "Significant Price Discovery Function" Criteria Under the CEA.

If the Commission does not decide to wholly exclude trade options from the position limits, NGSA requests that the Commission recognize that natural gas trade options, in particular, do not meet the "economically equivalent" or "significant price discovery" ("SPD") function criteria required for imposition of position limits under the CEA. The CEA authorizes the Commission to establish position limits only on: (1) "contracts of sale for future delivery" ("Futures Contracts"); (2) "options on the contracts or commodities traded on or subject to the rules of a designated contract market" ("Exchange-Traded Options"); (3) contracts that are "economically equivalent" to Futures or Exchange-Traded Options"; and (4) aggregate positions across designated contract markets, certain foreign boards of trade, and swap contracts that perform a SPD function with respect to regulated entities.[10]

Regarding the first two categories of contracts required to be assigned position limits (*i.e.*, Futures Contracts and Exchange-Traded Options), the Commission has established position limits on 28 individual "core referenced futures contracts," including NYMEX's Henry Hub Natural Gas (NG) contract. NGSA members agree that the NG contract is a Futures Contract that meets the requirements for imposition of position limits under the CEA and that NG look-alike swaps traded on designated contract markets or swap execution facilities are also "economically equivalent" contracts. Therefore, imposition of position limits on the NG contract and on NG look-alike swaps is appropriate.

However, as explained in detail in NGSA's February 10, 2014 Comments,[11] natural gas trade options that require delivery at any location other than Henry Hub, or are priced at anything other than the NG settlement price, are not "economically equivalent" to the NG contract

[10] CEA §§ 4a(a)(2), (5)(A), (6).

[11] February 10, 2014 Comments at 30-31.

because such delivery and pricing terms constitute fundamental economic terms of the NG contract. In addition, natural gas trade options bilaterally negotiated and traded over-the-counter do not (or cannot) perform a SPD function with respect to regulated entities because of their private nature. Therefore, natural gas trade options—unless requiring delivery to Henry Hub and priced at the NG settlement price—do not satisfy either the "economically equivalent" or SPD function criteria that are a prerequisite for imposing position limits. Accordingly, if the Commission does not decide to exclude trade options from position limits, NGSA requests that the Commission: (1) explicitly recognize that natural gas trade options that are not priced at the NG settlement price and do not require delivery to Henry Hub are not subject to the proposed position limits; and (2) provide greater regulatory certainty to NGSA members and market participants at large by requiring that specific findings be made that a given trade option is in fact "economically equivalent" to a core referenced futures contract, or performs a SPD function with respect to a regulated entity, before subjecting such trade option to position limits.

C. Subjecting Trade Options to Position Limits Would Impose Unreasonable and Unnecessary Compliance Costs on Market Participants.

Subjecting trade options to position limits would impose unreasonable and unnecessary compliance costs on market participants without any commensurate benefits. Unless they are used to deter excessive speculation consistent with Congressional intent, position limits merely impose constraints that will distort commodity markets and impede economically efficient behavior. Since trade options are not used for speculative purposes, there is no benefit to imposing position limits on trade options. Rather, imposing position limits on trade options will result in substantial compliance costs to market participants.

Subjecting trade options to position limits would require market participants to develop and implement new systems to:

- Distinguish between trade options that are "referenced contracts" under the Proposed Rule and those that are not;
- Monitor the number and quantity of referenced-contract trade option positions across delivery points and trading venues and integrate them with other position tracking systems; and
- Generate position reports aggregated across tracking systems.

Developing, implementing, and operating such systems will be expensive, time consuming, and require significant ongoing attention and resources. Such administrative difficulties would be compounded by the substantial ambiguities regarding: (1) the distinction between trade options and excluded forward contracts under the Commission's seven-element test for forward contracts

with embedded volumetric optionality;[12] and (2) how to calculate the delta-adjusted values of trade options.[13]

Considering the substantial compliance costs, non-existent benefits, and lack of statutory authority discussed above, the Commission should withdraw its proposal to subject trade options to position limits by removing the reference to position limits from the list of regulations to which trade options are subject under Rule 32.3(c). If the Commission still is supportive of subjecting trade options to position limits, NGSA requests that the Commission issue a separate rulemaking proposal that provides meaningful notice and opportunity to comment on the Commission's proposed justification and mechanism for doing so.

