



BETTER MARKETS

By Electronic Submission

August 28, 2023

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Large Trader Reporting Requirements (RIN 3038-AF27)

Dear Mr. Kirkpatrick:

Better Markets¹ appreciates the opportunity to comment on the proposed (“Proposed Rule”) issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”), which would revise the Commission’s regulations that set forth large trader positions reporting requirements for futures and options.²

Part 17 regulates large trader reporting for futures and options and mandates specific entities to provide daily reports on the positions held by the largest futures and options traders. These reports encompass valuable information such as open interest, positions held, and other relevant position information on futures and options. The Commission utilized these reports to conduct surveillance aimed at detecting and preventing price manipulation, as well as enforcing limits on speculative activities. Moreover, these reports enable the Commission to uphold a current and precise depiction of the markets, guaranteeing that both market participants and end-users possess essential information for gauging prices and managing risks. Through consistent collection and publication of this market data via the CFTC’s Commitment of Traders (COT) Report, Part 17 actively upholds market integrity and cultivates transparency, furnishing invaluable perspectives into market trends and dynamics.

Better Markets supports the Proposed Rule’s revision of Part 17 because, if approved, it will strengthen and modernize the Commission’s ability to identify disruptive trading activity and enforce position limits. Position limits are one of the most important tools at the Commission’s

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² Large Trader Reporting Requirements; 88 Fed. Reg. 41,522 (June 27, 2023).

disposal to protect markets, businesses, and consumers.³ Better Markets has for over a decade called on the Commission to lawfully implement a meaningful speculative position limits framework for derivatives to prevent big Wall Street banks and speculators from driving up prices on commodities and picking the pockets of American farmers and families.⁴ Unfortunately, the Commission’s 2021 final rulemaking on position limits falls short of protecting the interests of producers and consumers in prices that reflect actual supply and demand.⁵ This deficiency could have potentially paved the way for excessive speculation in the commodity markets, possibly playing a role in the emergence of price spikes and market volatility across a spectrum of consumer products, ranging from essential BBQ items⁶ to oil and gas.⁷

In fact, these commodity price spikes and volatility are creating an ongoing and worsening crisis facing all of America’s families.⁸ However, rural Americans and low- and moderate-income households⁹ as well as Black households are disproportionately harmed because they “are more likely to consume goods with volatile prices.”¹⁰

³ See Better Markets, *The CFTC Must Stop Wild Commodity Speculation That Breaks American Families’ Budgets* (2014), available at <https://bettermarkets.org/newsroom/cftc-must-stop-wild-commodity-speculation-breaks-american-families-budgets/>

⁴ See Better Markets, *Better Markets Calls for Tough Rules to Curb Excess Speculation* (2011), available at <https://bettermarkets.org/newsroom/better-markets-calls-tough-rules-curb-excess-speculation/>

⁵ See Better Markets’ comment letter, *Position Limits for Derivatives* (May 15, 2020), available at https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf

⁶ See Better Markets, *Grilling in the Face of Soaring Commodity Prices: Impact on Barbecue Essentials* (2023), available at https://bettermarkets.org/wp-content/uploads/2023/06/BetterMarkets_Grilling_Soaring_Commodity_Prices_06-28-2023.pdf

⁷ See Better Markets, *Stop Speculators From Driving Gas Prices Higher and Ruining Summer Vacations*, available at https://bettermarkets.org/wp-content/uploads/2023/05/Better_Markets_Energy_Commodities_Market_Fact_Sheet-5.25.23.pdf

⁸ See Better Markets, *The CFTC Needs to Investigate the Role and Impact of Financial Speculators in the Commodities Markets* (2013), available at https://bettermarkets.org/wp-content/uploads/2023/03/Better_Markets_Fact_Sheet_CFTC_Commodity_Speculation_Investigation-3-8-23.pdf

⁹ See, e.g., Scott Horsley, NPR, “Inflation May Be Easing – But Low-Income People Are Still Paying the Steepest Prices,” available at <https://www.npr.org/2022/05/11/1097966775/inflation-poor-income-inequality-biden-federal-reserve>; Rachel Siegel and Andrew van Dam, *The Washington Post* (Feb. 13, 2022), “‘Survival mode’: Inflation falls hardest on low-income Americans,” available at <https://www.washingtonpost.com/business/2022/02/13/low-income-high-inflation-inequality/>; Kendall Crawford, *Iowa Public Radio* (July 15, 2022), “Report: Rural Americans Hit Harder by Inflation Than Urban Ones,” available at <https://nebraskapublicmedia.org/en/news/news-articles/report-rural-americans-hit-harder-by-inflation-than-urban-ones/>; and, David Soll, *New Jersey Monitor* (July 15, 2022), “Swelling grocery bills are pummeling the poorest,” available at <https://newjerseymonitor.com/2022/07/15/swelling-grocery-bills-are-pummeling-the-poorest/>.

