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To: secretary <secretary@CFTC.gov>
Subject: Industry Filings: Comments on Industry Submissions
Attach: 10-21 CFTC Consultation position limits-Comments by AMAFI_final release.doc

Re Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations (p 4144 – Fed Register Vol. 75 n° 16

Dear Sirs,

You will find attached the comments from AMAFI, French Association in Financial Markets.

Please feel free to contact me should you need further information.

With my kindest regards

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**COMMODITY FUTURES
TRADING COMMISSION**

Consultation Document

**Federal Speculative Position Limits for
Referenced Energy Contracts and Associated
Regulations; Proposed Rule**

1. Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities, or who perform market infrastructure functions (trading, clearing, and settlement). Slightly more than a third of our members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on the CFTC proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations (Federal Register vol. 75 – 4144)

While AMAFI totally support CFTC's role to protect market participants by organizing and promoting efficient regulated markets, exempt from any abuses, it considers that the current proposed new rules could be counterproductive and have negative impacts on the whole energy market.

Executive Summary

The proposals in the consultation document should be postponed and revisited subject to the legislative proposals that will result from both the Congress vote on various issues including increased role of CFTC over OTC derivatives markets as well as decisions from the 20 most industrialized countries (G20 meeting).

AMAFI considers the policy options recommended by the CFTC, namely setting up speculative position limits on specific energy contracts could be detrimental for the US markets in terms of liquidity and non coordinated approach with other countries/regulators on similar issues. Furthermore, the proposal for aggregating position at a level of 10% [# 151.4 (a)] while being administratively very difficult to achieve would be, in terms of confidentiality and position management, detrimental to the fundamental needs of the various companies involved. Such a constraint if being implemented as such could result in legal action against companies for competitive arrangements.

AMAFI support the analysis performed by Chairman Gary Gensler before the Senate Committee on Energy and Natural Resources on March 9, 2010 resulting in recommendation to elaborate regulation on over-the-counter trading.

Since OTC markets are international, convergence between European, America and Asian rules is essential, as is the exchange of information between regulators in different regions.

As a general comment, AMAFI would like to raise three points that are of some concerns for us.

2. The first concern relates to the current political developments where the US Congress is debating on a major revision of its financial markets organisation and supervision of which derivatives is a key component. At the same time, on the international scene, a G20 meeting is working also on concerted contributions for closer coordination and improvements of the financial markets.

In that context, AMAFI would greatly urge CFTC to postpone the current proposal to be able to include developments arising from those national and international political decisions soon to be adopted.

3. The second remark is relative to the role of speculation in the 2008 oil crisis. Several studies monitored by the CFTC on the causes of the dramatic price increase found no evidences of such decisive impact from speculators. Even though the role of speculators in the oil market (as in other products) is discussed and their presence is questioned, it may be necessary to reassess the importance for an efficient trading centre to maintain the three key components that are hedgers, arbitragers but also speculator. It is "a necessary" to develop the liquidity that investors are looking for in a market.

4. Finally, the third observation will focus on the over-the-counter markets. This segment of the trading including energy products has grown up considerably.

As Chairman Gary Gensler mentioned in his testimony before the Senate Committee on Energy and Natural Resources on March 9, 2010

"The 2008 financial crisis left us with many lessons and many challenges to tackle. Though there were certainly many causes of the crisis, I think most would agree that the unregulated OTC derivatives marketplace played a central role." And later on this same speech "It is now time to bring comprehensive regulation to this large and economically significant (OTC) market."

AMAFI fully support Chairman Gensler in his assessments and the consequent analysis he developed.

5. OTC markets, being non regulated right now and for a major part of the trades not reported and/or centrally cleared, could constitute a much severe source of damages for the market stability.

For standardized OTC derivatives contracts, the use, where appropriate, of electronic trading platforms and central counterparties, to the contrary present fair and transparent conditions that contribute to market participants protection and investors confidence. CFTC in its role of overseeing the clearing houses under its jurisdiction has a privilege access to all necessary information to monitor situation that would be subject to suspicion or manipulation.

