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**Subject:** Advance Comments on Position Limits  
**Attach:** Comment Ltr to CFTC 12-13-10.PDF

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Dear Mr. Stawick:

We are filing the attached comment on behalf of our client, Delta Air Lines, Inc., in advance of the Commission's consideration of proposed rules relating to speculative position limits. In this advance comment, Delta suggests a methodology for setting the level of speculative position limits that is designed to meet the four goals of speculative position limits included in the Dodd-Frank Act.

Please feel free to contact Richard B. Hirst, General Counsel of Delta Air Lines, Inc., at (404) 715-7830, or me at the number below, if you have questions about our advance comment.

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**Richard B. Hirst**  
Senior Vice President & General Counsel

December 13, 2010

*VIA E-MAIL: PosLimits@CFTC.gov*

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Advance Comments on “XXVI. Position Limits, including Large Trader Reporting, Bona Fide Hedging Definition & Aggregate Limits.”

Dear Mr. Stawick:

Delta Air Lines, Inc. (“Delta”) appreciates the opportunity to comment in advance of the Commodity Futures Trading Commission’s (“Commission”) proposing rules relating to position limits under section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Section 737 of the Dodd-Frank amends section 4a of the Commodity Exchange Act, 7 U.S.C. §1 et seq. (“Act”) by adding new paragraphs 4a(a)(2)-(7) of the Act, making conforming changes to section 4a(b) of the Act, and by adding a new section 4a(c)(2) to the Act. The Dodd-Frank Act makes the most significant changes to the provisions governing the Commission’s authority to promulgate and enforce speculative position limits since they were first enacted in 1936. The rules that the Commission proposes and adopts implementing these provisions will have a significant effect on whether the futures and over-the-counter (“OTC”) markets in energy products operate primarily as a venue for speculation, damaging their public utility as a venue for price discovery and for commercial enterprises to hedge their business risks.

***Delta Air Lines, Inc.***

Delta is the world's largest airline both in terms of passenger traffic and fleet size. Delta's business has been, and continues to be, dramatically impacted by volatility in the oil markets.<sup>1</sup>

**The oil futures market has become subject to excessive speculation.**

The oil futures market has experienced dramatic changes since 2004. Prior to this time, from 2000 through 2003, open interest in the New York Mercantile Exchange West Texas Intermediate ("NYMEX WTI") crude oil contracts was relatively stable, growing modestly from 690,000 futures and options contracts to 822,000 contracts. During 2004-2009, the rate of growth accelerated, peaking in 2008 at 529% of open interest in 2000, having increased from about 630,000 futures and option contracts to 3,330,000 contracts and since then open interest has remained at historically high levels.

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<sup>1</sup> As noted in its comment letter filed in response to the Commission's previous proposed rulemaking on speculative position limits, Delta consumes approximately four billion gallons of jet fuel annually. Oil price volatility beginning in 2007, with prices peaking in 2008 and then dropping precipitously cost Delta approximately \$8 billion, including \$1.7 billion in hedge losses and premiums, compared with what Delta's cost of jet fuel would have been had the price of oil remained at \$60 per barrel. Movements in the price of oil directly affect the viability of Delta's operations and its levels of service and employment. The 2007-2008 price bubble in oil caused a 10 percent reduction in Delta's capacity and the elimination of nearly 10,000 jobs. See the comment letter submitted by Delta Air Lines Inc. in response to the Commission's notice of proposed rulemaking entitled, "Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule," 75 *Fed. Reg.* 4144 (January 26, 2010) ("Proposed Rules.") The Proposed Rules were subsequently withdrawn in light of enactment of the Dodd-Frank Act. "Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations," 75 *Fed. Reg.* 50950 (August 18, 2010).

### Total Open Interest in NYMEX WTI Crude Oil Futures and Options 2000 – 2009



Note: Data are from weekly Commission Commitment of Traders ("COT") reports.

