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**Subject:** Pre-Rulemaking Position Limit Comments and Recommendations  
**Attach:** CFTC Position Limits 100110 final.pdf

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Attached please find the Futures Industry Associations comment letter on Pre-Rulemaking Position Limit Comments and Recommendations.

Please feel free to contact the FIA with any questions or comments.

Thank you.

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October 1, 2010

**Via Email: PosLimits@CFTC.gov**

David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Pre-Rulemaking Position Limit Comments and Recommendations**

Dear Mr. Stawick:

The Futures Industry Association, Inc. (“FIA”) appreciates this opportunity to provide the Commodity Futures Trading Commission (“Commission”) with the comments and recommendations set forth below in advance of the issuance of any proposed rules setting position limits on certain contracts involving exempt and agricultural commodities.<sup>1</sup> Position limits are an important tool available to the Commission when necessary to prevent excessive speculation and to deter market manipulation. However, as Congress has recognized, position limits also have the potential to reduce liquidity and adversely affect the price discovery function of U.S. commodity markets. For this reason, FIA respectfully recommends that the Commission consider whether, based upon the information it currently has available, it should propose interim rather than final position limits on contracts involving exempt and agricultural commodities. FIA also recommends that any interim position limits apply only to net positions in economically equivalent contracts and be set at a level that will not reduce market liquidity or cause a migration of the price discovery function to foreign markets. Finally, FIA recommends that the Commission consider proposing an interim rule that aggregates positions only in commonly controlled accounts.

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<sup>1</sup> FIA’s regular membership is comprised of approximately 30 of the largest futures commission merchants (“FCMs”) in the United States, the majority of which also are either registered with the Securities and Exchange Commission as broker-dealers or are affiliates of broker-dealers. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than 80 percent of all customer transactions executed on United States designated contract markets.

## **I. Interest of FIA in Any Position Limits to be Set By the Commission**

When the Commission proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations in January 2010, FIA submitted extensive comments and recommendations. For the Commission's convenience, a copy of FIA's March 18, 2010, comment letter is attached hereto as Appendix A. FIA also participated in the legislative process that led to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). As the Commission and other federal agencies work to implement the Dodd-Frank Act, FIA has publicly committed to assist them by providing the information, comments, and recommendations that they need to ensure that U.S. markets remain the most efficient and competitive in the world.

Section 737 of the Dodd-Frank Act amended the Commission's authority in Section 4a of the Commodity Exchange Act ("CEA") to establish position limits and, unlike most other provisions in the legislation, became effective on July 21, 2010.<sup>2</sup> Section 4a now authorizes the Commission in certain circumstances to set limits on the size of positions, other than bona fide hedging positions, in Covered Contracts (defined below) that may be held by any person. FIA and its members have a significant interest in any federal speculative position limits that the Commission may propose.

## **II. Summary of FIA's Comments and Recommendations**

As explained in detail below, FIA respectfully recommends that the Commission proceed carefully in determining whether to establish position limits for contracts involving exempt and agricultural commodities. In particular, FIA recommends that:

- If the Commission believes that it can determine whether position limits are necessary based on the information currently available to it, then the Commission should consider proposing *interim* position limits for a limited set of the most liquid contracts;
- Any interim limits should:
  - be sufficiently flexible to avoid reducing liquidity or impairing the price discovery function of the markets;
  - apply only to net positions in economically equivalent contracts;
  - apply to aggregate positions based only on common control, not on common ownership;
- If the Commission proposes any interim position limits, it should propose at the same time or in the same rulemaking proceeding a definition of bona fide hedging position

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<sup>2</sup> Because the amendments to Section 4a are effective, FIA generally refers to the CEA sections rather than Section 737 of the Dodd-Frank Act when discussing the Commission's position limit authority.

that promotes the hedging of risks associated with exempt and agricultural commodity contracts;

- The Commission should provide guidance and seek comments on a process by which it will grant other types of exemptions from speculative position limits for positions that perform the same or similar risk reducing functions as bona fide hedging positions; and
- Before the Commission considers any final position limits, it should request comments on the process by which it could develop the factual information that it will need to determine whether final position limits are necessary and, if so, what levels are appropriate.

