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United States Senate
WASHINGTON, DC 20510–4705

October 14, 2011

Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Dear Chairman Gensler,

I am deeply concerned by reports that the Commodity Futures Trading Commission is proposing a policy that will increase the threat of price manipulation and volatility in commodity markets. Specifically, I am concerned that the final rule on "Position Limits for Derivatives" will permit a financial speculator to simultaneously own five-times the physically-deliverable supply of a commodity in cash-settled contracts and 25 percent of the physically-deliverable supply. While such a policy may be favorable to many financial speculators, it would simply increase costs for basic needs like energy and food products that are essential for hardworking American families and businesses.

The Dodd-Frank Wall Street Reform and Consumer Protection Act required the Commodity Futures Trading Commission (the "Commission") to implement effective position limits in energy commodities like oil within 180 days of the date enactment—July 21, 2010—in order to "diminish, eliminate, or prevent excessive speculation." The Commission is more than nine months late in implementing this rule. While this delay remains unacceptable, it is also imperative that the Commission's final rule actually protect consumers and businesses that rely on federal regulators protecting against price manipulation and market volatility.

I understand the Commission is considering a final rule that would permit financial speculators to hold 125 percent of the physical deliverable supply in a cash-settled "look alike" product during the final days of trading, plus up to 25 percent of the deliverable supply of the commodity, on the "condition" that they do not participate in the principle market for the basic, physically settled futures contract. The proposed "conditional spot month position limit" for certain cash-settled contracts will increase the threat of price manipulation, especially in the final days of trading in the spot month of all commodity futures contracts which call for physical delivery.

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The Commission's own recent enforcement actions highlight the threat of price manipulation during the final days of trading by employing trading strategies involving both cash-settled and physically-settled contracts. On May 24, 2011, the Commission charged Parnon Energy, and its affiliate Arcadia Petroleum, of manipulating the market for crude oil in early 2008 by fraudulently withholding physically-settled contracts in order to increase the value of their much larger cash-settled contracts position. At the time of the alleged manipulation, there were limits on the number of physically-settled contracts a speculator could hold but none on those settled for cash.

In a similar case, the Commission charged the now defunct hedge fund Amaranth Advisors, LLC of manipulating the natural gas market in 2006 through a trading strategy that involved both cash-settled and physically-settled contracts during the final days of trading. It is estimated that Amaranth's manipulative scheme cost consumers $9 billion between April and August 2006. Again, at the time of the manipulation, there were limits on physically-settled contracts but none on those settled for cash.

Allowing five times the leverage in cash-settled contracts would also increase volatility and costs for end users who are hedging, thus increasing costs for consumers and businesses. Large speculators would be rewarded for reducing physically-settled contract positions while migrating to the economically equivalent cash-settled contract. This would result in reduced liquidity and increased volatility in the primary price discovery contract at the expense of businesses with a commercial need for hedging.

Hardworking American families and businesses should not have to pay for a policy that would favor the financial sector's oil market profits and enrich the treasuries of countries we import oil from. I urge the Commission to drop the "conditional spot month position limit" policy from the final "Position Limits for Derivatives" rule and treat the physically-settled and economically equivalent cash-settled "look alike" contracts equally.

Sincerely,

Maria Cantwell
United States Senator

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