ATA
Driving Trucking's Success

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

Submitted via: www.regulations.gov

Re: Position Limits for Derivatives – RIN 3038-AD15 and RIN 3038-AD16

Dear Mr. Stawick:

The American Trucking Associations ("ATA")[1] is writing to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") proposed rules, entitled "Position Limits for Derivatives" (hereinafter "Proposed Rule").[2] This rulemaking is being promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act")[3] which requires CFTC to set and enforce speculative position limits on exempt and agricultural commodities. For the reasons set forth below, ATA believes that CFTC should establish more stringent position limits and should address the impact that passive, long-only traders are having on the price of oil.

BACKGROUND

Trucks haul nearly every consumer good at some point in the supply chain. Few Americans realize that trucks deliver nearly 70% of all freight tonnage or that 80% of the nation's communities receive their goods exclusively by truck. To deliver this freight,

[1] ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

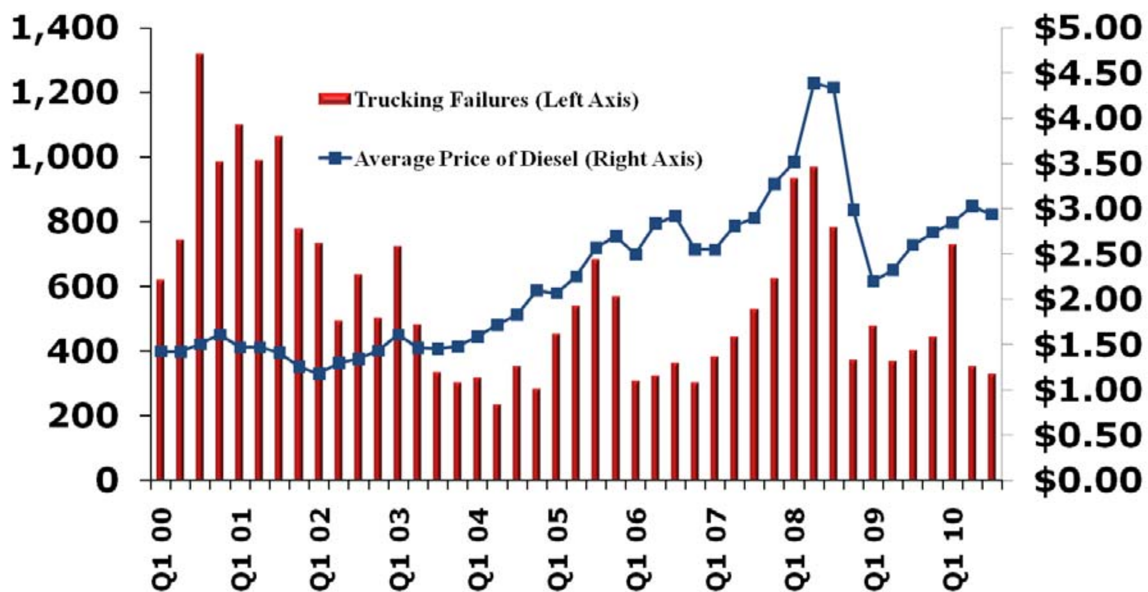
[2] *See* 76 *Federal Register* 4752 (January 26, 2011).

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010), *amending* the Commodity Exchange Act, 7 U.S.C. §1 *et seq*.

the trucking industry depends upon a steady affordable supply diesel fuel. Last year, the trucking industry consumed more than 35 billion gallons of diesel fuel. Each penny increase in diesel fuel prices costs the trucking industry approximately $356 million.

The trucking industry is comprised of more than 600,000 companies. For many trucking companies, diesel fuel has surpassed labor as their largest expense. Approximately, 95% of these companies are small businesses that have difficulty passing on volatile rising fuel prices to their customers. Today it costs approximately $1,200 to refuel a long-haul, over-the-road truck. As a result of this dramatic increase in the price of diesel, we expect an increasing number of trucking companies to fail. Despite the widespread use of fuel surcharges, the price of diesel fuel and motor carrier failures are highly correlated.

Trucking Company Failures vs. Diesel Prices[4]



This relationship surprises few in the industry. Trucking is a highly competitive industry with very low profit margins. Our industry cannot simply absorb these rapid increases in fuel costs and eventually these costs must be passed through to our customers. So not only do rapidly increasing fuel prices devastate truckers, but they harm consumers who are forced to pay higher prices for food, clothing and other basic necessities.