FIA respectfully submits that by proceeding cautiously and adopting FIA's recommendations, the Commission will accomplish its statutory mandate to prevent excessive speculation and market manipulation and protect the liquidity and price discovery function of U.S. derivatives markets.

### **III. The Commission Should Consider Proposing *Interim* Position Limits for Covered Contracts Involving Exempt and Agricultural Commodities**

If the Commission concludes, based upon the information currently available to it, that it is appropriate to proceed with a determination of whether position limits are necessary, the Commission should consider proposing *interim limits* until it has the data necessary to determine whether final position limits are necessary and, if so, establish appropriate limits. Moreover, if the Commission proposes interim or other limits for Covered Contracts, FIA respectfully requests that the Commission: (1) issue a rule proposal that includes all of the data and other information upon which it relies and an explanation of how that information supports any proposed limits; and (2) provide market participants with a meaningful opportunity to comment, including sufficient time to consider the proposed rule and its likely impact on the markets and their business operations.

#### **A. The Commission's New Position Limit Authority Under The Dodd-Frank Act**

The Dodd-Frank Act requires the Commission to propose and finalize scores of complex, interrelated regulations on a schedule that creates significant logistical and procedural challenges. Among the many important regulations that the Commission must address are position limits on certain specified contracts involving exempt and agricultural commodities.

Under Section 4a, the CFTC is authorized, in accordance with the standards set forth in Section 4a(a)(1), to set “by rule, regulation, or order” position limits on the following contracts:

- futures contracts traded on a designated contract market (“DCM”) or a derivatives transaction execution facility (Section 4a(a)(1));<sup>3</sup>
- swaps traded on a DCM or a swap execution facility (“SEF”); and
- swaps not traded on a DCM or SEF that perform or affect a significant price discovery function with respect to registered entities (Section 4a(a)(1)).

In addition, Section 4a(a)(5) authorizes the Commission to establish limits on swaps that are economically equivalent to futures contracts and options on futures contracts traded on a DCM (Section 4a(a)(5)). The contracts listed in Sections 4a(a)(1) and (5) are referred to herein collectively as “Covered Contracts.”<sup>4</sup>

Congress charged the Commission with establishing limits for Covered Contracts within 180 days for exempt commodities (or by January 17, 2011) and within 270 days for agricultural commodities (or by April 17, 2011), respectively, of enactment of the Dodd-Frank Act. Significantly, Section 4a(a)(2) expressly provides that, before the Commission can establish limits “as appropriate” on speculative positions in Covered Contracts, it must make separate findings pursuant to Section 4a(a)(1) for each type of Covered Contract that position limits are “necessary to diminish, eliminate or prevent” the burden on interstate commerce caused by excessive speculation – commodity price fluctuations that are sudden, unreasonable or unwarranted.

## **B. Additional Prerequisites to Proposing Interim Position Limits**

In connection with proposing interim or other limits, Congress directed the Commission to consider (1) whether position limits may cause price discovery to shift to foreign boards of trade (“FBOT”), and (2) the effect that position limits may have on market liquidity and the price discovery function of the underlying markets. *See* Sections 4a(a)(2)(C) and (3).

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<sup>3</sup> When Section 4a was adopted, options on commodities were statutorily barred. In June 1981, the Commission issued proposed regulations for a pilot program for exchange-traded options on futures contracts which stated that position limits may be appropriate. (*See* 46 FR 33293.) In October 1981, the Commission issued a final rule that required exchanges to impose speculative position limits on all contracts that did not have CFTC-imposed limits, including options on futures contracts. (*See* 46 FR 50938.)

<sup>4</sup> Section 4a(a)(6)(B) authorizes the Commission to set limits on yet another category of contract – a contract that settles against any price of one or more contracts traded on a registered entity and contracts traded on a FBOT that provides persons located in the U.S. with direct access to its electronic trading system – but only in connection with setting limits (and related hedge exemptions) on the aggregate number of positions a person may hold in contracts based upon the same underlying commodity.

## 1. Consideration of the Risk of Shifting the Price Discovery Function to Foreign Boards of Trade

CEA Section 4a(a)(2)(C) provides that “[i]n establishing the limits required under [Section 4a(a)(2)(A) for Covered Contracts], the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits *and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.*” FIA urges the Commission to consider whether even interim position limits will provide an incentive for trading to migrate to commodity contracts offered by FBOTs.

