TOM HARKIN
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United States Senate

WASHINGTON, DC 20510-1502

December 15, 2010

The Honorable Gary Gensler
The Honorable Michael Dunn
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O'Malia
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Dear Members of the Commission:

Implementing speculative position limits to address excessive speculation and protect consumers is a mandatory—and critically important—directive of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act). The requirement is mandatory rather than "permissive," and has a specified deadline.

Specifically, section 737(a)(2)(A) of the Dodd-Frank Act amends section 4a(a) of the Commodity Exchange Act by instructing that the Commission "shall by rule, regulation or order establish limits on the amount of positions, as appropriate [. . .] .other than bona fide hedge position, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market." Nothing in the letter or spirit of this provision indicates that the intent of Congress was anything other to establish "appropriate" speculative position limit levels; it certainly did not give the Commission license to interpret this phrase with such elasticity so as to elect to establish no limits whatsoever. Such an interpretation would render the provision meaningless.

Some have made the argument that previously-existing language in section 4a(a) of the Commodity Exchange Act requires the Commission to establish harm before imposing position limits. Specifically, they point to this provision: "For the purpose of diminishing, eliminating, or preventing [burdens of excessive speculation], the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contract of sale of such commodity for future delivery [. . .] as the Commission finds are necessary to diminish, eliminate or prevent such burden." This language has never been interpreted to require the Commission to make an affirmative finding of a harm having been caused in order to impose speculative position limits; rather the language compels the Commission to take action to deter and prevent manipulation and other disruptions in market integrity. It does not limit the Commission to acting solely after finding that such disruptions

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have occurred. Certainly, this language is compatible with and does nothing to limit or qualify the requirement spelled out in the Dodd-Frank Act to establish speculative position limits.

Further, the Dodd-Frank Act instructs the Commission to establish speculative position limits by deadlines set in advance of other general rulemaking timelines in the law. The robust language of the statute on this topic is evidence of the heightened interest in and importance of speculative position limits. It is also demonstrates that that Congress intended the Commission to act affirmatively on these matters rather than continue to delay resolving them.

Thank you for your leadership in ensuring that appropriate speculative position limit rules are implemented as intended pursuant to the Reform Act, and I look forward to the Commission's prompt attention to this issue.

Sincerely,

Tom Harkin
United States Senator