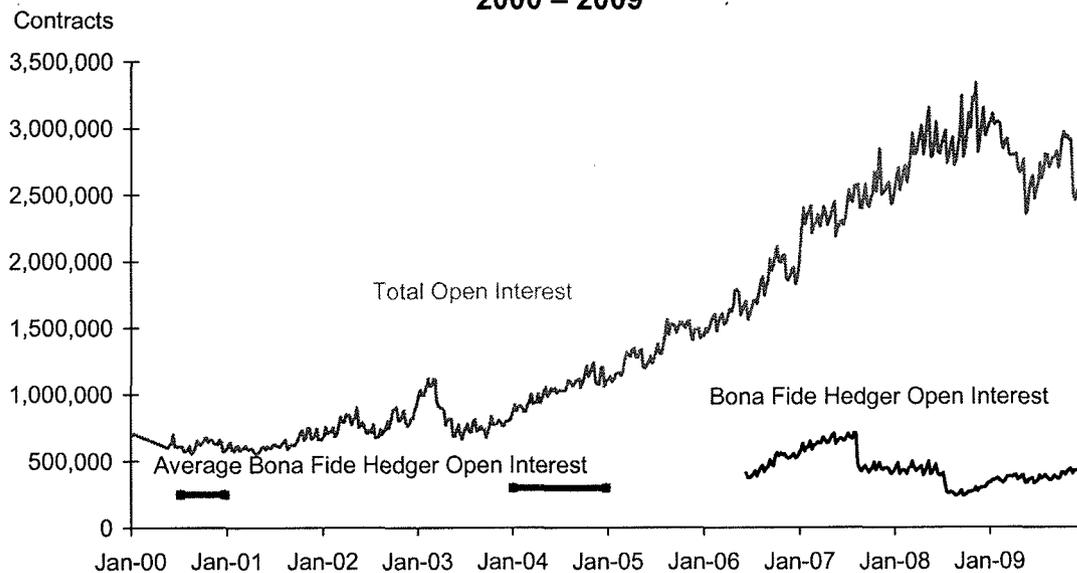
The dramatic increase in open interest since 2004 has been caused by an influx of speculative traders.<sup>2</sup> At its peak on September 16, 2008, non-commercial traders' open interest in futures and options was 1,440% of their 2000 annual average, growing from approximately 113,428 contracts to 1,633,534 contracts. On December 29, 2009 non-commercial open interest was 815% of their 2000 annual average. In contrast, trading by bona fide hedgers was relatively stable during period, actually declining somewhat below its level in 2000.

The following chart illustrates the growth of overall open interest and the lack of comparable growth of trading by hedgers:

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<sup>2</sup> The "non-commercial traders" category from the Commission COT reports is used as a proxy for speculative traders. However, if swap dealer positions were included, as they should be, speculative open interest would be significantly higher both as an absolute number of contracts and as a percentage of open interest.

**Bona Fide Hedger and Total Open Interest  
in NYMEX WTI Crude Oil Futures and Options  
2000 – 2009**



Note: Total open interest data are from weekly Commission COT reports. Bona fide hedger open interest data are from Buyuksahin 2008 and Commission disaggregated COT reports.

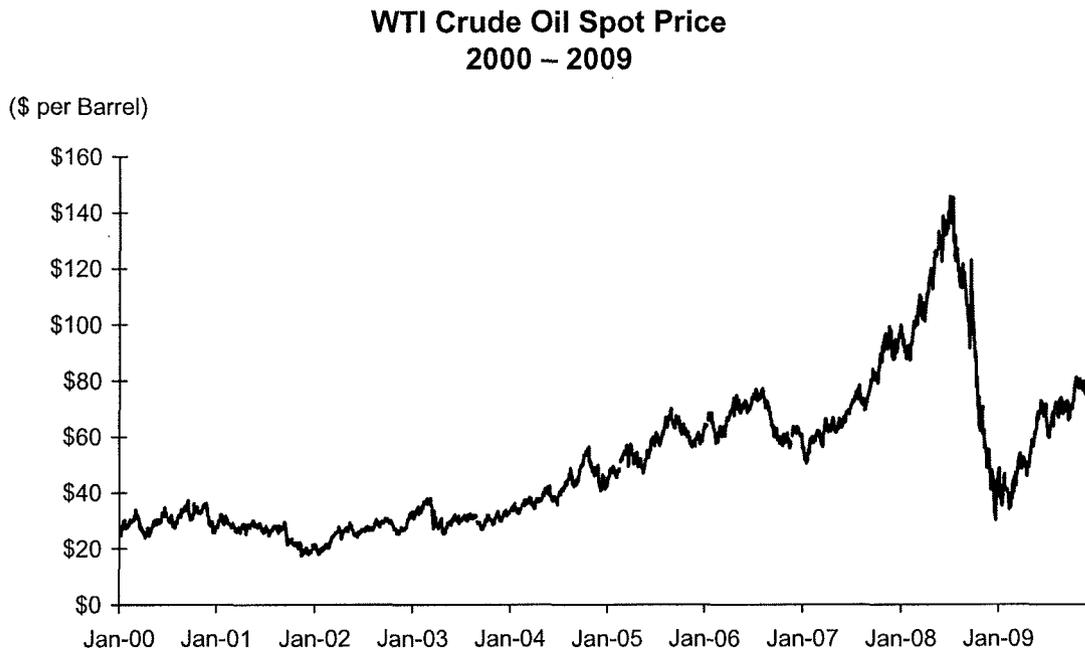
As a consequence of these two trends, the ratio of hedgers to speculators as a total percent of open interest reversed over the course of this period. In short, hedgers at the beginning of the period comprised approximately 60% of total open interest, but shrank to approximately 40% of open interest in 2009.