## 2. Balancing Important Legislative Goals

In addition to considering the risk of shifting the price discovery function to FBOTs, CEA Section 4a(a)(3) provides that, to the maximum extent practicable, the Commission should use its discretion to establish a position limit rule that:

- diminishes, eliminates, or prevents “excessive speculation;”
- deters and prevents market manipulation (particularly squeezes and corners);
- ensures sufficient market liquidity for bona fide hedgers; and
- ensures that the price discovery function of the underlying market is not disrupted.

During the legislative process, Sen. Blanche Lincoln emphasized that in setting position limits, “regulators must balance the needs of market participants, while at the same time *ensuring that our markets remain liquid* so as to afford end-users and producers of commodities the ability to hedge their commercial risk.”<sup>5</sup> In particular, Sen. Lincoln explained that “there is a legitimate role to be played by market participants that are willing to enter into futures positions opposite a commercial end-user or producer [because it is] [t]hrough this process [that] markets gain additional liquidity and accurate price discovery can be found for end-users and producers of commodities.”<sup>6</sup>

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<sup>5</sup> 156 Cong. Reg. H5248 (daily ed. June 30, 2010) (Letter from Sen. Christopher Dodd and Senator Blanche Lincoln to Rep. Barney Frank and Rep. Collin Peterson) (emphasis added).

<sup>6</sup> *Id.*

**C. Any Interim Rules Should be Sufficiently Flexible to Avoid Harming the Markets**

If the Commission concludes that it can propose interim limits that will not adversely affect market liquidity and the price discovery function of U.S. markets based upon the data currently available to it, FIA suggests that the Commission carefully consider the limitations in that data when establishing interim limits. Since June 2008, the Commission has collected swap position and related data from swap dealers, commodity index funds and commodity index traders.<sup>7</sup> Those data, while informative, have a number of limitations that should inform the Commission's decision-making process in determining whether and, if so, at what level, to set interim position limits on Covered Contracts. For example, those data are incomplete because they were not collected from all relevant market participants, do not include all swaps that are or that underlie Covered Contracts, and are aggregate all-months-combined positions rather than individual month positions across the forward curve. In addition, those data likely were characterized differently by each submitter and, likely are not sufficiently detailed to enable the Commission to compare "economically equivalent" contracts. Finally, the data currently available to the Commission differ from the data that will be available to it in the future once the Commission starts to receive information from large swap traders. Thus, to the extent that the Commission elects to rely on data generated by the special call to determine whether interim position limits are necessary, or otherwise as a basis for any proposed rule, it should include reasonable margins in any proposed limits to account for any differences or errors in the data.

Until the Commission has more complete and accurate information upon which to make the findings required by Sections 4a(a)(1) and (2), FIA recommends that any interim limits be:

- established, initially, for a limited number of the most liquid Covered Contracts;
- sufficiently large so that they will not inadvertently impair the liquidity and price discovery function of these very important markets;
- set only for the spot month where "sudden or unreasonable fluctuations or unwarranted changes in the price of [a] commodity" may affect the anticipated convergence of the futures price and cash market price of a physical commodity;

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<sup>7</sup> The CFTC's June 2008 Special Call required: (1) swap dealers to provide classification of index and single-commodity swaps businesses, identification of swaps clients who held all-months-combined futures equivalent positions greater than a single-month accountability level for the related market, and data for bilateral single-commodity swaps by market and futures equivalent positions arising from swaps referenced or hedged in U.S. markets; (2) commodity index funds to provide classification of index swaps businesses, market exposure from holding futures positions and OTC swaps or other derivatives positions, and identification of clients who have a \$100 million or more investment notional value; and (3) commodity index traders to provide the notional value of business based on commodities in the index in U.S. and non-U.S. markets and the estimated number of futures-equivalent contracts for each commodity traded on a DCM,

- accountability levels, rather than hard limits, for any non-spot single month or all months combined and across markets;<sup>8</sup> and
- applied only to net positions in economically equivalent contracts.

By adopting an iterative approach to establishing any interim limits on speculative positions in Covered Contracts, the Commission will have time to build a factual record upon which to determine whether final limits are necessary.

