

August 16, 2004

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Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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RECORDS SECTION

COMMENT

Re: Petitions for Repeal or Amendment of Federal Speculative Position Limits

Dear Ms. Webb:

Pursuant to the Commodity Futures Trading Commission (Commission) request for comments concerning the petitions related to repeal or amendment of federal speculative position limits identified in the Federal Register (Volume 69, Number 116) dated June 17, 2004, the undersigned farm and commodity organizations are pleased to provide the following observations concerning the petitions and the questions raised by the Commission in the notice.

Background –

The Commodity Futures Modernization Act of 2000 (CFMA) represented substantial modifications to the level of active regulation of the nation's futures markets by the Commission. The new law was designed to respond to a number of fundamental market changes created by technological innovation, greater levels of sophistication and risk assessment capacity of those actively engaged in futures markets, and increased competition from alternative exchange and off-exchange products and markets both domestically and globally. In addition, the CFMA recognized a desire by many to streamline the historic mandate of the Commission concerning specific provisions and requirements as well as certain markets where the more traditional levels of regulation could inhibit commercial activities.

To achieve these objectives, CFMA was designed to allow for differing levels of regulation and oversight of the futures markets based on the characteristics of the commodity or product. In addition, the CFMA sought to achieve the levels and types of protection desired by active market participants, those who are directly affected by market actions, and the public in general.

The CFMA provided the highest levels of regulation, oversight and opportunities for public comment and review of proposed modifications to its provisions for the agricultural futures markets. We believe this decision was based on a number of factors, including the potential of agricultural futures markets to be subject to manipulation, fraud and abuse, and the finite levels of physical product that underlay the markets. Furthermore, it was recognized that while many agricultural producers do not directly participate in the futures markets, those markets have a substantial influence on the prices received and paid by producers in their respective cash markets. Therefore, they, along with the public at large, should have ample opportunity to participate in any and all proceedings that could materially affect the price discovery function of the futures markets.

Pending Petitions –

The Commission has received petitions from the Chicago Board of Trade (CBT), Kansas City Board of Trade (KCBT) and the Minneapolis Grain Exchange (MGE), herein after referred to as the petitioners, seeking modifications to the current regulations and levels pertaining to Federal speculative position limits for the enumerated agricultural commodity contracts that are established and enforced under the regulatory authority of the Commission. While each petition proposes somewhat different action to be taken by the Commission, all relate to the same general issue. Thus, the Commission has requested comment on the full range of issues raised by the petitioners and identified six specific issues for which it seeks specific advice. The questions are summarized below followed immediately by the comments of the undersigned organizations.

Issues -

- (1) Should the Commission continue to impose Federal speculative position limits for all of the agricultural commodities enumerated in the regulation 150.2?

Although we are supportive of the concept of expanded speculative limits which enhance the ability of market participants to manage both risk and profit, we oppose the petitioners' request that the Commission repeal regulation 150.2, based on core principle 5 of the CFMA which would allow the exchanges to adopt speculative position limits or position accountability standards for the enumerated commodities.

The petitioners' position in support of repeal appears to be primarily based upon three arguments. First, it is their view that market participants or exchange customers have and will continue to have adequate opportunity for input into the decision making process of an individual exchange, based on their position as an exchange member and/or customer of member-traders. Thus, the concerns of their market participants and customers will be fully weighed and evaluated prior to any change in the speculative position limit for a given enumerated commodity.

The economic returns of the producers of agricultural commodities that are traded on the various exchanges are substantially influenced by the futures markets, which act as a portion of the overall price discovery mechanism for those commodities. In a large number of instances, the futures market is utilized to establish the pricing and delivery terms for a broad range of immediate and forward cash sales contracts. However, many farmers are neither members of an exchange nor the customers of members. Any concerns they may have about a proposed adjustment to speculative position limits, if they receive advance notice that such a change is under consideration, are unlikely to be communicated in the decision-making process of an exchange.

Secondly, advocates of repeal in their statements to the CFTC Agricultural Advisory Committee on July 21, 2004, expressed concern over the length of time necessary for the CFTC to act on a petition to modify the speculative position limits, based on their experiences stretching back to the late 1980's and early 1990's.

