



Commodity Futures Trading Commission

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Statement

Dissenting Statement of Commissioner Jill E. Sommers Regarding the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

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The Commission and its predecessors have grappled with the complex issues surrounding federal speculative position limits for many years in connection with transactions based on agricultural commodities. As prices rose across the board in virtually all commodities throughout 2007 and 2008, the Commission focused its attention on possible causes, including the influx of new traders into the markets, in particular swap dealers hedging the risk resulting from over-the-counter (OTC) business and traders seeking exposure to commodities as an asset class through passive, long-term investment in exchange traded funds (ETFs) and commodity index funds. Concerns were raised in numerous Congressional hearings that excessive speculation in both exchange-traded and OTC markets was to blame for rising prices, particularly in the energy sector. The Commission held three days of hearings in July and August of 2009 to discuss a number of different approaches and has received continuous feedback from the industry for the past several months. We now have before us a proposal from staff which would implement federal speculative position limits for futures and options contracts in certain energy commodities.

I dissent from issuing the proposal for the following reasons. I am concerned that hard positions limits may be imposed on exchange trading without similar limits in place for OTC markets. Legislation giving us the authority to impose OTC limits may be enacted this year, but the timing and final form of such legislation is unknown. While I wholeheartedly support efforts to enhance our authority in this area, I am concerned that forging ahead with federal limits in a piecemeal fashion is unwise. I am especially concerned that doing so will have the perverse effect of driving portions of the market away from centralized trading and clearing at the very time we are urging all standardized OTC activity to be traded on-exchange or cleared. Likewise, I am concerned that, without global standards, trading will move to other financial centers around the world. A report issued by the United Kingdom's Financial Services Authority and H M Treasury last month urges caution in introducing a position limits regime. See

Financial Services Authority & HM Treasury, Reforming OTC Derivative Markets, A UK Perspective at 31-35 (Dec. 2009). Clearly, more work is needed to achieve a uniform approach.

A delay in promulgating position limits will not leave the markets unprotected. The proposal before us “sets high position levels that are at the outer bounds of the largest positions held by market participants.” Proposal at 59. Exchange position limits and accountability rules remain in place and will continue to trigger the first line of defense against potential market manipulations or other disruptions. Even if the proposed federal limits were enacted, exchanges would be obligated to begin monitoring positions on their markets well before traders reach the federal limits. Aggressive use of the Commission’s surveillance authority in partnership with the exchanges should be sufficient to closely monitor and protect the integrity of the markets.

Finally, the proposal makes no distinction between passive ETF and index traders and speculators. While the proposal does seek comment on the feasibility of categorizing such traders differently, I am discouraged that we are no closer to an answer than we were prior to our 2009 hearings, the numerous Congressional hearings that focused on index trading, and the Commission’s extensive collection of index investment data since June 2008, which it now publishes on a quarterly basis. There is no doubt that passive long-only investors do not behave as typical speculative traders. They have a unique footprint in the markets. If the data demonstrates that passive long traders are disrupting the markets, through the rolling of their positions or otherwise, the Commission should make an affirmative finding and tailor a solution that addresses the problem.

It is also my hope that if the Commission adopts the limits included in the proposal, that it also promulgate federal limits for all other commodities with a finite supply, such as metals and the agricultural commodities not currently subject to federal limits. The rationale given for the current proposal applies equally to contracts in those commodities. Another inconsistency that would result if the Commission adopts the proposed rulemaking is that swap dealers would continue to receive bona fide hedge exemptions for positions related to agricultural commodities subject to federal limits, but the new proposed risk management exemption regime would apply to positions related to the four energy commodities included in the proposal. A uniform policy would benefit not only the Commission and market participants from an operational efficiency standpoint, but would also enhance transparency by eliminating needless complexities in the process.