#### **IV. If the Commission Proposes Interim Position Limits, it Should Consider Requesting Comments on the Process By Which it Can Develop the Information it Will Need to Determine Whether Final Position Limits are Necessary**

Position limits raise a myriad of complex policy and factual issues. Because the Commission must have a reasoned basis for any position limits that it adopts, FIA respectfully requests that the Commission consider seeking public comments on a process for collecting and examining the data that it will need to determine whether final limits are necessary.

As demonstrated in Appendix B, under the timeline established by the Dodd-Frank Act, it appears that the Commission may not have much of the data and other information that it needs to consider whether position limits are necessary until well after the January 17, 2011 and April 17, 2011, dates by which the Commission must establish limits “as appropriate” on speculative positions in Covered Contracts.<sup>9</sup> For example, the Commission is not required to define the data elements for reported swaps or issue final rules concerning large swap trader reporting, or data collection and reporting for swap execution facilities until July 2011. In addition, the Commission will be identifying swaps required to be cleared with 30-day comment periods on a rolling basis, including presumably beyond January 2011. No dates are specified for the Commission to promulgate regulations concerning reporting uncleared swaps and swaps for which no BOT or SEF is available. There appears to be several other examples of timing mismatches between when the Commission will receive transaction data and when it is required to consider the necessity of position limits. As a result of the challenging timeline set by the Dodd-Frank Act, FIA recommends that when the Commission proposes any interim position limits, it also should consider proposing and seeking public comments on the process that it will implement to obtain the data it needs to exercise its authority under Section 4a.

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<sup>8</sup> FIA recommends that the Commission set accountability levels at sufficiently high amounts to ensure that they will not unduly restrict trading and, thereby, reduce liquidity or cause price discovery to move to foreign markets.

<sup>9</sup> It also appears that the Commission may lack the necessary data to determine compliance with any federal speculative position limits it establishes on Covered Contracts until the summer or fall of 2011.

## **V. The Dodd-Frank Act Provides the Commission with Broad Discretion in Setting Position Limits**

Section 4a provides the CFTC with broad discretion to adopt FIA's recommendations concerning how the Commission should consider whether and how to exercise its authority to set position limits. Virtually every provision of Section 4a authorizes the Commission to set position limits "as appropriate." For example, Section 4a(a)(1) expressly permits the Commission to set different trading or position limits for, among other things, "different commodities, markets, futures, or delivery months, . . . for buying and selling operations" and for transactions commonly known as "spreads," "straddles," or "arbitrage." Similarly, Section 4a(a)(2) permits the Commission to set "as appropriate" position limits on Covered Contracts. Sections 4a(a)(3), (5), and (6) permit the Commission to set "as appropriate" specific limits on positions that a person may hold in the spot month, each other month, in the aggregate, in economically equivalent contracts, and across markets. The Commission also has discretion regarding which factors it considers in determining whether swaps perform or affect a significant price discovery function. *See* Section 4a(a)(4). Finally, the Commission has the discretion and authority to exempt, with or without conditions, persons or transactions from any position limits it establishes. *See* Section 4a(a)(7). In short, the Commission has more than sufficient discretion to make determinations about the need and, if so, the extent and application of position limits on Covered Contracts involving exempt and agricultural commodities.

## **VI. Interim Position Limits Only Should Apply to Net Positions in Economically Equivalent Contracts**

FIA respectfully submits that any interim aggregate position limit across markets should only apply to a net long or short position in economically-equivalent contracts. Section 4a(b) makes it a violation for anyone "to hold or control a *net long or short position*, . . . in excess of any position limit fixed by the Commission." Historically, the Commission has applied limits to net positions.<sup>10</sup> As noted above, under Section 4a(a)(6), the Commission may impose position limits for Covered Contracts across different markets. But, to identify a trader's true position for the purpose of determining compliance with a position limit, the Commission should look at the trader's net position in all equivalent instruments. As the Commission noted in its January 2010 position limit proposal, applying a position limit "without consideration of other directly or highly related contracts could result in applying a position limit only to a very limited segment of a broader regulated market."<sup>11</sup> The appropriate application of an aggregate limit should be to a net long or short position in all of the equivalent contracts.