III. The Commission Must Set the Position Limits Appropriately.

The CEA requires the position limits established by the Commission to be both "necessary" and "appropriate" for preventing "excessive speculation . . . causing sudden or unreasonable fluctuations or unwarranted changes in price" and "market manipulation, squeezes or corners," while at the same time ensuring "sufficient market liquidity for bona fide hedgers" and non-disruption of "the price discovery function of the underlying market."[14] To be consistent with these requirements, the new position limits should focus on (1) facilitating convergence between physical and financial markets and (2) preventing market manipulation, *e.g.*, corners and squeezes, between physical and financial markets. This would be best accomplished by limiting the position limits in the final rule to physical delivery contracts in the spot month, which have far greater potential for the kind of market manipulation and distortion the rule was intended to address than any cash-settled contracts or contracts outside of the spot month.

A. The Commission Should Eliminate the Proposed Position Limits on Cash-Settled Positions in the Spot Month, or At Least Increase Them and Remove Unnecessary Related Restrictions.

For these reasons, position limits on cash-settled contracts in the spot month should be eliminated, or, at the very least, increased substantially and be based upon open interest in the referenced contracts, as opposed to deliverable supply in the commodity. Because cash-settled contracts are not subject to physical delivery, there is no "corner" or "squeeze" concern that warrants a limitation based on deliverable supply, and any concerns about "excessive" speculation can be adequately addressed by a limitation based on open interest relative to other market participants. Allowing for higher limits in this way will ensure greater liquidity, improving price signals and facilitating price convergence.

If spot month position limits on cash-settled contracts are retained, the higher "conditional" limits for cash-settled contracts provided under Section 150.3(c) of the Proposed

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[12] *See* Letter from NGSA to Ms. Melissa Jurgens, Secretary, CFTC (May 27, 2014).

[13] *See* February 10, 2014 Comments at 32.

[14] *See* CEA §§ 4a(1), (3)(B).

Rule should be maintained (but increased, based on open interest, as discussed above) and should not be limited to traders that only hold cash-settled positions. Rather, the separate treatment of cash-settled and physical-delivery contracts under Section 150.2(a) should be maintained in such instance. The condition that the trader hold no spot-month position in the physical-delivery contract has the potential to harm the market for the physical delivery contract by moving liquidity in the spot month period from the physically-settled contract to the cash-settled contract. Additionally, a bona fide hedger that is a party to one or more trade options, *i.e.*, physical-delivery contracts, would presumably not be able to take advantage of the conditional exemption. Therefore, the higher limits on the cash-settled contract, if maintained, should not be conditioned on holding no position in the physical-delivery contract.

B. The Commission's Estimates of Deliverable Natural Gas Supply Used to Establish the Spot Month Position Limit Must Be Updated Based on Current Resource Levels.

With respect to physical delivery contracts in the spot month, the position limits based on deliverable natural gas supply must be updated based on current gas resource levels, as opposed to the 2004 resource levels on which the initial 1,000-contract limit in Appendix D to the Proposed Rule is based. NGSA supports the alternative proposed initial spot-month limit levels proposed by the Intercontinental Exchange, Inc. and CME Group estimates of deliverable supply. CME's estimates, for example, correspond to an alternative spot-month limit of 3,900 natural gas contracts. Underlying this spot-month limit level is an estimated deliverable supply of 154,200,000 MMBtu, an estimate that is consistent with NGSA members' observations. Natural gas production in the U.S. has increased over 35% in the last ten years, and the nation's natural gas pipeline capacity has expanded over the same period.[15] Both of these changes in the market point to a significant increase in deliverable supply at Henry Hub since the current levels were established in 2004. These changes should be reflected in the final rule.

Further, as the Commission considers whether to adopt updated estimates of deliverable supply for Henry Hub natural gas, we urge the Commission to include supply that is committed to long-term agreements. Physical natural gas under such agreements is consistently and regularly made available to the spot market at prevailing economic values. Thus, while a significant portion of deliverable natural gas supply is committed to long-term agreements, almost all of this natural gas is marketed and re-marketed by wholesale resellers (*e.g.*, marketers, merchants, producer marketer-affiliates, and end-user marketer affiliates). Therefore, such volumes should rightfully be included in Commission estimates of deliverable supply.

