



Commodity Futures Trading Commission

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Statement

“Moving Forward”

Statement of Commissioner Bart Chilton Regarding the Notice of Proposed Rulemaking for Speculative Position Limits for Referenced Energy Contracts

January 14, 2010

During the last decade, while traditional hedgers and speculators increased their use of the futures markets, many new non-traditional participants entered the arena, bringing with them capital and a wealth of innovative approaches to trading. The trend helped fuel the economic engine of our democracy—a good and positive outcome. As markets and market participants evolve, the Commission has an inherent responsibility to examine the impact, as well as to proactively anticipate the potential impact, of changing dynamics on those markets we are entrusted to oversee.

There is certainly no consensus about the potential and net impact of new non-traditional speculators on commodity markets. Did the massive passives—very large traders who have no interest in the underlying physical commodity and have, in general, a fairly inactive long trading strategy—contribute to \$147 barrel oil in 2008? Some say there is no impact on markets, others (like researchers at MIT, Rice and Princeton—and a new study out this week from Lincoln University of Missouri) absolutely disagree.

Regardless, what is important to remember is that having an impact is not equivalent to manipulation (or other abuse) under current law, rule or regulation; it is not per se negative. However, any conduct that potentially can distress markets, that has the propensity to create artificiality in the markets, needs to be understood and curbed as necessary.

The Commodity Exchange Act (CEA) has as its fundamental purpose the deterrence and prevention of fraud, market abuse and manipulation. To accomplish our mission requires vigilance and thoughtful consideration of the potential for market aberrations. It requires agile, balanced and prudent action in a timely manner—not usually the mark of government. Our role in striking the right balance with regard to the massive passives and other new dynamics in the futures industry requires that we not merely review and respond, but that we anticipate, deter and prevent.

That is why I support moving forward on the energy proposal before the Commission. This proposal strikes a reasonable balance. Simply put, it seeks to impose mandatory hard cap position limits. Doing so is not the mark of wild-eyed overzealous regulators. In fact, the position limits called for in the proposal are similar to limits already in effect for agricultural commodities. This proposal simply seeks to expand such mandatory hard cap position limits to four heavily traded energy contracts.

Specifically, the energy proposal would establish four different hard cap mandatory speculative position limits. They are: an exchange-specific spot-month limit; a single month limit; an all-months-combined limit; and an all-encompassing, cumulative U.S. exchange position limit for substantially similar-traded contracts. These limits would be dynamic in that they would be responsive to the size of the market and subject to annual recalculation by the Commission.

While I have been a staunch advocate for strong position limits, the levels set for the limits, in my opinion, actually err on the high side. The proposed limits will certainly be seen by some as higher than appropriate. However, should the limits prove inadequate, the agency can, and I hope will, recalibrate to ratchet them down or even increase them as deemed appropriate. The most important thing is to establish a thoughtful position limit system..

Furthermore, while the proposed limits err on the high side, such levels would still ensure that the very largest traders' positions, those with the greatest potential for causing market-contortions, would be limited. Moreover, if limits were set too low, there would be a possibility that trading migration could take place, transferring traders to over-the-counter markets or overseas exchanges. This is particularly noteworthy because Congress has yet to pass regulatory reform legislation that would grant the CFTC authority to properly regulate the over-the-counter markets—markets that are currently dark in that there is not government regulation or oversight. Hundreds of trillions of dollars are traded in these dark markets and they can influence the price that consumers pay for everything from gasoline, to a loaf of bread, to a home mortgage. Passage of such legislation to provide regulators with authority in this area is critically needed, and soon.

In addition to position limits, the proposal contains a mechanism to consider certain exemptions to those limits. I have suggested that any exemptions should be approved by the CFTC, targeted for legitimate business purposes, verifiable and transparent. This proposal meets all four of those criteria.

Traders hedging commercial risks, i.e. those who have inventory or have an interest in the underlying physical commodity, would qualify for a bona fide hedging exemption from the proposed speculative position limits upon application to the exchange. The CFTC would audit the use of this exemption to ensure its consistency with our rules and regulations. Importantly, no longer included in this class of traders would be swap dealers who establish positions to offset the financial risk of customer initiated swap positions. Instead, those traders could apply directly to the CFTC for a limited risk management exemption for positions held outside of the spot month. Swap dealers who receive this exemption from the CFTC would be subject to rigorous and regular reporting requirements to verify and qualify their need for the exemption. Currently, neither the names nor the numbers of such exemptions are available to the public.

Under the proposal, in order to increase transparency, the CFTC would make public the identities of those who receive exemptions.

Finally, the proposal seeks comment from the public on the question of expanding position limits to the metals complex and to soft agricultural commodities. While I am pleased that this question is at least posited through the proposed rule, I am extremely disappointed that metals are not a part of this proposal as I have sought. In essence, failure to include a proposed rule relative to metals such as gold and silver prevents the inclusion of metals in the final rule covering position limits in energy. As a result of the omission, CFTC attorneys have opined that should the Commission wish to establish position limits in metals as a result of public comment, the agency would have to undertake an entirely separate rulemaking. I strongly support thoughtful position limits in the metals complex. I have advocated for their inclusion in this proposal with each of my colleagues and staff, and regret the lack of consensus that remains. It is my sincere hope and expectation that the upcoming hearing on position limits with regard to metals will enable us to move more expeditiously on a parallel regulatory process for metals.

I thank everyone involved in conceiving and designing this thoughtful proposal with regard to energy. We seek comment, for an ample period of 90 days, on not only the overall proposal, but also specifically on the question of expanding the concept to the metals and soft agricultural commodities and on the question of imposing separate position limits for the massive passives as a class of investors. I look forward to the comments and ultimately to putting a sensible position limit system in place.