From: Marty, L (Lauriane) <lauriane.marty@apg-am.nl>
Sent: Monday, April 26, 2010 3:09 AM
To: secretary <secretary@CFTC.gov>
Subject: RE: Comment by APG Algemene Pensioen Groep NV on the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations
Attach: Scan001.PDF

Dear Mr. Stawick,

Now with the attachment.
Sorry for the inconvenience.

Best regards,
Lauriane Marty

From: secretary [mailto:secretary@CFTC.gov]
Sent: 23 April 2010 17:45
To: Marty, L (Lauriane)
Subject: RE: Comment by APG Algemene Pensioen Groep NV on the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

This is no attachment with this email. Thank you.

From: Marty, L (Lauriane) [mailto:lauriane.marty@apg-am.nl]
Sent: Friday, April 23, 2010 10:30 AM
To: secretary
Cc: Houben, OHJ (Olav)
Subject: Comment by APG Algemene Pensioen Groep NV on the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

Dear Mr. Stawick,

Please find attached the comments written by APG Algemene Pensioen Groep NV on the CFTC's Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations.

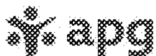
For your convenience, the original document will also be sent to the CFTC by postal mail.

Should you have questions regarding the memo, please do not hesitate to contact us.

Best regards,
Lauriane Marty

Lauriane Marty
Legal counsel
Legal, Tax, Regulations & Compliance
T +31 20 604 81 75
M +31 6 22 25 90 35
lauriane.marty@apg-am.nl

APG
Gustav Mahlerplein 3
1082 MS Amsterdam
The Netherlands
www.apg.nl
www.apgcareers.com



Please consider the environment and do not print this e-mail unless necessary.
APG encourages environmental awareness.

The information contained in this e-mail is confidential and may be privileged. It may be read, copied and used only by the intended recipient.
If you have received it in error, please contact the sender immediately by return e-mail; please delete in this case the e-mail and do not disclose its contents to any person.
We don't accept liability for any errors, omissions, delays of receipt or viruses in the contents of this message which arise as a result of e-mail transmission.

APG Asset Management is part of APG Algemene Pensioen Groep NV, Heerlen, registered in the trade register Limburg, The Netherlands no.14099617.

apg
Algemene Pensioen Groep

Asset Management

Amsterdam,
April 22nd, 2010

Visiting Address
Gustav Mahlerplein 3
1082 MS Amsterdam
The Netherlands

Phone
+31 20 604 81 75

Internet
www.apg.nl

E-mail
lauriane.marty@apg-am.nl

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

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

APG Asset Management welcomes the opportunity to provide comments on the CFTC's proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations.

APG is one of the world's largest administrators of group pension schemes and administers the pensions of over 4 million pension participants in the Netherlands. The Dutch pension system is unique, as it is based on collectivity and solidarity. By making comprehensive, collective agreements, millions of Dutch employees have more financial security. The solidarity provides stability and spreads costs as well as risks. The pension system also provides financial security for future generations through long-term investment horizons.

As of December 31, 2009 APG manages pension assets of approximately 240 billion euros. Listed commodities have a target asset allocation of 3%. APG views commodities as a liquid asset class bearing inflation, hedging and risk diversification characteristics. Inflation is a prominent concern and liability within a pension fund. The ability to hedge liabilities is crucial to the success of collective pension schemes.

APG is a stable commodity investor with a track record dating back almost a decade. APG is well aware of the importance of commodities, and the effects they can have on market participants. Therefore, we act within these markets in a responsible manner, and do not engage in activities that are disruptive to market functionality. As a stable investor, moving in and out of positions in an erratic way is not conducive to our investment mandate, and not the manner in which we conduct business.

APG supports the CFTC in promoting fair and orderly markets, and agrees that manipulation can be a threat to the integrity of the commodities markets. In turn, APG welcomes the initiative of the CFTC to take necessary measures ensuring that sufficient monitoring tools are put in place and that surveillance systems are strengthened, to prevent market manipulation.

Nevertheless, it is the view of APG that the proposed measures will not be successful in achieving the desired result of preventing market disruption. We believe the proposed rules will have a harmful effect on the market in general, and direct negative consequences for the pensioners we represent.

Therefore, APG urges the Commission to deny adoption of the present proposal and to consider the following suggestions.

