10-002
COMMENT
CL-02685

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April 26, 2010

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

**Re: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4144 (Jan. 26, 2010)**

Dear Mr. Stawick

By this letter, Deutsche Bank AG ("DBAG") responds to the Commodity Futures Trading Commission's ("CFTC" or "Commission") request for comments on its Proposed Federal Speculative Position Limits for Referenced Energy Contracts ("the Proposal"). For the reasons discussed herein, DBAG does not believe the CFTC should adopt federal speculative position limits as described in the Proposal.[1] Firstly, the stated premise for the proposal is without any demonstrated basis in historical fact. Secondly, even if the stated premise was valid, the Proposal in its current form would not be sufficient to remedy it. Finally, the Proposal contains features that would be unfair and extremely burdensome to market participants but does not explain why these features are necessary to achieve any purpose consistent with the Proposal's stated goals.

**The Premise for the Proposal is unsupported by evidence.**

The Proposal is premised on the notion that excessive speculation in energy futures markets was the cause of high and volatile prices in crude oil, crude oil products and in natural gas[2] for a period of time in the summer of 2008, and that limits on speculation are needed to prevent similar conditions from recurring. Much rhetoric has been offered by various parties in the press and in Commission and Congressional hearings asserting that

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[1] DBAG is a member of a number of industry groups that either have submitted or will be submitting comment letters on the Proposal, including the Futures Industry Association, the International Swaps and Derivatives Association, and the Financial Institutions Energy Group. We agree generally with the comments offered by those groups, but we would like to take this opportunity to re-emphasize certain of the arguments raised in their comments.

[2] The same arguments were raised by various parties regarding agricultural commodities during the same time period and are equally without merit, but as these markets are not the focus of the Proposal, we will not include them in this discussion.

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speculation in energy futures markets had been excessive and was to blame for price conditions that many considered objectionable. However, no party has offered any empirical evidence to support these assertions. Further, a number of formal studies were undertaken by domestic and international regulators adhering to sound and commonly accepted economic principles in response to these assertions, yet none have produced any empirical evidence that supports the conclusion that speculation during the relevant time periods was "excessive" or that speculation (excessive or otherwise) was responsible for the price conditions that prevailed. Rather, time and again, the conclusion reached by the experts based on the evidence they obtained while conducting these legitimate studies was that market fundamentals most likely drove the price movements.

**If the Proposal's premise were valid, the Proposal would not be sufficient to address it.**

Even if the premise for the Proposal were supported by empirical evidence, DBAG does not believe the imposition of limits in the manner proposed would be sufficient to reduce the potential for recurrence. The imposition of position limits that only affect conduct on domestic futures markets will likely cause market participants simply to shift positions either to foreign boards of trade that offer futures contracts on the same underlying commodities, or to OTC markets. In either case, the depth and liquidity of US futures markets would be diminished, interfering with their price discovery mechanism, and reducing the transparency of these commodity markets to both regulators and the public, all without necessarily changing the total amount of speculative investment in the market for these commodities globally. The CFTC currently requires foreign boards of trade that offer access to products to US market participants that are analogous to US contracts to impose analogous limits. While the Proposal does not include a provision to aggregate those positions with analogous US contracts, the CFTC has asked commenters to opine on whether it should. Also, Congress is currently considering legislative proposals that would expand the scope of the CFTC's authority to regulate position-taking in OTC markets. Again, while DBAG does not agree that such measures have been demonstrated to be necessary, if they were, the Proposal would not logically hope to accomplish the presumed goal of reducing the effects of speculation in energy markets unless it could be extended to all products that are the economic equivalents of the referenced contracts. Accordingly, we believe the CFTC should refrain from imposing a rigid limit structure on US futures markets until its authority to act in a more comprehensive manner is clarified by Congress, after which it should work with foreign regulators on a coordinated approach to maintaining orderly markets through enhanced transparency, and measured responses to specific market events.

**The Proposal contains features that are overly burdensome and unnecessary to achieve the stated purpose.**

The Proposal contains a number of features that would compound the restrictive effects of the speculative position limits on the independently operated business units of complex financial institutions, yet these features do not appear to serve any purpose consistent with the Proposal's intent. The Proposal would afford a swap dealer a limited risk management exemption from speculative limits, provided its entire futures position, including the portion that would otherwise be below the speculative limit, is taken strictly for the purpose of offsetting its OTC positions with its clients. As currently worded, it would appear that if a swap dealer held a position over the speculative limit subject to this exemption, but were to add a single futures contract in excess of the notional value of its OTC obligations, its entire position would be considered speculative and would thus violate the terms of the exemption and be in breach of the speculative position limit. In order to avoid this circumstance, the swap dealer would be required to manage the timing and precision of its hedging to a degree that is probably impossible on a sustained basis. It is not explained in the Proposal why a swap dealer that primarily provides a hedging service to clients, including many end-users of energy commodities and is given an exemption from speculative position limits for that purpose, should be ineligible to separately take a speculative position that is itself below the limit that applies to any other market participant.

