

From: Mamak, Matthew <Matthew.Mamak@alston.com>
Sent: Wednesday, April 14, 2010 3:36 PM
To: secretary <secretary@CFTC.gov>
Cc: Mamak, Matthew <Matthew.Mamak@alston.com>
Subject: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations.
Attach: Letter to David Stawick dated 4_14_2010_1.PDF

To Whom It May Concern:

Attached please find a comment letter related to the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations.

Best regards,

Matthew W. Mamak
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<<Letter to David Stawick dated 4_14_2010_1.PDF>>

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**NEW YORK
CITY BAR**

**COMMITTEE ON FUTURES
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April 14, 2010

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David A. Stawick
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Commodity Futures Trading Commission
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Washington, D.C. 20581

Filed via email: secretary@cftc.gov

Re: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

Dear Mr. Stawick:

The Committee on Futures and Derivatives Regulation (the "Committee") of the New York City Bar Association (the "Association") is writing to provide its comments on the Commission's notice of proposed rulemaking regarding federal speculative position limits applicable to certain energy contracts and related rules, published by the Commission on January 26, 2010, 75 F.R. 4144 (the "Proposal").

The Association is an organization of over 23,000 members. Most of its members practice in the New York City area. However, the Association also has members in nearly every state and over 50 countries. The Committee consists of attorneys knowledgeable about the trading and regulation of futures contracts, and it has a practice of publishing comments on legal and regulatory developments that have a significant impact on futures and derivatives markets.

The Committee is concerned about the departure from existing aggregation policy contained in proposed rule 151.4 with respect to the referenced energy contracts. Specifically, the proposed rule does not contain exemption for independent account controllers (as defined in Commission Rule 150.1(e)), as Rule 150.3(a)(4) currently does. When the exemption for

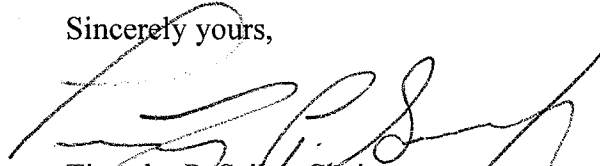
independent account controllers in Rule 150 was first proposed and then subsequently adopted in 1988, the Commission provided a rationale that remains valid today. See Proposed Rule, 53 F. R. 13290, April 22, 1988, and especially section II, "Accommodation of Changing Market Conditions;" and Final Rule, 53 F. R. 41563, October 24, 1988. Essentially the reasoning behind adoption of the exemption was that trading directed by independent account controllers following different trading programs would establish positions that were not traded as a block, would not unduly influence the market, and would be consistent with the justification for speculative position limits of preventing aggregation of positions that could affect markets. After adoption of the exemption for independent account controllers in 1988, the Commission revisited the issue at various times: see Final Rule, 56 F.R. 14308, April 9, 1991, broadening of the exemption after observation and a market survey of commodity pool operators, leading to the conclusion by the Commission that the "exemption from speculative position limits has worked well" resulting in a "lack of adverse data" and "lack of problems associated with the exemptive relief..." at section II - A, "The Proposed Rulemaking- The Proposed Amendments." See also a Final Rule published at 57 F. R. 44490, September 28, 1992. The notice of proposed rulemaking contains no rationale for treating independent account controllers differently based on the type of contract traded (energies), and cites no history of abuses related to independent account controllers in energy (or other) markets. The Committee believes that the rationale adopted by the Commission that originally supported and subsequently sustained the exemption for independent account controllers remains valid. The Committee urges that the Commission include a parallel exemption in proposed rule 151.4. If a parallel exemption were included, the intention of the Proposal regarding the proposed federally established position limits would still be implemented and then applied at the level of the independent account controllers, rather than at the pool level. Compliance by such independent account controllers would remain subject to Commission oversight; as noted on page 4149 of the Proposal, entities claiming the exemption for independent account controllers are now required upon call by the Commission to provide information supporting their claim that the account controllers are in fact acting independently.

Adoption of proposed rule 151.4 as presently drafted could also have an adverse impact on the operations of entities trading the markets covered by the proposed rule and utilizing independent account controllers. Adoption of proposed rule 151.4 could also raise the account administration problems the Commission sought to prevent or resolve in 1988. The April, 1988 proposed rule contained an acknowledgment by the Commission that the absence of an exemption for independent account controllers and the application of a speculative limit on the overall positions of an entity increased the risk of exceeding speculative limits for particular markets. Single entity limits create administrative difficulties for pool operators in tracking the positions of independent account controllers and taking necessary remedial action, creating a risk of inefficient operations and compromising the independent judgment of account controllers. The likelihood of more frequent intervention by pool operators in order to monitor overall positions established by multiple account controllers also poses the risk of partial disclosure of position information related to other account controllers as aggregate entity limits are allocated and/or imposed on a group of account controllers. See Proposed Rule, 53 F. R. 13290, April 22, 1988, and especially section II, "Accommodation of Changing Market Conditions." In some cases the proposed change regarding independent account controllers could also require revised disclosures to pool investors in registration statements, prospectuses, offering memoranda, and/or periodic account statements to disclose how pools would be applying limits to the positions controlled by its advisors. The costs of such measures could fall on pool investors.

Adoption of the rules could also require renegotiation of contracts with pool advisors in order to provide for pool-wide compliance with the energy limits, as distinguished from limits in other markets.

The Committee welcomes any questions the Commission may have about these comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Selby', written over the typed name.

Timothy P. Selby, Chair
The Committee on Futures
and Derivatives Regulation
New York City Bar Association

New York City Bar Association
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*These members of the Committee did not participate in this comment letter.