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COMMENT

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UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

In the matter of:)
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Account Ownership and Control) 17 CFR Part 16
Report)

2009 AUG 13 PM 5 25
OFFICE OF THE SECRETARIAT
C.F.T.C.

COMMENTS OF THE AIR TRANSPORT ASSOCIATION
OF AMERICA, INC.

The Air Transport Association of America, Inc. ("ATA")¹ respectfully submits these comments in response to the Advanced Notice of Proposed Rulemaking (the "Notice" or "ANPRM") concerning the Commodity Futures Trading Commission's ("CFTC" or "Commission") determination to collect additional ownership, control and related information for all trading accounts active on U.S. futures exchanges.² ATA supports the Commission's determination to collect account ownership and control data in order to better identify exchange trading activity that has market and regulatory consequence but which would go unrecognized absent such information. In addition to the proposed account Ownership and Control Report ("OCR"), we urge the Commission to consider mechanisms to obtain and aggregate similar account ownership and control information across all trading platforms, not just U.S. exchanges. We also support the collection of such data from the OTC market. This additional reporting – from non-U.S. exchanges and the OTC market –

¹ ATA is the principal trade and service organization of the major U.S. air carriers – both passenger and cargo. ATA member airlines are: ABX Air; AirTran Airways; Alaska Airlines; American Airlines; ASTAR Air Cargo.; Atlas Air; Continental Airlines.; Delta Air Lines; Evergreen International Airlines, Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways; Midwest Airlines; Southwest Airlines; United Airlines; UPS Airlines and US Airways; associate members are: Air Canada; Air Jamaica and Mexicana.

² 74 Fed.Reg. 31642 (July 2, 2009).

would bring true transparency to discrete trading activity by individual or related market participants that, in its totality, may cause extreme price volatility, excessive speculation, price manipulation or other trade practice abuses.

Because the airline industry is a substantial consumer of jet fuel, and because individual airlines rely on strategic hedging to manage the financial risk associated with that consumption, ATA and its members have a significant interest in healthy and properly functioning energy commodity markets and the CFTC's oversight of those markets.

The OCR is Needed to Enhance Transparency and Oversight

The Notice makes a compelling case for the Commission's determination to establish the OCR. For example, the Notice states that in 2008, electronic trading accounted for approximately 80% of trading volume on CBOT, CME, NYMEX and ICE Futures U.S. (p. 31643) and that "electronic platforms are now dominant in the United States," *Id.*, but that electronic trading has resulted in a "growing dispersion and anonymity of market participants." *Id.* Thus, the Commission concludes that "the OCR will allow the Commission to see more clearly and completely by identifying otherwise anonymous market participants and revealing links between apparently unrelated trading accounts whose aggregate behavior is of regulatory consequence." *Id.*

We agree that the OCR will confer significant surveillance and enforcement improvements which the Commission needs to fulfill its statutory

obligation to protect commodities markets from excessive speculation, manipulation and other abusive trading practices. For example, the OCR will:

