



## **Commodity Futures Trading Commission**

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# **Statement**

## **Closing Statement of Commissioner Michael V. Dunn, Meeting on Energy Position Limits and Hedge Exemptions**

**January 14, 2010**

Financial regulatory reform is needed to address the financial meltdown of the U.S. financial markets. In my opinion, Congress and regulators should focus on three things:

1. Providing transparency;
2. Reinstating some elements of the Glass–Steagall Act; and
3. Actively pursuing anti-trust laws to address “too big to fail.”

Of these three elements, the CFTC should have a major role in providing transparency to the markets we regulate.

In my opinion, the CFTC through Chairman Gensler, has been correct in requesting Congress to give us the authority to regulate the OTC market. He has asked that we be allowed to regulate derivative dealers, bring transparency to the OTC markets and move standard derivatives to regulated clearing houses. I whole-heartedly support these measures.

I am concerned that the adoption of this proposed regulation, without the corresponding OTC regulatory authority and similar undertakings by other nations’ regulators, may result in less transparency in the futures markets if those presently trading on exchange move to OTC and other opaque markets to circumvent these proposed position limits.

Today I am voting to release the proposed notice of rulemaking entitled Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations. My vote to release this proposed rule should in no way be construed as an agreement with the opinions expressed in the proposal or to the approach advocated in setting these proposed position limits. Despite my serious reservations, I have agreed to the release of this proposal so that the public at-large has ample opportunity to voice their opinions and concerns on this topic.

At the close of the Commission's position limits hearings on August 5, 2009, I stated that:

[T]he CFTC does not have the authority to set speculative position limits in all of the venues that may be affected by excessive speculation, specifically over-the-counter markets (OTC) and on foreign boards of trade (FBOT). Unilateral Commission action in only the markets we currently regulate may not have the desired effect of reigning in excessive speculation in the futures market. Without similar steps in the OTC markets and on FBOTs, those seeking to evade the limits we set could simply move to venues outside our authority.

I believe this is still true today, and that forging ahead on a position limits regime for political expediency is not the course of action that this agency needs or one that promotes the health and integrity of the futures industry in the United States. The simple announcement of our hearings several months ago caused business to migrate to OTC markets and FBOTs currently outside our purview. This is an unacceptable consequence of regulation and is, I fear, a sign of things to come if this agency does not take a coordinated approach to bringing sensible regulation to the futures markets.

I think it needs to be made clear that the Proposed Position Limits do not set trading limitations on any particular class of investor, including passively managed long-only index funds. The Proposed Position Limits' sole objective is to prevent excessive speculation by a single entity. I would be very interested to hear from the public on whether this incremental approach best addresses the market wide concerns raised by those who participated in our hearings last summer.

I would like to reiterate that my vote to release this document should in no way be construed as an agreement of any kind to final rules setting federal speculative position limits on energy contracts. My commitment remains to accept comments and information during the next few months with an open mind, and to work with my fellow Commissioners to ensure that we have a functioning futures industry.