This disproportionate increase in speculative trading between 2000 and 2009 was not necessary to ensure market liquidity for bona fide hedgers. The percentage of total open interest held by bona fide hedgers was flat throughout the period. Bona fide hedgers were assured of market liquidity in 2000 when the annual average speculative open interest was approximately 113,428 contracts. All of the speculative trading over this amount was excessive. Thus, in 2008, approximately 1,500,000 of the average speculative annual open interest of 1,633,534 contracts was unnecessary to supply bona fide hedgers with market liquidity.

Moreover, this excessive speculative trading did not ensure that the price discovery function of the underlying market was not disrupted. Much the opposite is true. This period of excessive speculative trading corresponds to a period of very high price volatility. During the period 2005-2008 the yearly variance in the price of a barrel of oil was \$52, compared with an annual variance of \$16 during the 5-year period of 1999-2004. In 2004, daily volatility was generally less than \$1, compared to 2008, when daily volatility of \$3 or more was the norm. On June 6, 2008, the price of crude oil increased \$10.75.<sup>3</sup>

<sup>3</sup> CFTC Hearing, *supra* (testimony of the Air Transport Association of America, Inc. at p. 3.)

The following chart illustrates the increased volatility in oil prices beginning in 2004.



Note: Data are from the EIA for Cushing, OK.

Accordingly, the excessive speculative trading during the period after 2004 did nothing to ensure orderly price discovery.

**The Commission historically has set speculative position limits at levels designed to deter market manipulation. If applied to energy contracts, these levels are too high to limit excessive speculation and therefore do not meet the new standards of the Dodd-Frank Act.**

The Commission, over the years, has adopted Commission-set speculative position limits in agricultural commodities and has required exchanges to set speculative position limits or to adopt position accountability rules for all other commodities. The Commission itself has noted that its use of formulaically adjusted limits based upon market open interest was undertaken in the context of the Congressional intent, expressed in the Commission's 1986 reauthorization, that

[t]he Committee believes that, given the changes in the nature of these markets and the influx of new market participants over the last decade, the Commission should reexamine the current levels of speculative position limits with a view toward elimination of unnecessary impediments to expanded market use.<sup>4</sup>

<sup>4</sup> "Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule," 75 *Fed. Reg.* 4144, 4146, citing H.R. Rep. No. 624, 99<sup>th</sup> Cong., 2d Sess. at 4 (1986).

The use of a formula based upon open interest thereafter became “a matter of administrative practice.”<sup>5</sup>

In response to recent alleged manipulations in the natural gas markets and unprecedented volatility in other energy markets, Congress, in the CFTC Reauthorization Act of 2008 (“Reauthorization Act”), took the first recent step to reinvigorate the utility of speculative position limits as a tool in curbing the significant harm caused by excessive speculation. That statute granted the Commission authority to apply speculative position limits to Significant Price Discovery Contracts traded on exempt commercial markets.<sup>6</sup>

Despite the new Congressional direction implicit in the Reauthorization Act’s speculative position limit mandate, the Commission again proposed to set speculative position limits by a formula based upon percentage of open interest. This time, the Commission explained its use of a formula based on open interest as an extension of the logic “limiting positions based on deliverable supply . . . since, for example, traders with sufficiently large positions can squeeze shorts and thereby distort the price of the deliverable commodity.”<sup>7</sup> The Commission continued, stating that

To illustrate how a formula based on open interest would restrict the ability of any single trader to disrupt market operations through the acquisition and liquidation of large speculative positions . . . a position limit that is set at 10% of open interest, given an assumed open interest level of 1,000 contracts would be 100 contracts . . . . Thus, the position limits, at the assumed open interest level of 1,000 contracts would mean that there, must at a minimum, be 10 independent long and 10 independent short traders. . . . Therefore, position limits that are formulaically set as a percentage of open interest can prevent any single trader from acquiring excessive market power if structured properly as one part of a comprehensive speculative position limit framework.<sup>8</sup>

It is clear from the Commission’s explanation of how it derived the levels for speculative position limits that the goal of the speculative position limits under the Proposed Rulemaking was to restrain squeezes, corners and similar price distortions from occurring. The Commission explicitly stated as much in its explanation of the merits of a formula based on open interest. The Commission grounded its reasoning on how it sets speculative position limits on restraining the relative market power of any *individual* trader. The goal of this approach is to ensure that no one speculative trader so dominates

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<sup>5</sup> *Id.* at 4147.