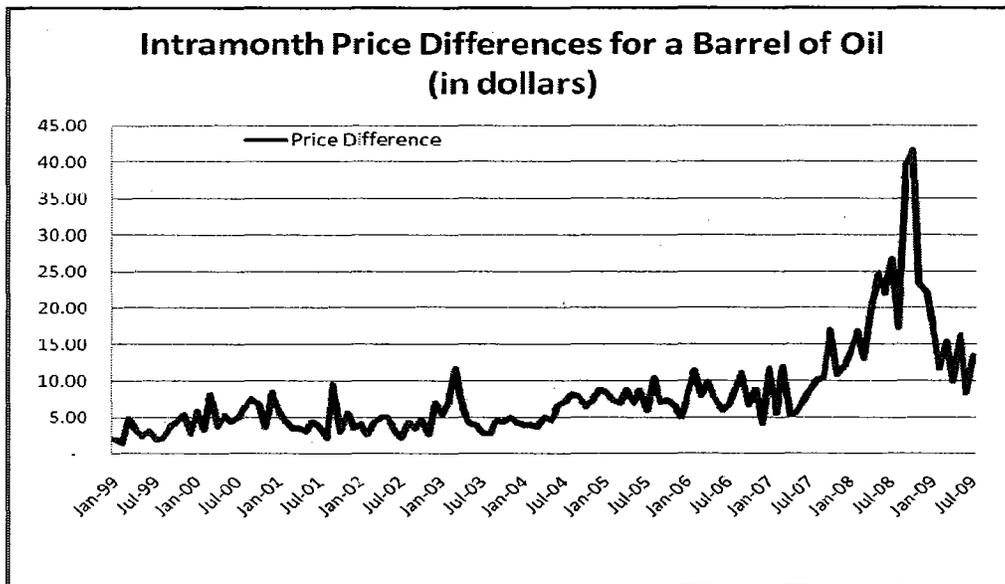
- Allow staff to aggregate trading accounts under common ownership or control;
- Link large trader reports and exchange trade registers;
- Oversee trading by widely dispersed individuals and accounts;
- Help staff link traders' intra-day transactions with end-of-day positions and assist investigations into intra-day manipulation and other trade practice abuses; and
- Bridge gaps in current data reporting systems.

These are important tools for the Commission in the execution of its surveillance and enforcement responsibilities.

The importance of the ownership and control data the Commission intends to collect cannot be overstated. As the Commission notes: "the inherent absence of ownership and control information in Trade Capture Report data presents an obstacle when [the Division of Enforcement] is investigating potential price manipulations or trade practice abuses..." (p. 31645). For U.S. airlines, the CFTC's lack of ownership and control information inhibits its ability to investigate excessive speculation which, together with a sustained high level of volatility, has become a very real threat to the financial stability of the industry. For an airline, an oil market characterized by high volatility driven by speculation presents a number of serious problems. It increases the costs and risks of hedging; it has pushed fuel prices to levels so high that they have depleted the capital of the firms in our industry; and with each spike in oil prices, airlines are forced to reduce air service, ground aircraft and eliminate jobs.

Excessive Speculation Drives Volatility

Since 2005 we have seen a significant increase in the volatility of oil prices. The increase has been particularly dramatic in the last two years. From 1999 through 2004, the average annual variance between the high price of a barrel of oil for the year and the low price was about \$16. From 2005 through 2008 the average annual per-barrel variance was about \$52. In 2007 the variance between the high and low prices was \$48 and in 2008 it was \$111. Daily volatility in 2004 was generally under one dollar. In 2008, the price of a barrel of oil rose \$10.75 in a single day (June 6), and daily volatility of \$3 or more became the norm. The average monthly difference in prices in 2008 was over \$19 per barrel.