¹⁰ Alexandre Tanzi, *Bloomberg News* (July 15, 2022), “Black US Households Face Higher Inflation, Richmond Fed Says,” available at <https://www.bloomberg.com/news/articles/2022-07-15/black-us-households-face-higher-inflation-richmond-fed-says?sref=mQvUqJZj>; Munseo Lee, *Federal Reserve Bank of Richmond*, “Do Black Households Face Higher and More Volatile Inflation?,” available at https://www.richmondfed.org/publications/research/economic_brief/2022/eb_22-25.

With many Americans living paycheck to paycheck and barely making ends meet, most Americans simply do not have the income or resources to pay for these price increases for everyday necessities.¹¹ As a result, increasing numbers of “workers are picking up extra jobs just to pay for gas and food.”¹² Regardless of the level of pain, the price of commodities impacts the lives, livelihoods, and standard of living of every single American. Worse, many fear that millions of people across the globe will starve to death due to unaffordable commodity prices¹³ which, in turn, raises the specter of social and political instability in several countries,¹⁴ which, in turn, raises serious geopolitical concerns.

There is no doubt that some of the price spikes and volatility are due to genuine supply and demand issues, dramatically exacerbated by the shocks from the pandemic and Russia’s attack on Ukraine as well as soaring inflation across the globe and central bank policies. However, it also appears that some potentially significant amount of these price spikes and volatility are due to excess speculation in the commodities markets, even though excessive commodity speculation is

¹¹ See Beverly Harzog, U.S. News and World Report (June 8, 2022), “How Many Americans Are Living Paycheck to Paycheck?,” available at <https://money.usnews.com/credit-cards/articles/how-many-americans-are-living-paycheck-to-paycheck>; Peter Coy, The New York Times (July 29, 2022), “What Does It Really Mean to Live ‘Paycheck to Paycheck’?,” available at <https://www.nytimes.com/2022/07/29/opinion/paycheck-finances.html>; Sara Ruberg and Alistair MacDonald, The Wall St. J. (July 8, 2022), “Food Prices Squeeze Poorest in Rich Countries,” available at <https://www.wsj.com/articles/food-insecurity-hits-rich-countries-as-inflation-makes-basics-unaffordable-for-many-11657272602>; Daniela Sirtori-Cortina, Bloomberg News (July 20, 2022), “Americans Are Buying Fewer Staples as Inflation Crimps Budgets,” available at <https://www.bloomberg.com/news/articles/2022-07-20/shoppers-buy-fewer-staples-as-inflation-erodes-resilience?srnd=premium&sref=mQvUqJZj>.

¹² See, Lauren Kaori Gurley, The Washington Post (July 17, 2022), “Workers are picking up extra jobs just to pay for gas and food,” available at <https://www.washingtonpost.com/business/2022/07/17/inflation-wages-extra-jobs/>; Gary Silverman, et al., The Financial Times (July 20, 2022), “US consumers are bending but not breaking as prices soar. Can it last?,” available at <https://www.ft.com/content/ea4d6ee2-7cca-4081-a491-870d4045646b> (“Over the last five to six months, with the inflation spike, we are seeing [here in Florida] more and more folks accessing our services. We regularly see people who have two or three jobs.”).

¹³ Michelle Nichols, Reuters (June 24, 2022), “World faces unprecedented global hunger crisis, UN chief says,” available at <https://www.reuters.com/world/world-faces-unprecedented-global-hunger-crisis-un-chief-says-2022-06-24/> (UN urging “ministers meeting on food security to take practical steps to stabilize food markets and reduce commodity price volatility”); Kabir Agarwal et al., The Wire (May 6, 2022), “‘Betting on Hunger’: Market Speculation Is Contributing to Global Food Insecurity,” available at <https://thewire.in/economy/speculation-is-contributing-to-global-food-insecurity-significantly>; see also Missy Ryan, The Washington Post (June 24, 2022), “Diplomats urge action as global food crisis deepens,” available at <https://www.washingtonpost.com/national-security/2022/06/24/food-security-ukraine/>; Antony J. Blinken, U.S. Secretary of State (May 19, 2022), Statement at the UNSC Meeting on Food Insecurity and Conflict, available at <https://www.state.gov/secretary-antony-j-blinken-at-the-unsc-meeting-on-food-insecurity-and-conflict/>.