While any swap dealer would certainly find hedging so precisely to be problematic, for a swap dealer that is part of a multi-faceted financial institution, this issue is moot. This is because the Proposal would require aggregation of positions across accounts that share 10% or more of common ownership interest, but it would not afford the ability to disaggregate accounts under common ownership based on independent control, as currently exists under Part 150 of the Commissions Regulations. Accordingly, the Proposal would require the swap dealer's positions to be aggregated with those of any separate business units within their organization that hold positions in the same markets, notwithstanding that they may be independently managed and share no trading or position data.[3] The aggregation of the other business units' positions with the swap dealer unit's positions would work to automatically invalidate the swap dealer exemption. As with the provision that would void a swap dealer's risk management exemption based on speculation below the speculative limit, the absence of disaggregation relief for independently controlled accounts is not explained in the Proposal.

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[3] In fact, this provision would require business units that previously did not share any position data to begin to do so, and to carefully coordinate their trading activities with one another. This has potentially serious fiduciary implications for firms that operate commodity investment vehicles that contain public investor funds and have implemented information barriers to prevent the firm's proprietary traders from obtaining advance knowledge of their planned trading activity.

**Alternatives to the Proposal**

DBAG supports the CFTC's mission to ensure fair and orderly markets, but does not believe the Proposal would advance that cause. However, if the Commission must take a more direct role in the oversight of energy markets, DBAG respectfully proposes that it instead consider adopting a position accountability program similar to that currently operated by the regulated exchanges.[4] In conjunction with this, we propose that the Commission adopt rules to formalize and expand the routine data collection in which it currently engages under the Special Calls to Swap Dealers and Index Traders to include all other types of market participants, requiring them to indicate which portions of their positions are hedging and which are speculative. Further, we urge the Commission to adopt rules that would permit a complex financial institution to disaggregate positions taken by its separately operated business units upon demonstrating that it employs policies, procedures and physical barriers that are designed to effectively segregate the management and flow of information among them.[5] By employing these measures in combination, we believe the Commission would be able to achieve greater transparency into the purpose behind positions taken by all market participants. Further, we believe this alternative approach would afford the Commission and its staff the flexibility to react in a practical manner to potentially disruptive events as they arise based on the specific circumstances, rather than constraining them to a rigid, hard-limits approach that may diminish the liquidity and price discovery function of the US futures markets, without providing any benefit in terms of market stability.

**Conclusion**

For the reasons stated herein, DBAG does not believe the imposition of speculative limits on energy futures contracts, as contained in the Proposal, is warranted. No evidence has been produced to support a conclusion that speculation in energy markets was responsible for recent periods of high and volatile prices in those markets. Further, even if that had been the case, DBAG believes the imposition of speculative limits in the manner proposed would not reduce the amount of speculative investment in the relevant commodities, but that it would instead drive activity away from the regulated US markets to overseas exchanges and the OTC market. DBAG respectfully requests that the CFTC consider alternative means of increasing transparency and ensuring order in energy commodity markets, as we suggest above.

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[4] As administered by CME Group, the position accountability program establishes position levels in certain contracts above which a market participant must, upon request, provide the exchange with information regarding the participant's purpose and intent for taking that position. Based on this information, the exchange may impose restrictions on the participant's trading activity as necessary, in the exchange's discretion, to prevent abuse and maintain an orderly market.

[5] Such measures should be independently auditable and reaffirmed on an annual basis, similar to the processes by which hedge exemptions are currently administered.

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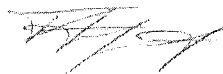
DBAG thanks the Commission for the opportunity to comment on the Proposal. If the Commission or its staff would like to discuss any of our comments, please contact the undersigned at 44 207.547.9041, or Adam Wernow in DBAG's Compliance Department at 212.250.6973.

Respectfully,



Troy Martin

Chief Operating Officer

Deutsche Bank Global Commodities

CC: Adam Wernow