Furthermore, CFTC has the ability to investigate and issue sanction if necessary.

Those are efficient mechanisms that CFTC can use if market conditions or price evolutions necessitate such an action;

6. By adopting its proposed speculative position limits and associated regulations, CFTC could generate an adverse effect movement with some participants moving their trades on OTC markets or switching to foreign exchanges if equivalent products are available or being developed.

7. Aggregating positions in accounts which any person, directly or indirectly, has an ownership or equity interest of 10% or greater or, by power of attorney or otherwise, controls trading raise considerable legal, confidential and administrative constraints.

Firstly, for accounts which are governed through totally independent managements, the follow-up in real time of the various accounts in regards of the global position limit is irrelevant in terms of confidentiality. Given the European (Market in Financial Instruments Directive) law on conflict of interests, it could be

highly difficult to know/request positions taken by companies in which a company holds an equity interest since they are independently operated and regulated.

Secondly, the administrative organization that such requirement would imply would appear costly and very sensitive to determine who should do what if the global limit is reached. Furthermore, as there would not be a distinction between US registered companies and foreign companies, the latter could be under their legal obligation be accused of illegal combination.

Thirdly, the new rule that takes into account both the control and the ownership levels is unnecessary and unwarranted and will be highly disruptive to a wide variety of market participants that have relied upon the previous rule to operate efficiently in the commodity markets.

Fourthly, the extraterritorial application of the proposed rule would be inappropriate where a global market participant has an equity interest in multiple independently operated non-U.S. businesses.

8. In conclusion, AMAFI recognizes the merit of the CFTC's proposals in its willingness to improve transparency while reducing potential damages from excessive speculation. But the suggested solutions are not perceived as being appropriate as they could affect market liquidity and create for the aggregation of positions a destabilizing effect if the independent account controller exemption that is prevailing through the regulation 150.3(a)(4) is not extended to the current project.

Request for comment

1. Are Federal speculative position limits for energy contracts traded on reporting markets necessary to “diminish, eliminate or prevent” the burdens on interstate commerce that may result from position concentrations in such contracts ?

AMAFI reiterate its view that such Federal speculative position limits for energy contracts are unnecessary. They could result in deteriorating the price discovery mechanism by pushing some participants/trades from reporting markets to OTC markets. This would be counterproductive looking at the trend international trend to repatriate OTC trades towards central cleared systems.

2. Are there methods other than Federal speculative position limits that should be utilized to diminish, eliminate, or prevent such burdens?

As mentioned in the point 5 here above, CFTC having the supervision of the clearing houses under its jurisdiction has a privilege access to control position if necessary. In addition, clearing houses could set up additional requirements i.e. increased margin calls for excessive speculative positions (some foreign clearing houses have already that facility available in their procedures). This gives the additional charge and burden to the “excessive” speculator while leaving other participants unaffected.

3. How should the Commission evaluate the potential effect of Federal speculative position limits on the liquidity, market efficiency and price discovery capabilities of referenced energy contracts in determining whether to establish position limits for such contracts?

As mentioned in reply to your first question, implementation of such proposed speculative position limits decided on a unilateral basis rather than on an coordinated international basis could impact negatively the liquidity and market efficiency of US referenced energy contracts.

4. Under the class approach to grouping contracts as discussed herein, how should contracts that do not cash settle to the price of a single contract, but settle to the average price of

a subgroup of contracts within a class be treated during the spot month for the purposes of enforcing the proposed speculative position limits?

