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COMMENT
CL-08374

**From:** Christine Cochran <Christine.Cochran@commoditymkts.org>
**Sent:** Monday, April 26, 2010 9:33 PM
**To:** secretary <secretary@CFTC.gov>
**Subject:** CMC Comments on 17 CFR Parts 1, 20 and 151 Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations
**Attach:** Energy Position Limits Statement FINAL.pdf

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Please find attached the official comments of the Commodity Markets Council on the Commission's proposed rules for federal speculative position limits in energy markets.


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April 26, 2010

***Via Electronic Mail and Standard Post***
David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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

Dear Mr. Stawick:

The Commodity Markets Council (CMC) submits these comments on the Commodity Futures Trading Commission (CFTC or the Commission) proposal to implement speculative position limits for futures and option contracts for referenced energy contracts. In light of the ongoing legislative debate, CMC encourages the Commission to not adopt the proposed rules.

CMC is a trade association that represents commodity futures exchanges, regional boards of trade, and numerous industry counterparts including domestic and multinational commodity merchandisers, processors, millers, refiners, commercial and merchant energy companies, precious and base metal trading firms, and bioenergy producers; US and internationally-based futures commission merchants; food and beverage manufacturers; major transportation companies; and financial institutions.

The businesses of all our member firms depend upon the efficient and competitive functioning of the risk management products traded on U.S. futures exchanges. Through the Commission's diligent oversight efforts that have fostered Exchange innovation and technology adoption, we have seen the energy markets grow and prosper. They have become deeper and more liquid, narrowing bid/ask spreads and improving hedging effectiveness and price discovery. Meanwhile, liquidity, technology, clearing quality, price and customer service have driven market selection. All of these developments serve the interests of the trade as well as the public.

Since the implementation of the Commodity Futures Modernization Act 2000 (CFMA), the markets have faced unprecedented challenges. Most notably, significant global growth in consumer demand for food, energy, and manufactured goods, as well as the growth of commodity investment funds. The Commission through its oversight and enforcement and Exchanges in their role as self-regulatory organizations, have successfully worked together to fight fraud, thwart price manipulation and build robust energy markets that serve market participants as well as the general public. To ensure market users and the public continue to have access to open, competitive, and financially sound futures and options markets, CMC encourages the Commission to not adopt the proposed rules.

Since publishing these rules for comment on January 26, 2010, Congress has continued its robust debate of the very issues embedded in the Commission's proposed action. Given the strong likelihood that Congress will soon enact legislation that would render the proposed rules moot, the CMC strongly urges that the Commission not adopt the proposed rules.

Should the Commission choose to move forward in its consideration of rules implementing position limits in energy markets, CMC members have raised several concerns. We urge the Commission to take these concerns into consideration to the extent final rules are developed.

The recent financial crisis shows there are gaps in the regulatory framework of U.S. financial markets; however, the current system empowering exchanges, in conjunction with CFTC oversight, to evaluate and set limits should be maintained. There are some market participants that believe the activities of large speculators in the energy markets were solely to blame for the run-up in commodity prices in 2007 and 2008. However, the experience of many of our members and a review of the evidence from numerous studies does not support the view that speculation was the sole or even primary reason for price volatility in the market. Instead, many economists conclude that supply and demand fundamentals and other macroeconomic factors proved to be the most significant factors driving the markets at that time.

By broadening the range of participants with access to the regulated and transparent U.S. energy markets, the CFTC, through its regulation, surveillance and enforcement, has fostered the growth of markets whose integrity led to increased liquidity and thus maximized the efficiencies of the market to the benefit of consumers and businesses. The participation of swap dealers and index investors in the energy futures markets reflects a change in the character of investment, but the liquidity provided by these new types of investors helps lower the price of commodities in the long-run for consumers. CMC members fear the current proposal would arbitrarily restrict hedge exemptions and drive some legitimate market participants out of the domestic energy markets. For example, there is confusion presented by proposed Section 151.3 that clearly states firms carrying a hedge exemption cannot speculate in the commodity; whereas, the Commission's description of the proposal suggests the limitation would attach only to those firms who have exemptions granted by the Commission for purposes of hedging financial, not physical risks. Restricted hedge exemptions could also edge out market-makers from the exchange cleared OTC swap market. Like any reduction in participation, we are concerned that this impact could widen bid/ask spreads and ultimately increase costs for commercial enterprises and consumers.

Exchanges and the Commission have developed an expertise in maintaining orderly markets, including setting appropriate reportable levels, position limits and accountability levels relative to energy commodities. This system provides the flexibility necessary to prevent excessive speculation while preserving transparent and liquid markets. Some observers may argue the proposed limits are large enough to accommodate most trading. The current proposal, however, would aggregate positions under the supervision of different controllers and CMC is concerned that by aggregating such positions, the Commission could inadvertently depress volume and unintentionally constrain markets when they need liquidity most.

Finally, action by the Commission on the proposed rules could create strong incentives for regulatory arbitrage, hinder the performance of regulated markets, and undermine CFTC surveillance efforts. Acting prematurely or not in concert with other regulators could harm market participants and the public. Additional regulatory requirements imposed on the US energy markets currently under the Commission's jurisdiction but not on OTC markets or foreign markets could push market participants onto less transparent markets outside the jurisdiction of the CFTC. We encourage the Commission to take a comprehensive and coordinated approach that will deter regulatory arbitrage and ensure trading venue options and competitive pricing.

We believe that U.S. markets can continue to serve as global benchmarks and support the Commission's mission to protect market users and the public from fraud, manipulation and abusive practices. At this time and in the interest of the markets and the public, CMC encourages the Commission to not adopt the proposed rules as currently drafted and instead await clearer legislative guidance from Congress.

Regards,

CHRISTINE M. COCHRAN
President