The CFMA greatly reduced the regulatory burdens and requirements that applied to the decision-making processes of the Commission. We believe that the regulatory relief provisions included in the CFMA provide a suitable balance between the needs of the exchanges for greater

regulatory flexibility and expedited consideration in gaining Commission rulings, and the interests of the public, in particular agricultural producers, to be represented and have a voice in modifications to exchange practices and policies that may substantially impact the commodity markets and their own livelihoods.

We are vitally interested in ensuring that the exchanges are able to fulfill their duties in terms of providing risk management and price discovery for U.S. farmers and ranchers and others who utilize these markets, including speculators, while also ensuring market integrity. However, until such time as regulation 150.2 is demonstrated to be an impediment to the efficient functioning of the markets or the exchanges, we see little to be gained from its repeal.

Third, the petitioners suggest that because the CFMA elaborates core principles to guide exchange policies and practices and has provided the Commission authority to repeal specific regulations subject to compliance with core principles, the Commission should do so.

We believe the authors of the CFMA intended for the public, including agricultural producers, to be able to fully participate in decisions governing exchange actions, which may have a significant bearing on their related markets and interests. At the same time, the Commission was provided flexibility to modify or repeal regulations should changing conditions warrant, while ensuring that specified principles were adhered to. The petitioners have not made a case that since the implementation of the CFMA the conditions pertaining to the rules that govern the establishment of Federal speculative position limits have changed to the extent that repeal of regulation 150.2 should be supported.

- (2) Why should some agricultural commodities be treated differently than other agricultural and non-agricultural commodities in terms of whether it is the Commission or the exchange that establishes speculative position limits?

The differing approaches to regulation for specific commodities are based on history, timing of specific contract introduction, tradition and experience over time with individual commodities and the futures contracts relevant to those commodities.

In the agricultural markets, there is no evidence that the futures markets for those commodities not subject to rule 150.2 function any more efficiently or satisfy the underlying needs of all direct and indirect market participants to a greater extent than what occurs under the regulatory structure that applies to the commodities subject to the rule.

In addition, it appears that the exchanges have adopted the Commission's formula approach to establishing speculative position limits for those commodities not subject to rule 150.2. However, should the rule be repealed, the exchanges may, somewhat arbitrarily, establish new criteria to adjust speculative position limits or utilize the more subjective position accountability provisions that, while subject to Commission oversight could result in greater market instability and increase the threat of manipulation or abuse.

- (3) If rule 150.2 is maintained should the regulations be modified to eliminate the non-spot, individual month or the all-months combined limits?

We have a strong interest in ensuring that the agricultural commodity futures markets function in a manner that is both efficient and transparent, while ensuring market integrity and affording

protection against all forms of manipulation or abuse to all who utilize or are impacted by the markets. Without committing to a position supporting or rejecting this request, we believe the Commission should undertake a more thorough study of the implications of the proposed modifications to the specific speculative position limits on the overall functioning of the futures markets as well as related cash markets, provide that information to the public and entertain an informed debate concerning this topic before taking any specific action or actions.

- (4) If the specific limits are retained in regulation 150.2, what criteria should be considered in determining the acceptable levels?

Please refer to our response to question 3 above.

- (5) If the federal speculative position limits are retained should the increases proposed by the CBT be granted? In addition, should the request of the KCBT and MGE for parity in setting the limits also be granted?

We believe the Commission should expeditiously conduct an independent review of each of the federal speculative position limits proposed by the CBT based on their existing criteria, responsible expectations concerning future trends in important issues such as market liquidity and open-interest, and responsibility to maintain the integrity of each of the exchange traded contracts.

While such a review may support increased federal speculative position limits for some contracts, each commodity should be considered separately and the decisions based on the results of the review subject to expedited public comment concerning the modifications the Commission would propose.

The undersigned support the KCBT and MGE request for continuing Federal speculative position limit parity among the wheat contracts traded on each of the petitioning exchanges.

- (6) If the Federal speculative position limits were eliminated what modifications, guidelines and criteria should the Commission adopt concerning acceptable practices for Core Principle 5 in addressing the requests related to non-spot, individual-month and all-months limits?

Because of our previously state position concerning the petitioners, requests, we believe these questions are not applicable.

Sincerely,

American Farm Bureau Federation
American Soybean Association
Independent Community Bankers of America
National Association of Wheat Growers
National Corn Growers Association
National Farmers Union

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