

ALERTS

CFTC Adopts New Position Limits Rules — The Impact on Private Fund Managers

November 3, 2020

On Oct. 15, 2020, the Commodity Futures Trading Commission (“CFTC”) adopted a “Final Rule”^[1] on a new position limits regime that covers 25 physical commodity futures contracts, as well as certain connected contracts.

The Final Rule will result in a combination of near- and longer-term trading compliance obligations for private fund managers, including the following:

- By Jan. 1, 2022, the list of futures contracts that are subject to position limits under federal law will expand from nine agricultural commodity contracts to 25 agricultural, metals and energy commodity “core referenced” contracts;
- By Jan. 1, 2023, swaps with economically equivalent characteristics to the 25 core referenced contracts will become subject to the CFTC’s limits; and
- By Jan. 1, 2023, several changes to the “bona fide hedge” and the “spread transaction” position limit exemptions will come into effect, and a limited “financial distress” exemption will be available in potential default or bankruptcy situations.

Due to the phased-in compliance for “economically equivalent swaps” accounting, and because current exchange-level position limits on the core referenced contracts are at least as restrictive as the new federal requirements, the Final Rule may have a negligible short-term impact on

many managers' trading processes. However, managers should note that the number of contracts subject to position limits that, if violated, would cause a private fund manager to violate federal law (as opposed to an exchange rule) will basically triple in fourteen months.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] See Final Rule: Position Limits for Derivatives (Oct. 15, 2020), available here.

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