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[15] *See* U.S. Energy Information Administration ("EIA"), Natural Gas Gross Withdrawals and Production, http://www.eia.gov/dnav/ng/ng_prod_sum_dcu_NUS_m.htm; EIA, U.S. Natural Gas Interstate Deliveries; ICF International, Natural Gas Pipeline and Storage Infrastructure Projections Through 2030 (Oct. 20, 2009), at 55, *available at* http://www.ingaa.org/File.aspx?id=10509.

IV. The Commission Must Modify the Proposed Aggregation Rule So That It Focuses On Control of Trading and Does Not Require Aggregation Based on Ownership Level of an Entity Alone.

A. Requiring Aggregation Based On Ownership Level of an Entity Alone is Inconsistent With Past Commission Precedent and Congressional Intent.

The Commission must modify the Proposed Aggregation Rule to focus on control of trading and eliminate the requirement to aggregate positions among legal entities based on ownership level of an entity alone. The Commission's past and present treatment of aggregation only requires aggregation of directly owned accounts,[16] and designated contract markets currently aggregate positions of owned entities only when ownership is combined with actual trading control.[17] It is important to note that the new position limits provisions in the Dodd-Frank Act did not modify the aggregation provisions in Section 4a(a)(1) of the CEA in any manner. Congress was evidently satisfied with the current treatment of aggregation for purposes of position limits and did not intend for the Commission's aggregation rules to cast a wider net by imposing additional information and coordination costs on market participants, reducing their individual operational flexibility, and effectively ignoring the separate legal nature of commonly owned, but functionally independent, affiliates for purposes of position limits. The Commission should modify the Proposed Aggregation Rule to require common ownership of accounts, or indicia of control, to aggregate positions—consistent with past policies that Congress saw fit to leave intact when it was making significant changes to the Commission's position limits authority.

B. Requiring Aggregation Based On Ownership Level of an Entity Alone Would Impose Unnecessary and Unreasonable Compliance Costs on Market Participants.

The Commission's proposed approach regarding aggregation of positions based on ownership alone would impose unnecessary and unreasonable compliance costs on market participants. Simply put, NGSA members and other market participants would bear substantial up-front and ongoing administrative costs if they are required to build out position surveillance systems to all business units, regardless of whether they currently control or even monitor such businesses' trading, in which they have 50 percent or more equity. Although the Commission has proposed a process in Section 150.4(b)(3) of the Proposed Aggregation Rule for seeking

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[16] *See* February 10, 2014 Comments 42-43 (discussing the Commission's aggregation policies and requirements in its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 Fed. Reg. 33,839 (Jun. 13, 1979), Revision of Federal Speculative Position Limits and Associated Rules, 64 Fed. Reg. 24,038, 24,044 (May 5, 1999), and the large trader rules in Parts 17 and 18 of the Commission's regulations).

[17] *See id.* at 43 (citing CME Rule 559.D.2, *available at* http://www.cmegroup.com/rulebook/CME/I/5/5.pdf; *In the Matter of Vitol Inc. et al.*, CFTC Docket No. 10-17 (Sept. 14, 2010), *available at* http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfvitolorder09142010.pdf).

exemption from aggregation where ownership levels exceed 50 percent, the process is so restrictive that is it unusable. Specifically, the requirement that financial statements not be consolidated frustrates one of the primary purposes of equity investment—to generate returns through investment that will be reflected on financial statements. In addition, requiring the investor to have the owned entity agree to restrict its commodities trading to not exceed 20 percent of any position limit is an unreasonable constraint on such entity's risk management program. As a more reasonable alternative, the Commission should require aggregation only with respect to an entity that actively *controls* the positions of another or, at the very least, extend the exemption in Section 150.4(b)(2) of the Proposed Aggregation Rule (currently applicable only to ownership positions between 10 and 50 percent) to ownership positions greater than 50 percent as well.

CONCLUSION

NGSA welcomes the opportunity to further discuss these comments with the Commission. If we can provide any additional information, please do not hesitate to contact us.

Respectfully submitted,

Natural Gas Supply Association