

- (A) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;
 - (B) incurs risks, in addition to price risk, related to the commodity; or
 - (C) is a dealer that regularly provides risk management or hedging services to, or engages in market making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; or
- (ii) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments.

“Hedging Entity ECP” means a corporation, partnership, proprietorship, organization, trust or other entity (other than an Commodity Pool ECP) that has a net worth exceeding \$1 million² and enters into swaps in connection with the conduct of its business or to manage the risk associated with an asset or liability that is or is reasonably likely to be owned or incurred by it in the conduct of its business.

“Hedging Individual ECP” means an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5 million, and enters into swaps to manage the risk associated with an asset or liability that is or is reasonably likely to be owned or incurred by such individual.

“Hedging or Mitigating Commercial Risk” has the meaning set out in CFTC Regulation 50.50(c) and includes the following swaps:

- (i) a swap that either:
 - (A) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from: (1) the potential change in the value of assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise; (2) the potential change in the value of liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise; (3) the potential change in the value of services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise; (4) the potential change in the value of assets, services, inputs, products, or commodities that a person owns, produces, manufactures, processes, merchandises, leases, or sells, or reasonably anticipates owning, producing, manufacturing, processing, merchandising, leasing, or selling in the ordinary course of business of the enterprise; (5) any potential change in value related to any of the foregoing arising from interest, currency, or foreign exchange rate movements associated with such assets, liabilities, services, inputs, products, or commodities; or (6) any fluctuation in

² The calculation of “net worth” may include the net worth of any of the entity’s direct owners (including any owner of a Shell Company that invests in the entity), provided that all the owners of the entity are ECPs and that the swaps entered into qualify as bona fide hedges pursuant to CFTC Regulation 1.3(jkk). An individual owner of the entity may qualify as an ECP for this purpose only if the individual: (1) has an active role in operating a business other than the entity relying on the definition; (2) directly owns all of the assets of the business; (3) directly is responsible for all of the liabilities of the business; and (4) acquires its interest in the entity relying on the definition in connection with the operation of the individual’s proprietorship or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owner or incurred by the individual in connection with the individual’s proprietorship.