No comment

5. Under proposed regulation 151.2(b)(1)(i), the Commission would establish an all-months-combined aggregate position limit equal to 10% of the average combined futures and option contract open interest aggregated across all reporting markets for the most recent calendar year up to 25,000 contracts, with a marginal increase of 2.5% of open interest thereafter. As an alternative to this approach to an all-months-combined aggregate position limit, the Commission requests comment on whether an additional increment with a marginal increase larger than 2.5% would be adequate to prevent excessive speculation in the referenced energy contracts. An additional increment would permit traders to hold larger positions relative to total open positions in the referenced energy contracts, in comparison to the proposed formula. For example, the Commission could fix the all-months-combined aggregate position limit at 10% of the prior year's average open interest up to 25,000 contracts, with a marginal increase of 5% up to 300,000 contracts and a marginal increase of 2.5% thereafter. Assuming the prior year's average open interest equaled 300,000 contracts, all-months-combined aggregate position limit would be fixed at 9,400 contracts under the proposed rule and 16,300 contracts under the alternative.

To be efficient, limits need to be measured on the outstanding position of an account versus the total exposure of the market. By establishing limits based on an annual basis this could lead to the set up by CFTC of under or over estimated limits depending of the prevailing market conditions or appetite of accounts to be exposed to these referenced energy contracts.

6. **Should customary position sizes held by speculative traders be a factor in moderating the limit levels proposed by the Commission? In this connection, the Commission notes that current regulation 150.5(c) states contract markets may adjust their speculative limit levels "based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract * * *"**

No comment

7. **Reporting markets that list referenced energy contracts, as defined by the proposed regulations, would continue to be responsible for maintaining their own position limits (so long as they are not higher than the limits fixed by the Commission) or position accountability rules. The Commission seeks comment on whether it should issue acceptable practices that adopt formal guidelines and procedures for implementing position accountability rules.**

AMAFI considers that the current rules are efficient. Consequently, no additional guidelines should be added.

8. **Proposed regulation 151.3(a)(2) would establish a swap dealer risk management exemption whereby swap dealers would be granted a position limit exemption for positions that are held to offset risks associated with customer initiated swap agreements that are linked to a referenced energy contract but that do not qualify as bona fide hedge positions. The swap dealer risk management exemption would be capped at twice the size of any otherwise applicable all-months-combined or single non-spot-month position limit. The Commission seeks comment on any alternatives to this proposed approach. The Commission seeks particular comment on the feasibility of a "look-through" exemption for swap dealers such that dealers would receive exemptions for positions offsetting risks resulting from swap agreements opposite counterparties who would have been entitled to a hedge exemption if they had hedged their exposure directly in the futures markets. How viable is such an approach given the Commission's lack of regulatory authority over the OTC swap markets?**

No comment

9. Proposed regulation 20.02 would require swap dealers to file with the Commission certain information in connection with their risk management exemptions to ensure that the Commission can adequately assess their need for an exemption. The Commission invites comment on whether these requirements are sufficient. In the alternative, should the Commission limit these filing requirements, and instead rely upon its regulation 18.05 special call authority to assess the merit of swap dealer risk management exemption requests?

No comment

10. The Commission's proposed part 151 regulations for referenced energy contracts would set forth a comprehensive regime of position limit, exemption and aggregation requirements that would operate separately from the current position limit, exemption and aggregation requirements for agricultural contracts set forth in part 150 of the Commission's regulations. While proposed part 151 borrows many features of part 150, there are notable distinctions between the two, including their methods of position limit calculation and treatment of positions held by swap dealers. The Commission seeks comment on what, if any, of the distinctive features of the position limit framework proposed herein, such as aggregate position limits and the swap dealer limited risk management exemption, should be applied to the agricultural commodities listed in part 150 of the Commission's regulations.

NO. As developed above, CFTC approach on the aggregation limit is a major concern for AMAFI. The same analysis would apply if the proposed rules on referenced energy contracts were extended to the agricultural commodities.

