

**From:** Christine Cochran <Christine.Cochran@Commoditymks.org>  
**Sent:** Monday, March 28, 2011 10:39 PM  
**To:** PosLimits <PosLimits@CFTC.gov>  
**Subject:** Coalition Letter on Position Limits  
**Attach:** Joint Industry Association Letter\_Position Limits\_032811\_Final.pdf

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Please find attached a joint letter on the Commission's position limits proposal from the Commodity Markets Council, Independent Petroleum Association of America, Natural Gas Supply Association, Silver Users Association, and US Chamber of Commerce.

Regards,  
Christine Cochran

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March 28, 2011

David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Position Limits for Derivatives; RIN 3038-AD15 and 3038-AD16**

Dear Mr. Stawick:

The undersigned organizations represent thousands of domestic and global businesses that rely on the price discovery and risk management functions of the U.S. derivatives markets in agriculture, energy, and metal commodities. We respectfully submit these comments in response to the notice of proposed rulemaking issued by the U.S. Commodity Futures Trading Commission (“Commission”) to establish position limits for certain derivatives in reliance on Section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”).

Our members use commodity futures and swaps to manage short- and long-term price risks and rely on the price signals that the markets provide in making investment and manufacturing decisions. These markets facilitate the production and growth that is necessary to meet a broad range of economic needs for producers and consumers. We support the shared goals of Congress, the Commission, and market participants to bring greater transparency and sounder risk management practices to the derivatives markets. However, we are concerned that the Commission’s proposed rules to establish position limits for certain physical commodity derivatives would create several negative and unintended consequences:

First, if not appropriately crafted, these proposed rules have the potential to restrict legitimate commercial activity and investor participation in U.S. markets, negatively impacting their liquidity and price the discovery functions. We do not oppose a position limits regime that is found to be necessary and appropriate to fulfill the Commission’s regulatory mandates. As expressed in greater detail in many of our individual comment submissions and those of other end-users and business groups, the proposed *bona fide* hedge exemptions and aggregation requirements are commercially impracticable and would benefit from a more deliberative and comprehensive consultation and drafting process to avoid negative impacts on businesses that have relied on these markets for decades.

Second, even if the CFTC ultimately makes a finding that position limits are necessary, Congress directed the CFTC to apply such limits across applicable exchange traded products, economically equivalent over-the-counter (OTC) swaps, and look-alike products that trade on Foreign Boards of Trade (FBOT). Without the new swap data reporting facilities required by Dodd-Frank in place, the CFTC lacks the information needed to gain a comprehensive view of the market for each of these instruments. Establishing this data should be a prerequisite to proposing and instituting any new position limits framework.

Third, the CFTC will be unable to fully coordinate with FBOTs and their regulators until the regulatory reform processes in other key jurisdictions is complete. For example, the European Union is months away from adopting final legislation in this area and even further from the regulatory implementation phase. Imposing a rigid position limits framework on U.S. markets absent coordination with FBOTs will create both regulatory and price arbitrage opportunities, and potentially shift market activity to foreign markets not regulated by the CFTC. Again, liquidity in U.S. markets, which is essential for price discovery and effective risk management, would be diminished and transparency in the global commodities markets reduced.

Fourth, it is imperative that the Commission conduct an adequate cost-benefit analysis of the proposal as required by Commodity Exchange Act Section 15(a). Again, the EU is in the process of conducting an economic impact assessment related to their legislative proposals, including a proposal to address commodity market volatility. Although the Commission's own research has failed to establish the causal link between speculation and volatility, the Commission continues to press forward with a rule that will inevitably impose substantial compliance costs on end-users. This will only add to the multitude of other compliance costs emanating from Dodd-Frank absent any clear benefit to the marketplace.

Finally, we question the need to prioritize this rulemaking on the same completion timeline as the definitional, clearing, and transparency rules that are central to the main goal of Dodd-Frank, reducing systemic risk. Our member companies have been largely supportive of reforms in the derivatives markets that will ensure well-functioning, transparent markets with appropriate safeguards to protect against market manipulation.

Just as our businesses allocate limited resources, we strongly encourage the Commission to focus on implementing rules that are clearly mandated under Dodd-Frank and develop a reasonable timeline and supportable basis for imposing position limits. Only then should the Commission proceed in developing a data-driven and comprehensive approach to a position limits framework rather than pushing forward now with an uncoordinated and piecemeal approach that presents the risks identified above.

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We appreciate your consideration and would be happy to discuss these concerns further with the Commission and staff.

Sincerely,

Commodity Markets Council  
Independent Petroleum Association of America  
Natural Gas Supply Association  
Silver Users Association  
U.S. Chamber of Commerce

cc: Chairman Gary Gensler  
Commissioner Michael Dunn  
Commissioner Bart Chilton  
Commissioner Jill Sommers  
Commissioner Scott O'Malia  
Dan Berkowitz, General Counsel  
Steve Sherrod, Acting Deputy Director, Market Surveillance  
Bruce Fekrat, Senior Special Counsel, Office of the Director