¹⁴ See, e.g., Patricia Cohen, The New York Times (July 2, 2022), “Skyrocketing Global Fuel Prices Threaten Livelihoods and Social Stability,” available at <https://www.nytimes.com/2022/07/02/business/economy/gas-prices-global.html?action=click&module=Well&pgtype=Homepage§ion=Business>.

prohibited and a practice the Commission is specifically mandated to prevent.¹⁵ For example, according to a report by The International Panel of Experts on Sustainable Food Systems (IPES-Food), wheat futures prices shot up so high soon after the war started that some grain elevators stopped buying futures contracts from farmers because they “feared prices would fall again by the time they sold.”¹⁶ In this situation, the cash and futures prices were not converging, and “failure to do so is a telltale sign of factors beyond supply and demand at play.”¹⁷

This view is supported by years of extensive research showing excess speculation¹⁸ and is suggested by the recent historic profits reported by commodity market intermediaries and financial firms, including Cargill, Bunge, Trafigura, and Wall Street’s largest banks’ trading desks (as detailed below). The data suggests that financial investors are cashing in on rising food and gas prices – although, with so many factors at play and with the opaqueness of the commodities market, it is difficult to say to exactly what extent.¹⁹ That is why a comprehensive, data-driven

¹⁵ The Commodity Exchange Act is codified at 7 U.S.C. § 1 *et seq.* The position limits mandate was amended by section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”). See Section 737, Pub. L. 111–203, 124 Stat. 1376, 1722-25 (2010).

¹⁶ N. Jacobs and J. Clapp, The International Panel of Experts on Sustainable Food Systems (May 2022), “Another Perfect Storm?”, available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ipes-food.org/_img/upload/files/AnotherPerfectStorm.pdf.

¹⁷ *Id.*

¹⁸ See Better Markets’ comment letter dated May 15, 2020 on CFTC’s proposed position limits, available at https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf; Better Markets’ comment letter dated March 28, 2011 on CFTC’s proposed position limits, available at <https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf>; Better Markets’ 2011 Report “Commodity Index Traders and the Boom/Bust Cycle in Commodities Prices,” available at <https://www.bettermarkets.org/sites/default/files/BM%20Report%20CIT%20FINAL.pdf>; Kabir Agarwal et al., The Wire (May 6, 2022), “Betting on Hunger’: Market Speculation Is Contributing to Global Food Insecurity,” available at <https://thewire.in/economy/speculation-is-contributing-to-global-food-insecurity-significantly> (detailing current and historic speculative interest in US and European commodities markets); Michael W. Masters and Adam K. White, Special Report (July 31, 2008), “The Accidental Hunt Brothers. How Institutional Investors Are Driving Up Food and Energy Prices,” available at <https://www.loe.org/images/content/080919/Act1.pdf>; Michael W. Masters and Adam K. White, Special Update (September 10, 2008), “The Accidental Hunt Brothers – Act 2. Index Speculators Have Been a Major Cause of the Recent Drop in Oil Prices,” available at <https://www.bettermarkets.org/sites/default/files/The%20Accidental%20Hunt%20Brothers%20-%20Part%202.pdf>; and Michael W. Masters, Testimony, Commodities Futures Trading Commission Hearing on Position Limits (March 25, 2010), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/metalmarkets032510_masters.pdf (attaching Mr. Masters’ August 5, 2009 testimony before the CFTC and June 4, 2009 testimony before the Senate Agriculture Committee).

¹⁹ N. Jacobs and J. Clapp, The International Panel of Experts on Sustainable Food Systems (May 2022), “Another Perfect Storm?”, available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ipes-food.org/_img/upload/files/AnotherPerfectStorm.pdf.

investigation by the Commission is imperative, as is the public release of a report fully disclosing not just the conclusions but the factual basis for them.²⁰

While little can be done by the Commission about the supply/demand factors and shocks driving these price hikes, one thing that can and should be done is an investigation into what role, if any, excess financial speculation has played in those price hikes and volatility.²¹ For the Commission to undertake a comprehensive inquiry, precise data is imperative. Hence, the revision of Part 17 becomes crucial, as it enables the Commission to modernize its data collection methods, ensuring the availability of accurate information.

