

**From:** Christine Cochran <Christine.Cochran@Commoditymkts.org>  
**Sent:** Tuesday, December 14, 2010 5:46 PM  
**To:** PosLimits <PosLimits@CFTC.gov>  
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**Subject:** Pre-Comment Letter from the Commodity Markets Council  
**Attach:** Position Limits Pre-Comment Letter FINAL.pdf

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Please find attached our comments on speculative position limits. If you should have any questions, please let me know.

Best,  
Christine

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December 14, 2010

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

**RE: Speculative Position Limits Pre-Rulemaking Comments**

Dear Mr. Stawick:

The Commodity Markets Council (“CMC”) appreciates the opportunity to submit the following comments for consideration by the Commodity Futures Trading Commission (“CFTC” or “Commission”) in advance of its planned rulemaking on position limits for certain contracts in exempt and agricultural commodities.

CMC is a trade association bringing together exchanges and their industry counterparts. The activities of our members represent the complete spectrum of commercial users of all futures markets including energy and agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange and the New York Mercantile Exchange. CMC is uniquely positioned to provide the consensus views of commercial and end users of derivatives. Our comments represent the collective view of CMC members.

The businesses of all our member firms depend upon the efficient and competitive functioning of the risk management products traded on U.S. futures exchanges. Through the Commission’s diligent oversight efforts that have fostered Exchange innovation and technology adoption, we have seen the commodity markets grow and prosper. They have become deeper and more liquid, narrowing bid/ask spreads and improving hedging effectiveness and price discovery. Meanwhile, liquidity, technology, clearing quality, price and customer service have driven market selection. All of these developments serve the interests of the trade as well as the public.

CMC supports the concept of position limits, whether set by an exchange or the CFTC, but only where such limits are necessary to prevent or diminish price distortions resulting from excessive speculation. In that circumstance, the price discovery and risk management functions of the market are disrupted and public confidence is undercut.

CMC does not believe speculation is synonymous with manipulation or is it an inappropriate practice. As the Commission appreciates, speculation is essential. It provides liquidity and ensures the price discovery and risk management functions of the market are achieved.

The CEA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), makes clear, the Commission’s authority to set position limits is designed not to restrict speculation, but to prevent “unwarranted and unreasonable fluctuations resulting from excessive speculation...”.

Moreover, the statute mandates that before position limits are imposed, the Commission must find (1) that there has been “excessive speculation” and (2) that the excessive speculation has resulted in “unwarranted and unreasonable price fluctuations.” CEA, Section 4a(a)(1)<sup>1</sup>. Even the new subsection 4(a)(2) confirms that any position limits set thereunder must be established “[i]n accordance to the standards set forth in paragraph 1 of this subsection.”

CMC believes Congress authorized the Commission to set position limits only in the limited circumstances where excessive speculation has resulted in unwarranted price fluctuations. The statute does not grant a general authority to set position limits.

There are some market participants that believe the activities of large speculators were solely to blame for the run-up in commodity prices in 2007 and 2008. However, the experience of many of our members and a review of the empirical evidence does not support the view that speculation was the sole or even primary reason for price volatility in the market. Instead, most economists conclude that supply and demand fundamentals and other macroeconomic factors proved to be the most significant factors driving the markets at that time.

For example, the CFTC’s study following the 2008 rise in oil prices concluded the price movements were the result of normal supply and demand factors. *See*, CFTC Interagency Task Force On Commodity Markets, Interim Report On Crude Oil at 3-4 (July 22, 2008). The Government Accountability Office in 2009 reviewed most of the empirical and anecdotal studies on “speculative trading” and reached the same conclusion. *See* GAL-09-285R, Issues Involving the Use of the Futures Markets to Invest in Commodity Indices at 5(30) 2009.

Against this background, CMC urges the Commission to conduct a thorough empirical analysis of pricing and market data before it imposes any position limits on futures, options or swaps contracts in exempt or agricultural commodities. CMC agrees with the commentary filed by CME Group that this is a subject best left to futures exchanges to address through existing market surveillance programs on a contract by contract basis. Exchanges and the Commission have developed an expertise in maintaining orderly markets, including setting appropriate reportable levels, position limits and accountability levels relative to energy, metal and agricultural markets. This system provides the flexibility necessary to prevent excessive speculation while preserving transparent and liquid markets.

CMC believes this flexible regulatory approach is a more effective way to address potentially manipulative and disruptive positions. Indeed, the failure of any empirical studies to identify unwarranted price fluctuations due to excessive speculation suggests these programs have been successful in promoting market stability and avoiding unwarranted disruptions. Imposing artificial position limits in this context could harm market liquidity.

If the Commission makes the necessary findings supported by demonstrable evidentiary data, CMC would nonetheless urge the Commission to proceed cautiously and judiciously in setting limits for given futures, options or swaps.

The new Dodd-Frank amendments contain various and somewhat confusing timing requirements for the exercise of the Commission’s authority in this area, but they all vest the Commission with discretion, premised upon the necessary findings, to establish limits “as appropriate.” Thus, the Act contains an element of flexibility so that the Commission need not act until it deems that position limits in a given area are “appropriate.”

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<sup>1</sup> The Commission also must publish the required finding and information in support of establishing such position limits in any notice of proposed rulemaking in order to comply with the requirements of the Administrative Procedure Act. Absent such a finding and supporting information, the public’s ability to comment on the proposal is compromised because it lacks an understanding of the Commission’s reasoning. (*See*, e.g. *Am. Med. Assoc. v. Reno*, 57 F 3<sup>rd</sup> 1129, 1132, D.C. Cir. 1995)

Additionally, Section 4a(a)(2)(C) mandates the Commission act to avoid shifting the price discovery function to foreign boards of trade (FBOTs). We believe Congress was concerned unnecessary restrictions on trading positions threaten to reduce liquidity and adversely affect the hedging and price discovery functions of the U.S. commodity markets. Moreover, the Financial Services Authority recently announced its decision to not impose speculative position limits.

Under the CEA, as amended by Dodd-Frank, the Commission also has been granted broad exemptive authority from any position limit rule. The CMC urges the Commission to use its exemptive authority to permit market participants to use futures, options and swaps contracts to manage the risks they face in their particular enterprises. Given the inter-connectiveness and correlation between various markets, many entities use the commodities markets to hedge risks in other markets as well as in physical commodities. CMC recommends the Commission use its exemptive authority to take account of these factors.

The CMC thanks the Commission for the opportunity to present its views on this most important subject. If you have any questions or would like to discuss further, please do not hesitate to contact me via email at [christine.cochran@commoditymkts.org](mailto:christine.cochran@commoditymkts.org) or via phone at (202) 842-0400 – ext. 101. Thank you in anticipation of your attention to these comments.

Regards,



Christine M. Cochran  
President