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<sup>10</sup> Prior to the passage of the Dodd-Frank, CEA Section 4a(b) and Section 150.2 of the Regulations referred to net long or short positions. Most recently, the Commission's proposed position limits for certain energy contracts would have applied to net positions in the same class of contracts. (75 Fed. Reg. 4168)

<sup>11</sup> 75 Fed. Reg. 4153

In proposing any interim limits, FIA requests that the Commission provide guidance and request comments on the general criteria for identifying “economically equivalent” contracts. Market participants that manage the market risks associated with a wide variety of commodity transactions currently select what they believe are effective instruments to manage the basis risks (e.g., commodity type, tenor and pricing methodology, settlement terms, volume, pricing point and underlying currency) inherent in those transactions, and treat positions in those instruments as economically equivalent.

#### **VII. Any Interim Position Limit Rule Only Should Aggregate Positions Based on Common Control**

The Dodd-Frank Act did not amend the provisions of Section 4a(a)(1), which require aggregation only of “positions held and trading done” under common control or by two or more persons acting pursuant to an “express or implied agreement.” If the Commission proposes interim position limits, FIA recommends that the Commission adopt the same aggregation requirement that applies to exchange-imposed position limits, *i.e.*, aggregation based on common control rather than common ownership. *See* Section 150.5(g) of the CFTC’s Regulations, 17 C.F.R. § 150.5(g).

The touchstone for aggregating positions should be common control. Congress gave the Commission authority to set position limits when necessary to eliminate or prevent excessive speculation, and to deter or prevent market manipulation. In the absence of actual common control over the trading of Covered Contracts, common ownership of accounts does not facilitate either excessive speculation or the potential manipulation of commodity prices.

FIA is concerned that a position limit rule like the one proposed by the Commission in January 2010, which would have required aggregation of the positions of all entities that share a ten percent or greater common ownership (regardless of actual control), will reduce market liquidity. Such a rule also does not take into account the independent management that exists between and among corporations, even those with common, minority ownership. In fact, an ownership interest requirement for aggregation potentially may dismantle structures put in place by many market participants to prevent affiliates from sharing information about trading and positions that might enable common control. For example, financial institutions, many of which have FCM affiliates, maintain barriers to prevent the flow of information between and among affiliates, including affiliates that control the trading of, and have fiduciary duties to, third-parties. In order to aggregate the positions of these separately-controlled, but commonly owned entities, they would have to share position and trading information to which they otherwise would not or should not have access. The end result of aggregation based solely upon common

ownership likely will be reduced market liquidity and less price discovery with no tangible regulatory benefit.<sup>12</sup>

### **VIII. If the Commission Proposes Interim Position Limits, It Also Should Propose and Seek Comments on a Definition of Bona Fide Hedging Position**

CEA Section 4a(c)(1) exempts bona fide hedging transactions from any position limits established by the Commission. It also authorizes the Commission to define “bona fide hedging transactions or positions by rule, regulation, or order consistent with the purposes of the Act.”<sup>13</sup>

New Section 4a(c)(2) identifies the parameters that the Commission must use to define bona fide hedging transactions “for the purposes of implementation of [limits on Covered Contracts],” but only for futures contracts or “options on the contracts or commodities.” Apart from requiring that the definition of bona fide hedging transaction be consistent with the purposes of the CEA, Congress placed no restrictions on how the Commission should define bona fide hedging transaction for any Covered Contract other than futures and options on commodities. As a result, the Commission has broad discretion to define bona fide hedging transaction for swaps executed on DCMs or SEFs.