<sup>6</sup> In fulfillment of the new responsibility for setting speculative position limits in energy contracts under the Reauthorization Act, the Commission proposed to amend speculative position limits for energy contracts in several ways. First, it would have required that contract markets and exempt commercial markets with respect to their Significant Price Discovery Contracts set speculative position limits rather than position accountability rules. Also, the Commission proposed both market-specific limits in addition to aggregate limits across markets. *Id.* at 4168.

<sup>7</sup> *Id.* at 4152.

<sup>8</sup> *Id.* at 4152.

and controls the market that it can extract from the other market participants prices that are not reflective of the true economic value of the commodity. This is a worthy regulatory objective. But, it does not fulfill the Congressional mandate of the Dodd-Frank Act.

**The Dodd-Frank Act mandates that the Commission set speculative position limits in a manner that will do more than simply deter market manipulation; speculative position limits must also limit excessive speculation in the energy markets, ensure liquidity to hedgers and protect price discovery.**

Following close on the heels of the 2008 Reauthorization Act, and its dramatic expansion of the Commission's speculative position limit authority,<sup>9</sup> the Dodd-Frank Act made even more sweeping changes to ensure that speculative position limits would be applied by the Commission in a manner intended to limit excessive speculation in the energy markets.

As amended by the Dodd-Frank Act, section 4a(3) of the Act for the first time provides specific guidance to the Commission on the factors that the Commission should apply in setting speculative position limits. Previously, section 4a simply provided that the Commission shall fix limits as the Commission "finds are necessary to diminish, eliminate, or prevent" the burden on interstate commerce caused by excessive speculation. The Dodd-Frank Act provides explicit guidance that the goals of speculative limits are broader than restraining the market power of the very largest speculative traders. As amended, section 4a(3) of the Act instructs that speculative position limits, to the maximum extent practicable, should achieve four goals:

- 1) diminish, eliminate or prevent excessive speculation;
- 2) deter market manipulation;
- 3) ensure liquidity for bona fide hedgers; and
- 4) ensure that price discovery is not interrupted.<sup>10</sup>

It is striking that Congress amended section 4a(3) of the Act to clearly articulate that deterring manipulation and diminishing excessive speculation are distinct goals of speculative position limits. Accordingly, both goals must be achieved by the

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<sup>9</sup> The 2008 Reauthorization Act expanded the Commission's speculative position limit authority to include Significant Price Discovery Contracts traded on exempt commercial markets and contracts traded on a Foreign Board of Trade which are economically linked to those of a U.S. market.

<sup>10</sup>Section 4a(3) provides that;

In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

(B) to the maximum extent practicable, in its discretion—

(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

(ii) to deter and prevent market manipulation, squeezes, and corners;

(iii) to ensure sufficient market liquidity for bona fide hedgers; and

(iv) to ensure that the price discovery function of the underlying market is not disrupted.

Commission to give effect to the Act's meaning. Moreover, Congress has further instructed that speculative position limits should be set to ensure liquidity for bona fide hedgers and to ensure the well-functioning of price discovery. It is clear that the amended speculative position limit language demands a fresh methodology for setting speculative position limits.

Meeting these statutory requirements cannot be done using the Commission's traditional open interest formula for setting speculative position limit levels. The amendment of the Act explicitly providing direction to the Commission to achieve these four goals requires that the Commission construct a new methodology for setting speculative position limits levels.

**Delta's proposal takes into account all four Dodd-Frank Act statutory criteria in setting the levels for speculative position limits.**

The four goals of speculative position limits mandated under section 727 of the Dodd-Frank Act can only be achieved by constructing a new methodology for determining the limit level which would begin with the amount of bona fide hedging activity in a market. It would then ask, "How much speculative trading is necessary to provide market liquidity for the trading of bona fide hedgers and to provide for efficient price discovery?" Speculative activity above that amount is, by definition, excessive. Such excessive speculative trading not only is unnecessary to achieve the goals set forth in the Dodd-Frank Act of ensuring liquidity for bona fide hedgers and that price discovery is uninterrupted, but, as discussed above, is associated with increased market volatility and therefore is actually contrary to the achievement of those goals. Once the over-all amount of speculative trading that is necessary to provide market liquidity to bona fide hedgers and for efficient price discovery is determined, we would use that as a guide to determine where the individual speculative limits should be set.

This new methodology would *not*:

- result in a quota that would be drawn against during the year by speculative traders with the possibility that speculators at some point would exhaust their ability to trade
- result in some speculators having greater trading opportunities than others, or
- change the day-to-day operation of speculative position limits in any way.