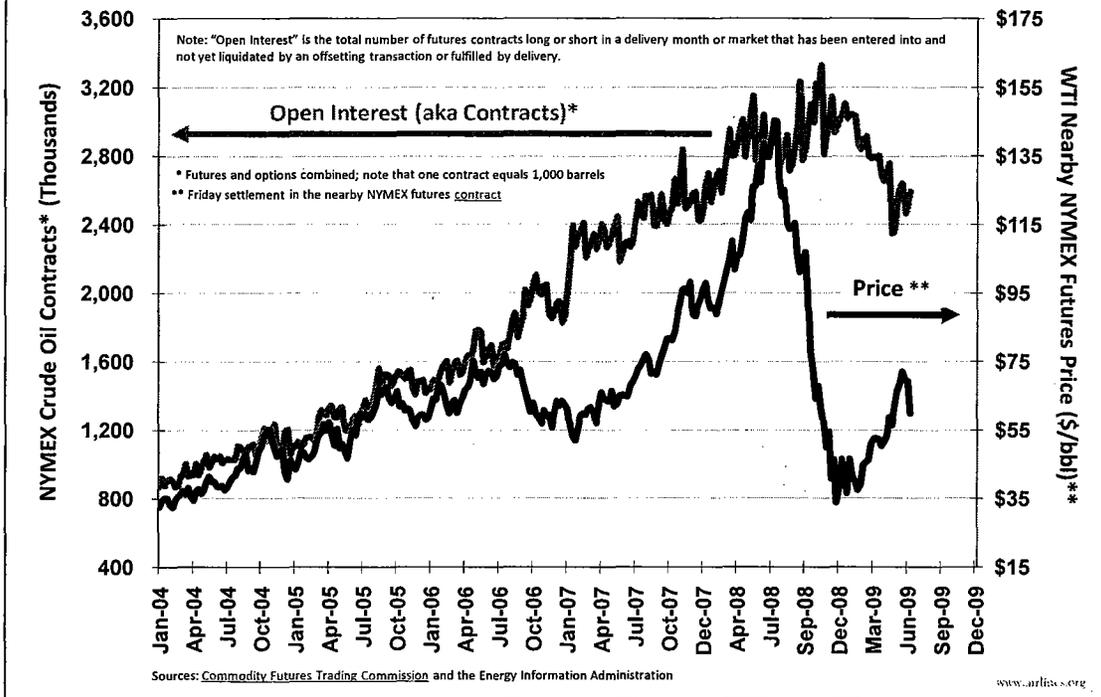


This increase in volatility has been associated with a massive increase in speculative investment in oil futures. A recent study by the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs noted that over the last six years, financial institutions have aggressively marketed commodity index funds, which are heavily weighted to oil futures, as a way for hedge funds, pension funds, and other investors to diversify portfolios and speculate on rising commodity prices. The study noted that the total value of investment in commodity indexes has increased tenfold since 2003, from an estimated \$15 billion in 2003 to around \$200 billion in mid-2008. During that period, the volumes of oil futures traded on the exchanges quadrupled, despite the fact that, over the same period, global demand for physical barrels of oil remained virtually unchanged.³ This increase in speculative activity is closely correlated with the increased volatility of oil prices, which has caused so much harm.

³ Total world demand for oil from 2005 to 2008 (in million barrels per day): 2005 – 84.00; 2006 – 84.98; 2007 – 85.90; 2008 – 85.33. Source: Energy Information Administration

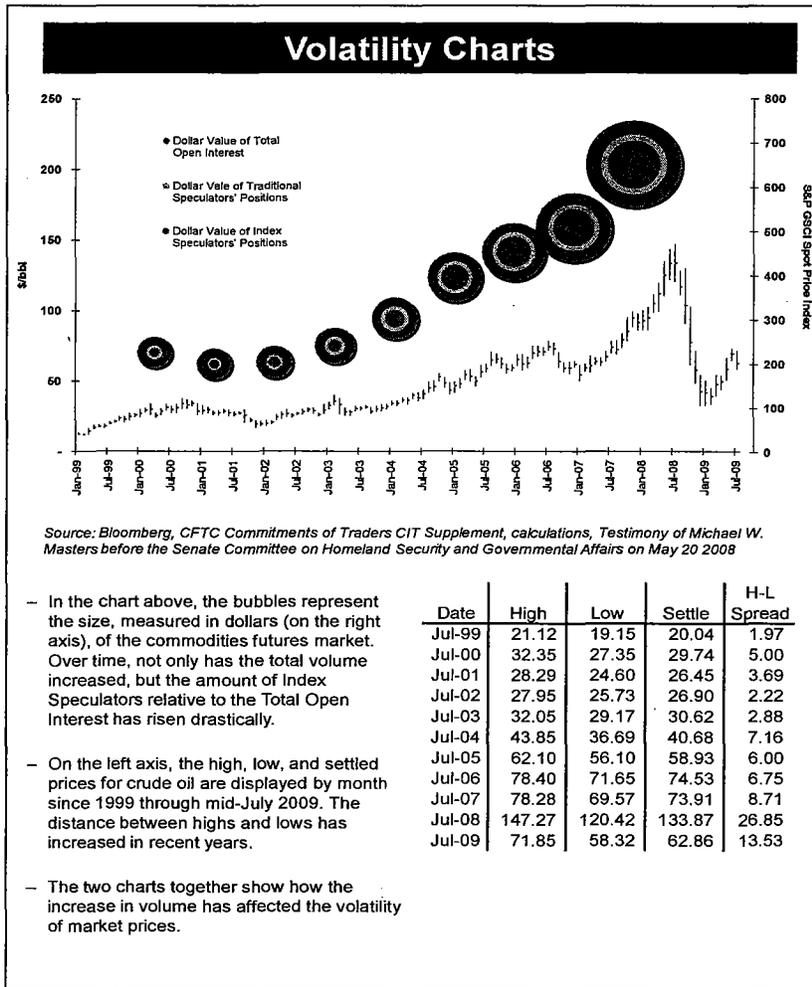
NYMEX Crude Oil Contract Volume Soared in 2003-2008 Period