It is for this reason, that the trucking industry is interested in curbing excessive speculation in the energy derivative markets, which has impacted diesel fuel prices. We believe that part of the solution required to address this excessive speculation and its

[4] Sources: Avondale Partners, LLC and Energy Information Administration. *Note* failure statistics only include fleets with five or more trucks.

insidious impact upon consumers is the establishment of position limits in the energy derivatives markets.

DISCUSSION

ATA supports CFTC's proposal to immediately implement speculative position limits as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We have concerns, however, that this rulemaking departs from the Dodd-Frank mandate to address excessive speculation. As discussed in more detail below, we do not believe that the proposed position limits are adequate to address excessive speculation and we are especially concerned that CFTC has not proposed a means to address the impact that long-only passive investors, such as index funds, are having on the current price of crude oil and diesel fuel.

A. The Proposed Position Limits are Too High to Address Excessive Speculation

While we are supportive of CFTC's efforts to establish position limits, we are concerned that the proposed position limits will be ineffective in curbing excessive speculation.

The Commission proposes to implement position limits for physical delivery contracts in two phases.[5] First, CFTC would establish spot-month position limits at 25 percent of estimated deliverable supply. During the second phase, CFTC would impose position limits for non-spot-month contracts based on the open interest of the referenced contract, according to a proposed formula of 10 percent of open interest in that contract up to the first 25,000 contracts, and 2.5 percent thereafter.

These proposed limits do not fulfill the statutory requirement to prevent excessive speculation. Section 4a(3) of the Commodities Exchange Act, as amended by the Dodd-Frank Act, requires CFTC to establish position limits that:

(1) diminish, eliminate, or prevent excessive speculation;
(2) deter and prevent market manipulation, squeezes, and corners;
(3) ensure sufficient market liquidity for bona fide hedgers; and
(4) ensure that the price discovery function of the underlying market is not disrupted.

The position limits proposed by CFTC may be adequate to prevent market manipulation, but fall short of fulfilling the statutory requirement of curbing excessive speculation. The proposed position limits do not address the problem of the cumulative effect of a large number of speculators with significant positions. These traders may not intend to manipulate, squeeze or corner the market; yet their combined impact interferes with

[5] *See* Proposed Rule at 4770, *proposed to be codified at* 17 C.F.R. §151.4.

normal price discovery. Allowing multiple entities to each control up to 25 percent of the estimated deliverable supply will not reduce the amount of speculation in the energy markets from today's high levels.

CFTC should reevaluate the proposed position limits to ensure that there is a level of speculation adequate to create the liquidity necessary for commercial hedgers, while preventing the type of speculation that disconnects commodity prices from the traditional market forces of current supply and demand.

CFTC should consider establishing more restrictive position limits. These tighter limits should be accompanied by a procedure that allows CFTC to rapidly evaluate the impact of the position limits on the marketplace and to respond quickly to situations where derivative liquidity is insufficient for commercial participants to properly hedge risk. CFTC also should assess the level of its established position limits more frequently than the proposed annual assessment.

B. CFTC Failed to Address the Problem of Long-Only Passive Speculation

We are increasingly concerned with the impact that passive long traders (*e.g.*, exchange traded funds, index funds) are having on the price of energy commodities, as these entities' trading strategies do not depend on the supply and demand in the underlying physical market and therefore distort the price discovery function. The purchases of these index instruments have injected billions of dollars into the energy futures markets and the contracts held by these speculators now exceed the value of contracts held by the commercial participants. Individual investors in these funds do not have the intent to manipulate the market, yet their collective action is driving the price of oil and other energy commodities higher without regard to the underlying supply and demand for those commodities. As such, these investors collectively are a significant part of the excessive speculation problem.

To address the excessive speculation problem caused by long-only passive investors, CFTC should determine an acceptable aggregate level of speculation and set individual trader limits to be reflective of that aggregate level. Separate position limits should be established for passive long speculators and the contracts held by these entities should be aggregated for purposes of applying the position limits.

* * * *

Excessive speculation is contributing the rapid escalation of diesel fuel prices and is harming the trucking industry and consumers. For this reason, the Commission should establish speculative position limits for energy commodities; however, the Commission should consider lower limits than those proposed combined with a mechanism for rapidly adjusting those limits to address issues of liquidity. The Commission also should

establish position limits for the long-only, passive speculation that is distorting the market's price discovery function.

We appreciate the opportunity to comment on the Proposed Rule. If you have any questions concerning these comments, please contact the undersigned at (703) 838-1910.

Respectfully submitted,

Richard Moskowitz
Vice President & Regulatory Affairs Counsel