Every speculator in the market would be able to trade contracts constrained only if the individual trader's net position in all-months-combined or any single month of a futures contract exceeded the limit level, just as current speculative limits operate. This level would be reviewed by the Commission periodically, perhaps on a yearly basis.

Under Delta's suggested approach, the speculative position limit would be set in a manner to ensure that there is more than sufficient liquidity to meet the needs of bona fide hedgers. This liquidity would be provided by other hedgers in the market, by swap

dealers whose futures trading is related to their acting as an over-the-counter counterparty to a bona fide hedger, and by the portion of the market that consists of pure speculative traders. The amount of pure speculative trading permitted under Delta's proposed limits, roughly 40% of total open interest, would provide a sufficient cushion to ensure adequate liquidity to hedgers in the market, and the limit would be adjusted periodically to reflect the growth of hedging activity in the market. This will ensure that the growth in speculative activity can match, but not exceed, the growth in hedging activity in the market. This would ensure that the market can continue to meet the liquidity needs of hedgers and that the price discovery function will continue to operate without disruption, while limiting excessive speculative activity. Thus, Delta is proposing a methodology for determining speculative position limits that would maintain the same ratio between hedging and speculative trading in the current market as prevailed prior to the time that the oil futures market became subject to excessive levels of speculative trading. This methodology achieves all four goals for speculative position limits mandated by the Dodd-Frank Act.

**Delta's proposal results in a speculative position limit level of 5,000 contracts in any one month and in all-months-combined in the oil futures market.**

This limit is considerably lower than limits which the Commission has considered previously, but, as discussed earlier, such limits have been designed to prevent individual traders from amassing a large enough position to manipulate the market, and would have little or no effect on the amount of speculative activity in the market as a whole. Institutions which profit from the volatility caused by high levels of speculation, and their allies, will undoubtedly argue that a limit of 5,000 contracts per person will reduce liquidity below acceptable levels. This will not happen for two reasons. First, we would apply the 5,000 contract limit only to purely speculative positions. Positions of traders that relate to a trader's acting as a counterparty to a bona fide hedging transaction would not be subject to the limit. For example, if a swaps dealer engages in an over-the-counter transaction with a bona fide hedger, and hedges its risk by taking a position in the futures market, the futures market transaction, if identified by the trader as related to the hedging transaction, would not count as a speculative trade for position limit purposes. Thus, the very considerable amount of pure speculative activity which will take place under our proposed limit will be in addition to the amount necessary to provide liquidity directly to hedgers. Second, the 5,000 contract limit would affect only a very small number of traders. The vast majority of traders hold positions smaller than 5,000 contracts. The history of the 2000-2003 period shows that the level of speculation permitted under our proposed limit is more than adequate to provide liquidity and price discovery.

Our methodology for identifying appropriate speculative position limits can be used for setting the speculative position limit levels for any physical commodity. For the reasons discussed above, Delta believes that this methodology is particularly appropriate for the energy markets. We use the oil futures market (New York Mercantile WTI contract) as an example to illustrate the calculation methodology.

*STEP 1; identify a base period.* As indicated above, the beginning point is identifying a base period during which the futures market operated in an orderly manner.

The base period selected would be a period that a consensus believes meets the four Congressional goals of the Dodd-Frank Act. For the oil futures market we believe, we believe that the most recent period that meet these criteria would be the period between 2000 and 2003, which is the period immediately prior to the unprecedented run-up in speculative trading (hereafter, the “base period”).

*STEP 2; find the percentage of hedging during the base period.* Step 2 is finding the ratio between hedgers and speculators during the base period. During the base period, hedgers constituted approximately 60% of the market open interest and speculators 40%.<sup>11</sup>

*STEP 3; calculate the Speculative Open Interest Target.* Establish a Speculative Open Interest Target by looking at the prior year’s hedging open interest and calculating the amount of speculative open interest that would be necessary to maintain the same ratio between hedging and speculative trading as existed during the base period. In the case of the oil futures market, this means calculating the amount of speculative open interest that would be necessary to maintain the ratio of 60% hedging to 40% speculation. Accordingly, we would adjust the Speculative Open Interest Target annually to reflect changes in the amount of bona fide hedging from one year to the next.

Thus, the Speculative Open Interest Target for 2010 would be determined based upon the total amount of hedging open interest in 2009. In finding the amount of hedging open interest we would sum the amount of bona fide hedging positions with the futures positions of a swap dealer that relate to its activity as an over-the-counter counterparty to bona fide hedgers.<sup>12</sup> The average hedging open interest for 2009 was 951,451.<sup>13</sup> For this 951,451 hedging open interest to be 60% of total market interest, the Speculative Open Interest Target amount would be 634,300 contracts.