I. The Proposed Rule Aims to Modernize the Current Framework and Establish a Trajectory for Streamlined Future Enhancements in Reporting Large Trader Data Under Part 17.

Better Markets supports the Proposed Rule, which aims to modernize and establish an avenue for streamlined enhancements in the reporting of data for large traders under Part 17 of the Commission's regulatory framework. The Commission's large trader reporting system plays a fundamental role in upholding market integrity, facilitating price discovery, and ensuring effective hedging through futures contracts for commercial end-users. Among its various applications, the information furnished under Part 17 enables the Commission to recognize large positions within individual markets or spanning multiple markets. This encompasses the ability to consolidate positions held by a specific beneficial owner across numerous accounts maintained with diverse clearing members.

While the proposal maintains the fundamental dataset currently gathered through large trader reports, it also suggests integrating supplementary information that is not fully encompassed in existing reports. This availability of more comprehensive and dependable data will enhance the Commission's comprehension of traders' utilization of specific transactions, concurrently deterring potential instances of abusive trading practices. Both the Commission and the public stand to gain from fortifying and modernizing this crucial surveillance mechanism. The implementation of the Proposed Rule would not only bolster the Commission's capacity to pinpoint disruptive or manipulative trading behavior but also provide an enhanced way for the Commission to conduct thorough, meticulous, market-specific, and data-driven assessments of its position limits to affirm its desired efficacy.

²⁰ See Better Markets, *The CFTC Needs to Investigate the Role and Impact of Financial Speculators in the Commodities Markets* (2023), available at https://bettermarkets.org/wp-content/uploads/2023/03/Better_Markets_Fact_Sheet_CFTC_Commodity_Speculation_Investigation-3-8-23.pdf

²¹ *Id.*

A. Removal of the § 17.00(g) Record Format

According to the Proposed Rule, the Commission's existing record format is considered obsolete, particularly the use of the outdated Cobol Language submission standard.²² Unlike other reporting frameworks at the CFTC, the reliance on Cobol Language is unique, given the Commission's shift toward contemporary data reporting methods in its broader set of reporting regulations. This outdated record format not only tends to be error-prone but also poses challenges for external queries beyond the Integrated Surveillance System (ISS), making the integration of large trader position data with other Commission data a complex task. Furthermore, the submission standard lacks the necessary adaptability to accommodate certain aspects of innovative contracts.

Better Markets supports the Proposed Rule's proposal to replace the current record format and to delegate authority to the Director of the Office of Data and Technology to determine the form and manner for reporting data required under Part 17.²³ Using a modern submission standard is expected to enable automated data quality assessments from the Commission to reporting firms.²⁴ This would alleviate the challenges related to rectifying data inaccuracies and to expedite the overall correction procedure. A streamlined error correction process will support staff in promptly generating the weekly COT report.²⁵

B. Appendix C

The removal of the record format will entail the removal of certain data fields. To replace the data fields proposed to be deleted, the Proposed Rule suggests incorporating an Appendix C into Part 17. This new addition would outline the necessary data components and provide definitions for these elements, ensuring a comprehensive and modernized framework for reporting large trader data.

The Proposed Appendix C will retain specific data components present in the existing § 17.00(g) record format, modify select data elements within the current § 17.00(g) format, and introduce certain data elements that were previously absent from the § 17.00(g) format.²⁶ These newly proposed data elements are designed to encompass information that the current § 17.00(g) record format does not encompass but is crucial for fulfilling the Commission's responsibilities in surveillance and market analysis. Better Markets believes these changes are essential for modernizing data reporting practices and strengthening the Commission's surveillance and market analysis capabilities, which are needed for the Commission's position limits analysis. The inclusion of these newly proposed data elements reflects a proactive approach in aligning reporting requirements with the evolving landscape of financial markets.

²² See Large Trader Reporting Requirements; 88 Fed. Reg. 41,522 (June 27, 2023)

²³ See 88 Fed. Reg. at 41,525.

²⁴ See 88 Fed. Reg. at 41,526.

²⁵ *Id.*

²⁶ See 88 Fed. Reg. at 41,527.

CONCLUSION

We hope these comments are helpful as the Commission finalizes its Proposed Rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Cantrell Dumas". The signature is fluid and cursive, with the first name being more prominent.

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