

# Potential Framework for DCM Review of Non-enumerated Hedges

---

**Ronald S. Oppenheimer**

*On behalf of*

The Commercial Energy Working Group

Energy and Environmental Markets Advisory Committee Meeting  
July 29, 2015

# Potential Framework for DCM Review of Non-enumerated Hedges

---

## Benefits

- Avoids resource duplication.
- Capitalizes on:
  - The depth and breadth of Designated Contract Markets (“DCMs”) experience in evaluating hedging strategies; and
  - DCM active oversight of market participant positions, particularly in the front month.
- Is not disruptive to current end-user hedging practices.
- Provides flexibility for market innovation and evolution -- a vehicle for end-users to present new or unique risk-reducing facts and circumstances and make the case for an exemption in an expeditious manner.

# Potential Framework for DCM Review of Non-enumerated Hedges

---

## Way forward – 3 Steps

- The Commission would:
  - refine the list of enumerated hedges to include those positions and strategies that have been described in comment letters in this rulemaking;
  - advise that the positions and strategies for which DCMs have historically granted exemptions under their existing rules also qualify for exemptions under Section 4a of the CEA, as amended by the Dodd-Frank Act; and
  - determine that a hedge exemption issued by a DCM to a party to exceed position limits on that DCM in connection with a specified position or strategy that is “non-enumerated” may be relied upon by that party to exceed federal speculative position limits.
    - The appropriate procedural vehicle to make that determination could be a rule, order, no-action letter, statutory interpretation, exemption or other.

# Potential Framework for DCM Review of Non-enumerated Hedges

---

## Process

- The application procedure would essentially follow current process taking advantage of DCM resources and expertise:
  - an annual application describing activities and needs (which may be supplemented if needs increase);
  - analysis by the DCM of the application, including separate analyses of the party's exposure and the appropriateness of the position or strategy as a hedge;
  - a letter issued by the DCM approving, denying or conditionally approving the exemption application; and
  - a limit established for positions on that DCM.

# Potential Framework for DCM Review of Non-enumerated Hedges

---

- For any “non-enumerated” hedge exemption granted by the DCM, the DCM would provide a notice to the Commission:
  - identifying that a non-enumerated hedge exemption had been granted;
  - including the DCM’s conclusion as to the size of the party’s exposure to the non-enumerated position or strategy; and
  - the size of the exemption granted.

*n.b.*, such notice must be subject to complete confidentiality.

# Potential Framework for DCM Review of Non-enumerated Hedges

---

- The party receiving the DCM “non-enumerated” hedge exemption could exceed federal speculative limits up to the amount of exposure validated by the DCM, using either DCM, SEF or OTC positions (provided that the use of DCM or SEF positions does not exceed any applicable DCM or SEF limit, or involve “double-dipping”).

# Potential Framework for DCM Review of Non-enumerated Hedges

---

## Certainty

- Reliance on DCM determinations needs to have certainty to be effective.
- If the Commission or its staff does not agree that a particular “non-enumerated” position or strategy qualifies as hedge exempt, its treatment should only be changed prospectively and by Commission action, affording interested parties an opportunity to participate in the process.

# Potential Framework for DCM Review of Non-enumerated Hedges

---

- Things not addressed by this approach:
  - The “economically appropriate” test;
  - Cross-commodity hedging;
  - The “five-day” rule; and
  - Form 204 and other filing requirements.