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<sup>11</sup> Delta’s comment letter on the Proposed Rules includes a full explanation of the methodology and the underlying data supporting this conclusion.

As noted in our comment to the Proposed Rules, Delta only has bona fide hedger and swap trader position data available for the year 2000 during the base period. Although the calculations are performed using only data from 2000, we have no reason to think that the overall results would be materially different using data for all four years of the base period. The Commission would have available to it, or be able to obtain, data for the entire base period.

<sup>12</sup> The Commission currently does not collect large trader data on this basis. Accordingly, the swap dealers would need to modify their reporting systems in order to capture this information.

<sup>13</sup> This is 378,124 contracts bona fide hedging plus 573,328, which is one-half the swap dealer open interest.

*STEP 4; translate the Open Interest Target to an individual speculative position limit level.* The speculative position limit level that applies to individual traders would be set at a level intended in very rough terms to maintain this ratio of speculative to bona fide hedging trading, thus meeting the four criteria of section 737 of the Dodd-Frank Act. Rather than setting the individual limit levels by taking a straight percentage of the Speculative Open Interest Target amount (as the Commission does when using its open interest formula), we would translate the Speculative Open Interest Target amount to a limit level that applies to individual traders by taking into account: 1) the size of the Speculative Open Interest Target; 2) the number of speculative traders in the market; and 3) the distribution of size of their individual positions, making use of the Commission's large trader data information. Using that data, each reportable trader in the market would be enumerated and ranked by open interest. Those amounts would be summed in order of ranking from largest to smallest, using an iterative process to find the individual speculative position limit.

How this calculation is performed is illustrated by the following example. Although the Commission would have data available to it from the Large-Trader Reporting System to make an exact calculation, we do not have that data. Accordingly, we have made some reasonable assumptions, which are noted in our example of the calculation to translate the Speculative Open Interest Target into an individual speculative position limit.

*FIRST.* Begin with: (1) the 2009 Speculative Open Interest Target; and (2) the 2009 average number of speculative traders.

The 2009 Speculative Open Interest Target was 634,300 contracts, as explained above.

The average number of speculative traders was approximately 227 traders each week. The CFTC reports publicly some trader numbers but not the number of speculative traders as defined here. Based on that data for 2009, there was an average of approximately 227 speculative traders each week (331 total traders – 104 Producer/Merchant/Processor/User Traders<sup>14</sup>). If the Speculative Open Interest Target were shared equally across all speculative traders, then each trader would receive a limit of 634,300 contracts divided by 227 traders, which is 2,794 contracts.<sup>15</sup> This is the lower bound speculative position limit and the result for the first iteration.

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<sup>14</sup> More specifically, the estimated average number of speculative traders = the average number of total reporting traders in 2009, 331, less the sum of the average number of reporting long and short bona fide hedgers in 2009, which were 46 and 58, respectively, to arrive at an estimated 227 speculative traders (331 – 58 – 46 = 227). This method could potentially under or overestimate the actual number of speculative traders. On the one hand it assumes that no Producer/Merchant/Processor/User traders hold both long and short positions, thus potentially double counting some bona fide hedgers and underestimating the number of speculative traders. On the other hand it assumes that all swap dealers engage in speculative trading, thus potentially overestimating the number of speculative traders.

<sup>15</sup> In this example, swap dealers who engage in both bona fide hedging and speculative trading would report these positions separately and their speculative trading would be subject to the individual speculative position limit.

SECOND. Adjust the individual speculative position limit to reflect that not all speculative traders hold positions of equal size.

Because some speculators would have open interest of less than the average size of 2,794 contracts, open interest for all speculative traders under this individual speculative position limit would be less than the Speculative Open Interest Target. The difference between the Speculative Open Interest Target and speculative open interest for all speculative traders under this lower bound target could then be reallocated to other traders in the second iteration resulting in a larger speculative position limit level to adjust for the fact that some speculators would have smaller positions than the average. This reallocation occurs in the second and subsequent iterations.

Calculating the second iteration of the speculative position limit requires additional data: the difference between the Speculative Open Interest Target and speculative open interest for all speculative traders. This difference can be determined from the distribution of open interest across speculative traders. The CFTC has such data, but does not make these data available publicly.

CFTC public data does enable an estimation of total speculative open interest using the same methodology described above. 2009 average estimated speculative open interest was 1,788,815 contracts. As an illustrative example, assume that the distribution curve of these 1,788,815 contracts across the 227 traders includes a small number of large traders and large number of small traders. This assumption is consistent with the concentrations that the CFTC reports across all types of traders. On average in 2009 the four traders with the largest open interest out of 331 total traders (barely one percent of traders) held more than 25 percent of open interest. The eight largest traders held 40 percent of open interest.