1. Speculation vs. manipulation

There is an important difference between speculation and market manipulation. While the latter is a disruption of the market, speculation is necessary for daily functionality and liquidity of the market.

For instance, speculators provide necessary liquidity to the market, which contributes to the process of price discovery, and reduces volatility. If the market is less volatile and unpredictable, risk management is more efficient and price benchmarks more reliable. Energy consumers and producers have a mismatch in their hedging needs. This mismatch needs to be filled by speculators.

Therefore, we believe the CFTC should encourage a healthy and necessary level of speculation within the market and take the necessary measures to detect and prevent market manipulation.

However, the existing proposal appears to prohibit not only market manipulation, but also speculation. By unduly restricting speculation, therefore increasing volatility and risks in the commodities market, the proposal completely eludes its objectives.

2. Aggregation of positions

The CFTC proposes to apply speculative limits to aggregated positions. To begin, we find the explanation regarding position aggregation quite unclear, and would appreciate if the CFTC would elaborate on the intended meaning.

The implementation of limits across positions, as currently described, does not seem workable to us. APG invests in numerous absolute return funds, private equity funds, listed and non-listed companies. In practice, it would be quite impossible for us to monitor our aggregated positions across all investments, on a daily basis, to ensure compliance with the applicable speculative position limits and prevent our positions to breach a limit. Our existing monitoring tools would have to be entirely modified which will require some time to adapt and will create extra costs.

We also fear that, in the case where we hold more than 10% of the shares of a company which is active on the commodity market, the aggregation of our directly held positions with the positions held indirectly through that company will not be possible as this information is confidential. The same rationale applies also where APG is part of a pool investment.

Restricting APG to a maximum position across pools, equity, etc., will result in an inefficient allocation of capital across asset classes as well as the commodity complex. The aggregation standards will lead to disruptions in the real economy, even though commercial enterprises are classified as bona fide hedgers.

For example, the new rules might create situations where APG will have to refrain from providing capital to an energy Exploration and Production company with a sound business plan because the company needs to use futures to manage its business risk. The directly held positions in Futures of APG aggregated with the positions indirectly held through this E&P company could be in breach with the new Futures limits. In this case, the effect of CFTC's proposal will be that the efficient allocation of capital to commercial enterprises will be obstructed.

The aggregation proposal for energy contracts differs from the well established practice for other commodity products, such as agricultural products, as referred to by the CFTC. By applying different standards to products across the commodity complex, the CFTC creates an unworkable and unjustified

response to the regulatory task at hand. In addition, the complexity resulting from the lack of uniformity in aggregation standards does not seem reasonable by the nature of the products.

APG believes that the existing aggregation standards, which take as criteria the direct controlling or decision power, have proved to be efficient and have been approved by professional market participants. The necessity to change these standards does not coincide with the desire to achieve increased transparency or the effectiveness brought on by successful and rational regulation.

3. Cost Effectiveness

OTCs provide additional ways to source liquidity and customization for speculators as well as commercial enterprises. The current proposal will undoubtedly increase the costs for obtaining OTC exposure to unacceptable levels.

The reasons for this are the following:

- Currently, the majority of swap dealers also have profitable speculative activities. If the swap dealers are forced to diminish or stop their speculative activities, the OTC premium will need to make up for the loss.
- In general, imposing limits on futures positions can result in more demand for OTCs, possibly more than the swap dealers are allowed to hedge. A scarcity premium will be added to the fee needed to ration the demand. As a result, the markets will become less efficient.

As an alternative, liquidity could be found in OTCs that have some basis risk to the desired exposure but have become more cost effective. This probably would move liquidity abroad and would reduce liquidity in the US futures markets since these are no longer needed to hedge OTC positions. Again, this will result in less transparency and efficiency in the commodity markets.

4. Harmful effect on Equity positions

APG invests in Material and Energy related listed Equity and in non-listed Natural Resource activities. Reducing liquidity in the energy markets (as explained in our point 1) will increase volatility in cash flows and will reduce profitability and willingness to invest in developing new business or expanding current existing businesses. This is especially true for commodity producing companies.

APG would like to encourage the CFTC to take into account the consequences that result from a decreased appetite from Exploration & Production companies for development due to higher volatility in the commodity markets.