Because of the critical importance of the definition of bona fide hedging transaction to hedgers, including commercial end users, and to any limits established by the Commission, FIA recommends that the Commission seek public comments about how to define bona fide hedging, particularly in connection with hedging basis risk. For example, integrated financial institutions that help end user clients manage risk rely on a variety of exchange traded and OTC derivatives contracts to hedge that risk. The terms of these hedging transactions may not be perfectly aligned with, among other things, the commodity type, contract specifications, delivery point, timing or tenor of the underlying transaction. For example, market participants often hedge physical power transactions with natural gas futures or swap contracts, or various grades and

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<sup>12</sup> In addition, as FIA pointed out in its March 18, 2010 comments on the Commission’s January 2010 proposed position limit rule, imposing an aggregation requirement based on common ownership “may be unworkable and surely will sharply increase the cost of compliance.” Independently-controlled affiliates often have separate information systems and procedures for back office operations that will require substantial and very expensive modifications in order to allocate and monitor commonly owned positions to abide by aggregated limits. Moreover, no matter how many resources they devote to the aggregation of such positions, it likely will be impossible for market participants to comply with ownership-based limits on an intra-day basis. Because of the complexity and difficulty in tracking these positions, the Commission should consider providing a safe-harbor relief for an inadvertent, intra-day breach of a position limit. In addition, even though common account owners will be responsible for complying with any position limits established by the Commission, FIA requests that the Commission provide FCMs with guidance about whether and, if so, how they should confirm account ownership and monitor compliance by their customers with the aggregation requirement. On the other hand, if as FIA recommends, the Commission proposes aggregation based solely on common control, FIA requests that the Commission consider proposing a safe harbor for FCMs that reasonably rely on the representations of customers that the accounts of affiliated companies are separately controlled.

<sup>13</sup> *Id.*

locations of crude oil with WTI futures or swap contracts. If the Commission adopts a narrow definition of bona fide hedge that excludes a wide range of commonly-used transactions and positions, hedgers may not be able adequately to offset their risks within Commission-set speculative position limits. The inability of market participants to hedge risk in established markets may increase systemic risk or cause a shift of hedging activity to foreign markets. Either of those results would be inconsistent with Congress' directive to protect the liquidity and price discovery function of U.S.-regulated markets.

FIA recommends that the Commission use the rulemaking process to develop a hedging definition that encompasses the complex, multi-faceted, commodity-related risks that businesses need to manage. The Commission also should seek input about how to define bona fide hedging transactions for swaps traded on DCMs and SEFs. Market participants would benefit greatly from guidance about the types of transactions and positions that the Commission will treat as qualifying for exemptions from any position limits it establishes.

**IX. Any Interim Position Limit Rule Should Not Prohibit a Bona Fide Hedger from Holding Otherwise Permissible Speculative Positions**

The CEA does not require or authorize the Commission to propose a speculative position limit rule that "crowds out" hedgers. Traders who hold bona fide hedge exemptions should be allowed to hold a speculative position up to the speculative limit and to hedge up to the limit of their hedge exemption. As FIA pointed out in its March 18, 2010 comments, a rule that prohibits a bona fide hedger from holding a speculative position within its hedge exemption is contrary to Section 4a(c), even as amended by the Dodd-Frank Act, because it effectively imposes a position limit on the bona fide hedge position, something that is expressly proscribed by Section 4a(c). Moreover, speculative positions that are within Commission-established speculative position limits by definition should not be considered to be excessive speculation.

**X. FIA Encourages the Commission to Seek Comments on a Process By Which It Will Grant Other Types of Exemptions from Speculative Position Limits**

Section 4a(a)(7) provides the Commission with broad authority to exempt, conditionally or unconditionally, any person or class of persons and any class of Covered Contracts from any speculative position limits that it sets under Section 4a. FIA believes that the Commission should use its authority to grant exemptions in appropriate circumstances. For this reason, FIA recommends that the Commission propose a process that it will follow and the criteria that it will consider in determining whether to grant requests by market participants for exemptions from position limits. For example, the Commission should seek comments on the factors it should review in deciding whether to grant hedge exemptions to liquidity providers who enter into swaps with customers in circumstances where the hedge of the risks associated with the swap position may not fall squarely within the definition of bona fide hedging position.

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October 1, 2010  
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Exemptions from position limits should be available for positions that serve the same function as bona fide hedging transactions and positions – *i.e.*, they manage risk and, therefore, promote the financial stability of providers of swaps and other risk management instruments to their customers and counterparties. Unless the Commission announces and seeks comments on a process by which market participants can apply for an exemption from speculative position limits, liquidity providers may not be able to use Covered Contracts to hedge the risks associated with swap positions. Thus, they will either have to find alternative, perhaps foreign, markets in which to hedge that risk, or reduce or abandon the risk management products and services that they provide to their customers. In either case, the liquidity and price discovery function of the Covered Contracts likely will be diminished or disrupted, a result that may contribute to price volatility and less efficient markets.