One way to model a distribution with a small number of large traders and large number of small traders is with a constant divided by trader open interest rank. For example, imagine the constant is 100. Trader 1, the trader with the largest open interest, would have open interest of  $100/1$ , or 100. Trader 2 would have open interest of  $100/2$ , or 50. Trader 3 would have open interest of  $100/3$ , or 33. These would be the traders with large open interest. Trader 100 would have open interest of  $100/100$ , or 1. The next hundred traders, Traders 101-200, would each have open interest of between 1 and 0.5. The result is a small number of large traders and large number of small traders.

This distribution is then scaled up with a larger constant so that the sum of the open interest of the 227 traders is 1,788,815. The constant that gives this result is 297,919 contracts. Using this constant, Trader 1, the trader with the largest open interest, has open interest 297,919. Trader 227, the trader with the smallest open interest, has open interest of 1,312.

These values are consistent with the limited data the CFTC reports publicly on trader size. Trader 1's open interest is less than the maximum possible open interest of

the largest trader overall.<sup>16</sup> Trader 227's open interest is greater than the reportable position minimum of 350 contracts.

This distribution in combination with the first iteration individual speculative limit of 2,7940 contracts results in approximately 111 traders having their position limited to 2,7940 while the remainder continue to have open interest of less than amount. The resulting aggregate speculative open interest is 509,909, which is 124,391 contracts fewer than the Open Interest Target of 634,300. These 124,351 contracts are then reallocated across the 111 traders whose first iteration positions were equal to the initial speculative position limit. This amounts to 1,120 additional contracts per trader, for a second iteration individual speculative position limit of 3,800.

This procedure continues through as many iterations as necessary until the speculative open interest equals the Speculative Open Interest Target and a final estimated individual speculative position limit is derived. In this case, the final speculative position limit of approximately 4,000 contracts was derived after the fourth iteration.<sup>17</sup>

Based on these results, Delta proposes that the single month and all months combined limit would be set at 5,000 contracts, the customary minimum level permitted by the Commission for newly listed futures contracts on energy and non-tangible commodities.<sup>18</sup>

Delta believes that this is the appropriate speculative position limit level because the number of traders that would be constrained by the speculative position limit is relatively small. As noted above, most traders in the market will be below the speculative position limit with only a relatively small number of traders trading in very large sizes. Such traders are likely to be large institutions trading for their own accounts. In this regard, it should be noted that such institutions would not be subject to the speculative position limit if their trading were related to their transactions in the over-the-counter market with a bona fide hedger. Accordingly, the speculative position limit would only affect the largest traders whose trading is purely speculative in nature.

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<sup>16</sup> CFTC data allow calculation of long and short interest of the largest four traders as a group. Further CFTC data on the second four largest traders allows calculation of the smallest open interest of traders 2-4. Using the total open interest for traders 5 through 8, we know that the smallest possible value for trader 4's open interest would be 1/4 of this total, as if they had any less they would have a smaller position than trader 5. Assuming traders 2 through 4 all have this same minimum level of open interest and subtracting their positions from the total open interest of traders 1 through 4 gives us the largest possible position for trader 1, essentially assumes that traders 2 through 8 all have the same level of open interest. The average total open interest held by the largest 4 and 8 traders in 2009 was 26.53% and 40.50%, respectively. From these data the smallest possible position of trader 4 is calculated to be 3.49%  $((40.50\% - 26.53\%) / 4 = 3.49\%)$ , The largest possible position of the largest trader would be 16.05%  $(26.53\% - (3 * 3.49\%))$ , or 439,905 contracts  $(16.05\% * 2,740,266)$ , the average total open interest in 2009).

<sup>17</sup> The Commission currently sets a limit for long and short positions, rather than an open interest limit. While not identical, the aggregate open interest limit number could also be used as the aggregate limit on short and long positions.

<sup>18</sup> See, 17 CFR §150.5(b)(3)(1998).

As noted above, this process permits the speculative limit to be adjusted upwards to match the growth in hedging activity in the market. Under the same assumptions, the speculative position limit would exceed 5,000 when bona fide hedging open interest (including ½ of swap dealer interest) exceeds 1,086,000. An increase of that amount represents an increase of roughly 14% in trading by hedgers over the 2009 average bona fide hedging open interest. This level of trading has occurred in the past, most recently in early August 2007, and may well occur in the future. Growth in trading by hedgers would expand the need for the liquidity that is supplied by speculators and our methodology would provide for such measured growth in speculative trading to keep pace with an increase in hedging activity.

