rightingfinance

++

Christopher Kirkpatrick
Secretary to the Commission
Commodity Futures Trading Commission (CFTC)
Three Lafayette Center
1155 21st Street NW
Washington, DC 20581
Submitted electronically at http://comments.cftc.gov

Comment on the Position Limits Proposal: RIN 3038

Dear Mr. Kirkpatrick,

We submit this comment on behalf of RightingFinance,[1] a consortium of organizations with human rights and gender advocacy mandates advocating for a human rights approach to financial regulation. We appreciate the opportunity to comment on the CFTC's proposed position limits regime.

Our interest in adequate regulation on position limits stems from our ongoing work as organizations concerned with the human rights and gender impacts emerging from the speculative price movements of commodities. As stated by the UN Special Rapporteur on the Right to Food, the underlying speculation-based causes of price spikes need to be addressed in order to enable countries to fulfill their basic obligations regarding the right to food.[2]

Speculative-driven increases in commodity prices have also led to growing interest by investors in large tracts of land which put pressure on limited arable land, and oftentimes by financial firms that have no productive purpose in sight for it. Such large land acquisitions have been associated to a variety of human rights impacts, from those of political participation by people opposing the purchases to the rights to work and to livelihoods by communities that depend on it.

---

[1] Steering Committee members of the initiative are the following organizations and networks with human rights advocacy mandates: Association for Women's Rights in Development –AWID, Center for Economic and Social Rights –CESR, Center for Women's Global Leadership –CWGL, Center of Concern, CIVICUS: World Alliance for Citizen Participation, Development Alternatives with Women for a New Era –DAWN, International Network for Economic, Social and Cultural Rights -ESCR-Net – (Working Group on Economic Policy and Human Rights), IBASE (Brazil), Social Watch. Inquiries about this submission can be addressed to Aldo Caliari, Director of the Rethinking Bretton Woods Project at Center of Concern (acaliari@coc.org).

[2] UN Special Rapporteur on the Right to Food, "Food Commodity Speculation and Food Price Crises: Regulation to Reduce the Risks of Price Volatility," Briefing Note No. 02, September 2010.

Position limits, if well-calibrated and effectively managed, prevent price and supply manipulation by a few traders. The position limits regime must also be designed and administered to prevent price distortion that can occur without intention to manipulate, as a result of excessive speculation by financial entities with no commercial interest in producing, transporting or processing commodities.

Wall Street lobbyists, commodity exchange officials and industry consultants with academic credentials, such as those at the February 26th meeting of the CFTC Energy and Environmental Markets Advisory Committee, are trying to persuade the CFTC that the commodity price boom and bust of 2008 and subsequent price volatility were entirely due to supply and demand factors. The Chicago Mercantile Exchange has even argued that a mere contract design flaw was the chief explanation for the failure of wheat futures contracts to provide a reliable price benchmark for the forward contracting of wheat at grain elevators and food processing facilities.[3]

However, a market analyst who aggregated positions held by financial speculators, vs. those held by commercial hedgers, wrote that August 2008 prices above $5.50 a bushel for corn (Chicago Board of Trade corn prices went up to $8 a bushel in 2008) were due to financial speculation.[4] Furthermore, there are dozens of studies that have demonstrated the role of excessive speculation by financial entities in distorting commodity prices.[5] Commodity index traders, such as Goldman Sachs and Morgan Stanley, played and continue to play a particularly well-documented role in driving price levels and price volatility.[6] As a recent Growmark Research report noted, "Periodically these Wall Street players change the composition of their investment portfolios to include commodities. When they do, they buy commodities across the board, which explains why most commodity prices move in tandem over time even though they have different fundamentals."[7] (Although Growmark, a $10 billion agricultural cooperative, manages its own index fund, Growmark's weight of money to drive prices is no match for that of Goldman, Morgan and other large financial players.)

The CFTC should not be persuaded by those who lobby for position limit exemptions or exclusions for indexed contracts, a continuation of exchange-managed position accountability, and position limits set too high to prevent or reduce excessive speculation. Instead, we urge the Commission to do the following to finalize the position limit rule:

---

[3] Krissa Welshans, "Non-convergence in grain markets solved," *Feedstuffs*, January 12, 2015.

[4] The Brock Report, "The Money Game Continues," August 1, 2008.

[5] http://www.nefiactioncenter.com/PDF/commodityspeculationstudies_21jan2013.pdf

[6] E.g., David Frenk and Wallace Turbeville, "Commodity Index Traders and the Boom/Bust Cycle in Commodity Prices," Better Markets, 2011 and Benoit Guilleminot, Jean-Jacques Ohana and Steve Ohana, "The Interaction of Speculators and Index Investors in Agricultural Derivatives Contracts," March 18, 2013, revised December 30, 2013. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2253374

[7] Katherine Daughtery and Kel Kelly, "News, Money and Prices: How Money Flows Distort Our Perceptions of News Reports," Growmark Research, February 25, 2015, at 4. http://www.growmark.com/sites/Files/Documents/NewsMoneyAndPrices.pdf

1. set position limits low enough (e.g. five percent of each covered contract, per parent firm and its affiliates and subsidiaries) to enable commercial hedgers to regain for all covered contracts their pre-2000 average share of 70 percent of agricultural contracts. That commercial hedger share of "legacy" agricultural contracts prevented excessive speculation and price volatility not due to supply and demand factors in most years of the CFTC's history prior to the implementation of the "Commodity Futures Modernization Act of 2000."
2. review position limits every six months. The impact of climate change on agricultural production and transportation logistics, e.g. barge carrying capacity in drought impacted rivers, will make more volatile the CFTC verified estimates of deliverable supply from which spot month limits are derived. The new requirements for near real-time and uniform reporting of trade data in agricultural and non-agricultural contracts will enable effective CFTC data surveillance and data smart recalibration of limits.
3. apply position limits to commodity index fund contracts to prevent price movements in one indexed commodity from affecting prices in other commodities that are price related only by virtue of being indexed. The purpose of commodity exchanges is to enable effective price risk management by commercial hedgers, not to enable portfolio diversification by index investors with no commercial interest in those commodities.
4. require parity in position limits for physically deliverable contracts and cash-settled only contracts. Parity in the position limit formula will discourage migration of trades to cash-settled only contracts, which will occur if the CFTC finalizes the current proposal to allow a position limit five times higher for cash-settled only contracts than for physically deliverable contracts.

We realize that the CFTC staff and the Commissioners are under enormous pressure from Wall Street, the exchanges, their allies in Congress and foreign regulators to return to the "good" old days of loophole-rich "light touch" regulation, which transnational banks and corporate end users of commodity and financial derivatives have easily evaded. Returning to "legacy" level position limits, exchange managed position accountability and numerous trade data reporting exemptions would verify the CFTC's submission to that pressure.

However, consumers, farmers and communities dependent on land around the world can ill afford another round of extreme food and energy price volatility.

Thank you for your consideration of these comments.

Respectfully submitted,

RightingFinance Initiative (www.rightingfinance.org)