February 28, 2017

The Honorable Chris Giancarlo, Acting Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: "Reproposal of Position Limits For Derivatives" RIN 3038-AD99

To Acting Chairman Giancarlo:

Americans for Financial Reform ("AFR") appreciates this opportunity to comment on the above-referenced Reproposal (the "re-proposal") by the Commodity Futures Trading Commission (the "Commission"). AFR is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

The Dodd-Frank Act required that position limits for commodities be established within six to nine months of the passage of the legislation. The motivation for and urgency of this requirement was supported by extensive Congressional investigation of commodity prices and the role of the swaps market in generating excessive market speculation. Such speculation has been a significant contributor to the wild swings in commodity prices that have occurred over the past decade.[2] Commodity price increases linked in part to speculation have harmed consumers and real economy businesses, while commodity price declines from over-inflated levels have contributed to economic instability in resource extraction industries.

However, the Commission's completion and implementation of these position limits has been delayed again and again, first by a lawsuit, and then by a lack of Commission action since the re-proposal of the rule in 2013 to comply with the court order. The delay in the establishment of position limits since the re-proposal of the 2013 rule is now over three years. This delay violates the requirements of the statute, and it is bad for the American public.

This latest re-proposal by the Commission is a decision to delay action still further by re-proposing the position limit rules instead of finalizing them. Compounding the harm, this re-

[1] A list of AFR member organizations is available at http://ourfinancialsecurity.org/about/our-coalition/.
[2] Henn, Markus, "Evidence on Negative Impact of Commodity Speculation", World Economy, Ecology, and Development, April 10, 2014. Available at http://www2.weed-online.org/uploads/evidence_on_impact_of_commodity_speculation.pdf

proposal is significantly weaker than the 2013 re-proposal of the rule, which was itself weaker than the original 2011 proposal.

In previous 2011 and 2014 comments on the Commission's position limits proposals we addressed both the evidentiary and statutory base for commodity position limits requirements, as well as the weaknesses in the Commission's proposals, most notably the high spot month limits and the failure to regulate overall levels of market speculation.[3] In our 2016 comment on the supplementary exemptions and guidance recently advanced by the Commission and now incorporated into this re-proposal, we highlighted the additional weaknesses created by broadening the definition of "bona fide hedge" and granting additional authority to the exchanges to recognize non-enumerated and anticipatory hedges.[4] We incorporate these comments by reference here.

Similar points have been made by numerous public interest and end user organizations, who have properly criticized the Commission's ever-weakening position limits proposals as failing to actually implement the Congressional mandate to control speculation in the commodity markets. By setting spot month limits that are far too high, permitting overly broad exemptions to these limits, and delegating substantial oversight powers to exchanges that face a profit motivation to increase trading volume, the Commission has set out a position limits regime that will not protect the public from commodity price manipulation by speculators. Instead, it simply accepts and authorizes current market practices. Merely certifying current market practices violates both the letter and the spirit of the law, and leaves the door open to wild swings in commodity prices that are unjustified by fundamentals and harm real economy businesses and consumers.

Despite our serious concerns about the weakening of the rule in the 2013 proposal and in the additional supplementary exemptions proposed in 2016, AFR and other public interest organizations saw some value in finalizing a position limits oversight regime. When combined with improved data on commodity swap positions at the trader level, such a regime would create administrative infrastructure that could later be useful for restricting speculation if the specific limits were reconsidered in the future. With the Commission's choice to re-propose position limits rather than finalizing them, even this step forward appears in doubt.

We urge the Commission to turn away from its current course of the repeated delay and weakening of commodity position limits. Instead, the Commission must act on the Congressional

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[3] Americans for Financial Reform, "Comment For Proposed Rule 76 FR 4752", March 29, 2011. Available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=34046. Americans for Financial Reform, "Comment On Position Limits For Commodities", February 10, 2014. Available at http://ourfinancialsecurity.org/wp-content/uploads/2014/02/AFR-Position-Limits-Comment-Letter-2.10.14.pdf

[4] Americans for Financial Reform, "Comment on CFTC Position Limits Supplement", July 13, 2016. Available at http://ourfinancialsecurity.org/wp-content/uploads/2016/07/AFR-Comment-to-CFTC-On-Position-Limits-Supplement.pdf

mandate to control the greatly increased level of speculation in vital CFTC-regulated commodity markets.

Thank you for the opportunity to comment on this Proposal. Should you have any questions, please contact Marcus Stanley, AFR's Policy Director, at marcus@ourfinancialsecurity.org or (202) 466-3672.

Sincerely,

Americans for Financial Reform