We would again note that the Speculative Open Interest Target is a target, not a hard cap on the overall amount of trading of speculators in the market. It is intended to be a guide for determining the speculative position limit level that will apply to individual traders. Thus, it is entirely possible that at any point in time the target may be exceeded if trading behavior of speculators in the market generally departs from prior observed norms, such as if many traders began to assume larger sized positions or if there were an influx of speculative traders into the market. The speculative position limit levels we recommend would therefore tend to keep speculative activity within a range of the Speculative Open Interest Target. Although Delta is recommending an alternate method for determining the levels of speculative position limits, its proposal would not change the over-all framework of speculative positions limits and the method of compliance by individual traders from current requirements.

### **Delta's Methodology is Based on Commission Precedent**

Delta's methodology is informed by Commission precedent. The open-interest formula used by the Commission is only one of two alternative methods under which exchanges may determine the appropriate levels for exchange-set speculative position limits under Commission rule 150.5(c)(2), 17 C.F.R. §150.5(c)(2). That rule provides that speculative position limits may also "be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract." Delta's suggested approach is consistent with this Commission alternative methodology.

### **Separate sub-limit for aggregate positions of passive, long-only speculators**

Using this as a general framework, Delta recommends that the Commission establish separate speculative position limits for passive, long-only traders. These would be established using the same methodology used to set the general speculative position limit levels, but the calculation would be based upon a separate open interest target level based upon the open interest of passive, long-only speculators. This would result in a limit level for passive, long-only speculators that would be less than the limit generally applicable to speculative traders. Such a limit is appropriate in light of the unique trading attributes of passive, long-only traders. This limit would also be adjusted periodically to reflect the growth in market volume of bona fide traders in the market.

Although the Commission has not previously distinguished types of speculative trading strategies in setting speculative position limits, Section 4a of the Act empowers the Commission to do so.<sup>19</sup>

### **Speculative Position Limits Aggregated Across Markets**

The target amount methodology which uses customary size of positions to set speculative position limits would work equally effectively in determining the aggregate speculative position limits required under the Dodd-Frank Act. Delta understands that the chief obstacle to implementation may be incomplete data with respect to the formerly unregulated over-the-counter markets. In this regard, it may be possible for the Commission to draw some reasonable assumptions about position sizes based upon the trading activity of swap dealers in the futures markets, for which there is large trader data. Working assumptions on the relation of swap dealer's trading in the futures market to the size of the over-the-counter markets might be established through sampling techniques coupled with special calls for information. As more data is cumulated by the swaps repositories, the Commission will be able to refine its assumptions and eventually to apply actual data to the calculation of aggregate speculative position limit levels.

Accordingly, Delta believes that the Commission should proceed to propose:

1. the specific methodology that it will follow in setting speculative position limits;
2. specific speculative position limits for the futures markets; and
3. aggregate limits which include limits on related positions in the OTC markets to the extent it is so able to do so based upon the data that it is able to marshal at this time.

Delta does not support the general deferral of acting on speculative position limits until the Commission is able to assemble optimal data, nor does it support setting speculative limits so high that they will have no effect whatsoever based on the lack of data for certain market segments. Delta believes that the Commission should instead strive to establish meaningful speculative position limits using sampling and other statistical techniques to make reasonable, working assumptions about positions in various market segments and refining the speculative limits based upon market experience and better data as it is developed.

With respect to the spot-month speculative position limit, Delta agrees that a formula of one-quarter of the available deliverable supply is an appropriate measure, but only if strictly applied as a unified limit across markets and type of contract. No speculative trader should be able to exceed that amount by dividing his or her position

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<sup>19</sup> Section 4a provides that, "Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures . . . or different trading limits for buying and selling operations . . . ."

between different markets or by holding his or her position either entirely or partially in financially settled contracts.

\* \* \* \* \*

As noted in this letter, the speculative bubble in oil prices has concrete detrimental consequences for the real economy. Congress provided the Commission with enhanced authorities relating to speculative position limits and provided additional direction with respect to the goals that speculative position limits should achieve. Delta believes that meeting this new mandate requires an approach other than application of a formula based on open interest. Delta further encourages the Commission to move forward aggressively to implement the Congressional mandate as fully as possible, recognizing that it may have to use sampling and other statistical techniques initially until better data becomes available.

Delta supports and appreciates the considerable efforts of the Commission and its staff in implementing the provisions of the Dodd-Frank Act. Please contact the undersigned at (404) 715-2830, or our outside counsel, Paul M. Architzel of WilmerHale at (202) 663 6240, if you would like to receive the data underlying the graphs in this letter or if we can provide any additional information.

Respectfully submitted,

Delta Air Lines, Inc.

By:



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Senior Vice President -General Counsel



Paul M. Architzel

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cc: Chairman Gensler  
Commissioner Dunn  
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