## **XI. Conclusion**

For the foregoing reasons, FIA respectfully requests that, if the Commission believes it has the information necessary to make the findings required by Section 4a, the Commission propose: (1) interim position limits for a limited number of Covered Contracts consistent with the recommendations set forth herein; and, at the same time, (2) a definition of bona fide hedging transaction that promotes the hedging of risks associated with exempt and agricultural commodity transactions. In addition, FIA requests that the Commission seek comments on a process for developing the information that it will need to determine whether final position limits are “necessary to diminish, eliminate, or prevent” the burden on interstate commerce caused by “excessive speculation.” Please direct any questions about this letter to Barbara Wierzynski, Executive Vice President and General Counsel, at 202-466-5460.

Respectfully yours,



John M. Damgard  
President  
Futures Industry Association

cc: Honorable Gary Gensler, Chairman  
Honorable Michael Dunn, Commissioner  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott O’Malia, Commissioner  
Daniel Berkovitz, General Counsel  
Terry Arbit, Deputy General Counsel, Office of the General Counsel  
Stephen Sherrod, Acting Director of Surveillance  
Bruce Fekrat, Special Counsel

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**APPENDIX A**

March 18, 2010 FIA Comment Letter  
on the CFTC's Notice of Proposed Rulemaking:

Federal Speculative Position Limits for  
Referenced Energy Contracts And Associated Regulations

75 Fed. Reg. 4144 (Jan. 26, 2010)

## APPENDIX B

Based upon the provisions of the Dodd-Frank Act, the rulemakings it requires and the complexity of position limit issues, the Commission should consider publishing for notice and comment a process for developing the information it needs to make the findings required by Section 4a(a)(1), including the following, among other, data and information:<sup>14</sup>

Report/Data Rule or Other Information	Date by which interim or final rule must be published or other information provided <sup>15</sup>
The definition of swap (Section 721)	None specified
Interim rule for reporting of pre-enactment swaps to a swaps data repository or the CFTC (Section 729) (note that because CEA § 2(h) remains in effect for 360 days from the date of enactment, it is not clear whether the CFTC can require interim reporting of exempt commodity swaps)	October 19, 2010
Position Limits Rule — exempt commodities (Section 737)	January 17, 2011
Position Limits Rule — agricultural commodities (Section 737)	April 17, 2011
Standards to specify the data elements for each swap reported to a swap data repository (Section 728)	July 16, 2011
Data collection and maintenance by DCOs (Section 725)	July 16, 2011
Data collection and reporting for swap execution facilities (Section 733)	July 16, 2011
Issue rules for DCO's swaps submission for review and clearing (Section 723)	July 21, 2011
Reporting of post-enactment swaps to a swaps data repository or the CFTC (Section 723)	October 14, 2011 unless otherwise prescribed by the CFTC
Transaction reporting for swaps for which no swap data repository accepts the swap (Section 729)	As determined by CFTC rule or regulation
Identification of swaps required to be cleared (Section 723)	Ongoing basis with a 30-day public comment period for any such determination
Reporting of uncleared swaps to a swaps data repository or the CFTC (Section 729)	None specified
Large swap trader reporting and recordkeeping requirements (Section 730)	None specified
The characteristics of economically equivalent futures and swap contracts (Section 737)	None specified (but presumably before the establishment of any position limits on Covered Contracts)
The definition of "international arbitrage" (Section 737)	None specified

<sup>14</sup> The Notice should include information about the data the Commission plans to collect and any formulas that it intends to employ in making any necessary calculations.

<sup>15</sup> Pursuant to Section 754 of the Dodd-Frank Act, unless otherwise specified, the provisions of the Dodd-Frank Act do not take effect until at least 360 days after enactment (*i.e.*, by July 16, 2011) or, to the extent that any provision requires a rulemaking, not less than 60 days after the final rule is published, whichever is later. The "not less than" language in Section 754 gives the Commission discretion to stagger the effective dates of the implementing regulations in order to provide market participants with sufficient time to comply with the new regulatory requirements.

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October 1, 2010  
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