In Mid-September of 2008, Open Interest Surpassed Equivalent of 3.23 Billion Barrels



Volatility and Excessive Speculation Harm U.S. Airlines and Their Employees

We estimate that the speculative oil price bubble that began in mid-2007, peaked in mid-2008, and then plummeted abruptly, cost U.S. airlines tens of billions of dollars. U.S. airlines spent nearly \$58 billion on jet fuel in 2008, \$16 billion more than in 2007, and jet fuel surpassed labor as the largest cost category for most airlines. One airline, Delta, estimates an \$8.4 billion cost increase, compared with what it would have spent on jet fuel if the price of oil had remained at \$60 a barrel. This includes \$1.7 billion in hedge losses and premiums. The result is that several airlines did not survive 2008. Since December 2007, eight airlines have ceased operations.



In 2008 alone, some 28,000 pilots, flight attendants, mechanics, ramp workers, gate agents, reservation sales and service representatives, and office workers lost their jobs due to cutbacks in our industry, and air service was reduced at countless communities across the country. Further capacity reductions, layoffs, bankruptcies and liquidations will occur if oil price volatility is not reduced to more manageable levels.

Account Ownership and Control Data Will Support the Commission's Efforts to Ensure Fair, Open and Efficient Commodities Markets and Protect Consumers

The Commission recently concluded hearings on regulatory mechanisms to fulfill its statutory responsibility "to ensure the fair, open, and efficient functioning of futures markets."⁴ In a July 7, 2009 press statement, Chairman Gensler announced the Commission would review and consider the imposition of aggregate position limits with respect to energy markets pursuant to its statutory obligation to "eliminate, diminish or prevent the undue burdens on interstate commerce that may result from excessive speculation."⁵ Chairman Gensler also announced that the Commission would review the criteria for granting hedge exemptions from such limits.

The OCR directly supports these efforts and will be an important tool for staff, as well as the Commission, in achieving the level of market transparency and regulatory oversight needed to restore the public's confidence in the futures markets, particularly energy markets. The OCR complements the enhancements recently made to the weekly Commitments of Traders report and the ongoing special call to collect and report data from swaps dealers and index investors, and it will advance the goal to "provide the public with greater insight into the new types of trading activity"⁶ affecting the energy markets.

⁴ Press Statement by Chairman Gary Gensler, July 7, 2009.

⁵ Id.

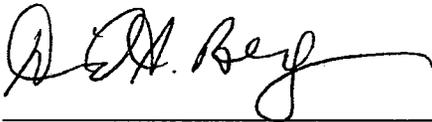
⁶ Id.

Conclusion

For the reasons set forth above, we urge the Commission to quickly complete this rulemaking to establish the proposed Ownership and Control Report. The OCR will enhance the Commission's oversight of the futures markets, particularly energy markets, and will assist in its efforts to ensure fair, open and effective markets. The factors that support the OCR also support collection of the same kind of data across all markets. We urge the Commission to consider mechanisms to expand the reach of the OCR beyond regulated U.S. exchanges.

Respectfully submitted,

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