5. APG's specific case

- Pensioners need to hedge their liabilities. One of the largest liabilities is inflation. Commodity exposure is an efficient method to hedge this liability. If the proposed limits are introduced, APG will struggle to obtain the required exposure, given the size of the AUM. As a result, Collective Pension Schemes will be required to move to other pension managers that still will be able to provide the desired exposure. Please note this move will not lead to less overall exposure.
- As a solution, APG could build exposure outside the U.S. This would decrease transparency in the commodity markets and result in higher costs as we would move into less liquid and efficient markets.
- Another alternative would be to move exposure to the OTC market in the US or abroad. This would also decrease the transparency in the commodity markets. Plus, it would introduce risks, such as replacement risk in case the counterparty defaults.

- The desired USD exposure is a fixed percentage allocation of capital under management. Therefore, if commodity prices would decline, exposure in the amount of futures needs to increase in order to stay at the desired USD level.
- Please note that holding the USD exposure fixed results in a smoothing effect on the volatility of the commodity markets. In order to hold a fixed exposure, the fund needs to sell if prices go up and buy if prices go down.

In response to Question 15 asked by the CFTC, please see below.

The entrance of passive index money often gets the blame for running up commodity prices. APG would like to point out the following points:

1. Index positions are rolled forward before expiration. After the positions are rolled out of the first month a drop in these Energy future prices is not observed. This shows that the price convergence issues present on the Agricultural markets do not apply to the Energy market.

2. Often the absolute dollar amount is used to show the participation of passive index money. However, one needs to look at the actual amount of underlying contracts. For example the S&P GSCI spot index tripled in value from primo 2003 until mid 2008. As a result the absolute dollar amount is not the correct measure to use. One should use the actual amount of underlying futures.

3. Commodities for which there was no active futures market experienced similar or even larger price increase over the same period! In these markets passive index money definitely was not present. The run up in commodity prices was clearly driven by a prolonged period of global growth and the resulting increase demand for commodities, especially India and China.

4. The main reason for the run up in prices was the contemporary inability for supply to meet demand and the outlook for supply not to be able to meet demand going forward. This view is supported by the observation China has been engaged in enormous commodity stockpiling programs in anticipation of the return of tight commodity markets.

5. The price run up experienced over the past year should not be seen in the light of current supply and demand alone. Commodity markets are forward looking. It's clear elevated forward prices are needed to incentivize the development of new supply. Especially in Energy, hold one exception: Natural Gas. High Natural Gas spot and forward prices have incentivized the development of new technology that now vows for low spot prices and decreasing forward prices.

Additional comments

To finish, APG would like to comment on the lack of sufficient information provided by the CFTC on the following points. We ask the CFTC not to take any action until sufficient proof has been developed to validate the decision to implement position limits.

First of all, the CFTC sees the necessity to act as valid because of the risk of market disruptions in energy markets. Nevertheless, the CFTC fails to give any detail on this perceived risk of market disruptions and fails to indicate the necessity of the proposal.

Second, we feel that the CFTC fails to convey the necessity for swap dealers to be restricted and pushed out of their speculative activities.

Finally, we question the CFTC's decision to relate the proposed position limits to open interest in a non-linear fashion. We would like to see evidence that validates the reduction in percentage of open

interest after a certain threshold. In this case, the reduction from 10% of open interest to 2.5% for the marginal increase after the first 25,000 contracts.

Conclusion

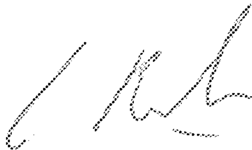
In general, we believe that the proposed measures will lead to a market characterized by lower liquidity where price discovery will be hindered and the risk management function for commercial enterprises will be less efficient due to higher volatility and higher costs.

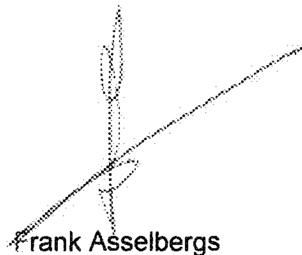
Also, these measures will drive exposure outside of the control of the CFTC and as a result commodities will become less regulated and less transparent.

Lastly, the proposal will drain liquidity from the system in such a way that Exploration and Production companies will have less appetite to develop new projects. As a result, this will have an adverse effect of higher energy prices and lower energy security going forward.

With kind regards,

On behalf of APG Algemene Pensioen Groep NV,





Nicole Renkens
Senior Legal Counsel
APG Asset Management

Frank Asselbergs
Fund Manager, Commodities
APG Asset Management