11. The Commission is considering establishing speculative position limits for contracts based on other physical commodities with finite supply such as precious metal and soft agricultural commodity contracts. The Commission invites comment on which aspects of the current speculative position limit framework for the agricultural commodity contracts and the framework proposed herein for the major energy commodity contracts (such as proposed position limits based on a percentage of open interest and the proposed exemptions from the speculative position limits) are most relevant to contracts based on other physical commodities with finite supply such as precious metal and soft agricultural commodity contracts.

AMAFI would strongly urge CFTC to postpone any decision as long as major revision of the financial system is adopted by Congress.

12. As discussed previously, the Commission has followed a policy since 2008 of conditioning FBOT no-action relief on the requirement that FBOTs with contracts that link to CFTC-regulated contracts have position limits that are comparable to the position limits applicable to CFTC-regulated contracts. If the Commission adopts the proposed rulemaking, should it continue, or modify in any way, this policy to address FBOT contracts that would be linked to any referenced energy contract as defined by the proposed regulations?

While AMAFI understand the CFTC's position to extend its no-action relief to FBOTs trading contracts linked to CFTC-regulated ones, subject to the existence of comparable position limits, international cooperation should be a high priority. As such coordination with local regulators of the FBOTs should be considered.

13. The Commission notes that Congress is currently considering legislation that would revise the Commission's section 4a(a) position limit authority to extend beyond positions in reporting market contracts to reach positions in OTC derivative instruments and FBOT contracts. Under some of these revisions, the Commission would be authorized to set limits for positions held in OTC derivative instruments and FBOT contracts. The Commission seeks comment on how it should take this pending legislation into account in proposing Federal speculative position limits.

Same as question 11.

14. Under proposed regulation 151.2, the Commission would set spot-month and all-months-combined position limits annually.

- a. Should spot-month position limits be set on a more frequent basis given the potential for disruptions in deliverable supplies for referenced energy contracts?
- b. Should the Commission establish, by using a rolling-average of open interest instead of a simple average for example, all-months-combined position limits on a more frequent basis? If so, what reasons would support such action?

No comment

15. Concerns have been raised about the impact of large, passive, and unleveraged long-only positions on the futures markets. Instead of using the futures markets for risk transference, traders that own such positions treat commodity futures contracts as distinct assets that can be held for an appreciable duration. This notice of rulemaking does not propose regulations that would categorize such positions for the purpose of applying different regulatory standards. Rather, the owners of such positions are treated as other investors that would be subject to the proposed speculative position limits.

- a. Should the Commission propose regulations to limit the positions of passive long traders?
- b. If so, what criteria should the Commission employ to identify and define such traders and positions?
- c. Assuming that passive long traders can properly be identified and defined, how and to what extent should the Commission limit their participation in the futures markets?
- d. If passive long positions should be limited in the aggregate, would it be feasible for the Commission to apportion market space amongst various traders that wish to establish passive long positions?
- e. What unintended consequences are likely to result from the Commission's implementation of passive long position limits?

No comment

16. The proposed definition of referenced energy contract, diversified commodity index, and contracts of the same class are intended to be simple definitions that readily identify the affected contracts through an objective and administrative process without relying on the Commission's exercise of discretion.

- a. Is the proposed definition of contracts of the same class for spot and non-spot months sufficiently inclusive?
- b. Is it appropriate to define contracts of the same class during spot months to only include contracts that expire on the same day?
- c. Should diversified commodity indexes be defined with greater particularity?

No comment

17. Under the proposed regulations, a swap dealer seeking a risk management exemption would apply directly to the Commission for the exemption. Should such exemptions be processed

by the reporting markets as would be the case with bona fide hedge exemptions under the proposed regulations?

YES

18. In implementing initial spot-month speculative position limits, if the notice of proposed rulemaking is finalized, should the Commission:

- a. Issue special calls for information to the reporting markets to assess the size of a contract's deliverable supply;
- b. Use the levels that are currently used by the exchanges; or
- c. Undertake an independent calculation of deliverable supply without substantial reliance on exchange estimates?

No comment

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