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MANAGED FUNDS ASSOCIATION

April 14, 2005

VIA ELECTRONIC MAIL: Secretary@cftc.gov

COMMENT

Ms. Jean A. Webb
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Revision of Federal Speculative Position Limits

Dear Ms. Webb,

Managed Funds Association ("MFA") is grateful for the opportunity to provide its comments on the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed rulemaking to increase Federal speculative position limits for all single-month and all-months-combined positions (Commission Regulation 150.2 published in *The Federal Register*, Volume 70, Number 49, March 15, 2005).

MFA is the only U.S.-based global membership organization dedicated to serving the needs of those professionals throughout the world who specialize in the alternative investment industry, including hedge funds, funds of funds and managed futures funds. MFA's over 850 members include professionals from the majority of the 50 largest hedge funds, which manage a significant portion of the estimated \$1.1 trillion invested in hedge funds. MFA's members include commodity trading advisers and commodity pool operators that are major participants in all futures markets, including those subject to Federal speculative position limits.

The proposed increase in Federal speculative position limits will have the effect of making the agricultural futures markets in the United States more competitive with exchanges and markets located outside of the United States. The continued maintenance of unnecessarily low position limits has the anti-competitive effect of limiting access to U.S. markets and encouraging market participants to trade away from U.S. exchanges, whether on foreign futures exchanges or through off-exchange instruments. This diversion of trading activity to other markets reduces the hedging and price discovery functions of U.S. markets, while also discouraging the development of competitive products and markets in this country.

MFA applauds the Commission for taking this important first step in the liberalization of the levels for single-month and all-months-combined positions for Chicago Board of Trade ("CBOT") corn, oats, soybeans, wheat, soybean oil, and soybean meal; Kansas City Board of Trade ("KCBT") hard winter

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wheat; Minneapolis Grain Exchange ("MGE") hard red spring wheat; and New York Board of Trade ("NYBOT") cotton No. 2. We believe that this proposed rulemaking demonstrates the Commission's willingness to listen to the concerns of the industry and to work to ensure a competitive marketplace. We hope that the Commission considers this increase in position limits to be the beginning of a process towards further reform. Ultimately, MFA would like the CFTC to eliminate these Federal limits and replace them with exchange-administered speculative position limit provisions, for the reasons set forth below.

Federal speculative position limits are of vital interest to MFA's members because of the direct impact they have on the management of customer funds committed to the management of commodity trading advisors and pool operators. As you know, MFA supported the CBOT's April 27, 2004 amended petition for the repeal of Federal speculative position limits applicable to certain agricultural futures and option markets (the "CBOT Amended Petition"). We continue to support the CBOT as well as the interests of the KCBT, the MGE and the NYBOT.

Elimination of Federally Mandated Position Limits

As stated in our August 16, 2004 comment letter, MFA supports the findings set forth in the CBOT Amended Petition, and joins the CBOT, the KCBT, the MGE and the NYBOT in requesting that all Federally mandated position limits be eliminated from Commission Regulations and that Regulation 150.2 be repealed. In 2000, Congress passed the Commodity Futures Modernization Act ("CFMA"). The CFMA replaced a rules-based approach to regulation with a more flexible model based upon compliance with Core Principles. Core Principle 5 of Section 5(d) of the Commodity Exchange Act, as amended ("CEA"), applicable to designated contract markets, deals with Position Limitations or Accountability, and states that:

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate ("Core Principle 5").

Therefore, although the Commission retains the authority to set speculative position limits pursuant to Section 4a(a) of the CEA, the most recent pronouncement of Congressional intent as set forth in the CFMA's Core Principles squarely places responsibility for establishing position limits upon the exchanges.

The fact that the Commission set speculative position limits for the agricultural contracts listed in Regulation 150.2, and left the responsibility to set all speculative position limits for other products, including other agricultural products, to the exchanges under Regulation 150.5, appears to be a matter of historical development, and not based upon any distinctions applicable to the enumerated contracts. For example, in the Federal Register release accompanying the adoption of the current single-month and all-months levels for CBOT and other exchange contracts, the Commission stated that it had never established a speculative position limit for the MGE's former durum wheat contract, because that contract was listed after the promulgation of the Commission rule that required contract markets to set their own speculative limits for contracts not subject to limits set by the Commission. The Commission further stated that since the adoption of that rule, it has generally preferred to rely upon exchanges to set their own position limits. Revision of Federal Speculative Position Limits and Associated Rules, [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶27,608, at 47,884, fn. 9 (64 F.R. 24038, May 5, 1999).

In fact, even before the passage of the CFMA and the adoption of the Core Principles, the CBOT suggested granting the exchanges sole responsibility to establish and monitor speculative position limits

subject to Commission oversight. At that time, the Commission responded that it “. . . believes that this suggestion may merit future consideration.” Revision of Federal Speculative Position Limits and Associated Rules, [1998-1999 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶27,608, at 47,882-47,883, fn. 7 (64 F.R. 24038, May 5, 1999). Although the CFTC has decided to retain these Federal limits, MFA requests that the Commission continue its review of policy in the speculative limits area, including consideration of whether to grant the sole responsibility to establish speculative position limits to the exchanges by repealing Regulation 150.2, and for the Commission to oversee the exchanges’ exercise of that responsibility, as envisioned by the CFMA.

MFA continues to believe that position limits are not necessary or efficient in detecting or combating market manipulation and price anomalies. Moreover, since most foreign futures exchanges do not rely upon speculative position limits as a regulatory device, and because off-exchange markets do not have any position limits applicable to them, access to domestic markets has been discouraged by the presence of position limits. The development and growth of foreign and off-exchange markets has correspondingly been encouraged as U.S. markets have become less competitive due in part to regulatory constraints such as speculative position limits. MFA also believes that a chilling effect has been created by the presence of speculative position limits: as assets under management increase, traders who use U.S. markets must restrict or eliminate their use of markets where speculative position limits exist or where they are maintained at unreasonably low levels.

Conclusion

MFA commends the Commission for its efforts in monitoring the issue of Federal speculative position limits and for its consideration of the petitions and submissions of the exchanges and market participants such as MFA’s members. MFA applauds the Commission for taking this important first step in increasing Federal speculative position limits and hopes that the Commission will continue to review its current policies regarding the administration of speculative position limits, for the reasons set forth above. MFA is optimistic that the Commission will agree that these Federal limits should ultimately be eliminated. If you have any questions regarding these comments or would like to discuss them, please call me at (202) 367-1140.

Sincerely,



John G. Gain
President

cc: Acting Chairman Sharon Brown-Hruska
Commissioner Michael V. Dunn
Commissioner Fred Hatfield
Commissioner Walter L. Lukken
Rick Shilts, Acting Director of Market Oversight
Dr. Jim Overdahl, Chief Economist