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April 20, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4144 (January 26, 2010)

Dear Mr. Stawick:

We are writing to the Commodity Futures Trading Commission ("CFTC") on behalf of a client which is a registered commodity trading advisor and in such capacity a member of the National Futures Association (the "CTA") regarding the CFTC's Proposed Part 151 – Federal Speculative Position Limits for Referenced Energy Contracts (hereinafter, the "Proposed Part 151 Regulations").

By way of background, the CTA is part of a conglomerate that includes bona fide hedgers and independent account controllers (the "Affiliated Traders") which trade commodity futures and options pursuant to separately developed, executed and marketed strategies. Consistent with CFTC Reg. § 150.3(a)(4)(i)(A)-(D) (the "Independent Account Controller Safe Harbor" or the "Safe Harbor"), the CTA and the Affiliated Traders have in place information sharing walls to prevent the affiliates from knowing or having access to position data about trades of the others.

Because of the numerous negative consequences set forth below, the CTA has requested that we comment to express its views that the CFTC should not adopt the Proposed Part 151 Regulations without the addition of an exemption from aggregation of positions along the lines of the Independent Account Controller Safe Harbor.

As currently drafted, the Proposed Part 151 Regulations will not provide for an exemption from aggregation of positions in referenced energy contracts outside of the spot month for independent account controllers, including for independent account controllers which are affiliated entities. An analogous exemption is currently provided in the Independent Account Controller Safe Harbor. In this regard, the Proposed Part 151 Regulations represent a significant departure from, and a direct reversal of, more than 30 years of CFTC rulemaking in this area dating back to the CFTC's 1979 Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 Fed. Reg. 115 at P 33839 (July 13, 1979). Without this exemption, the CTA believes that the Proposed Part 151 Regulations will needlessly and unjustly damage organizations with affiliates which have separately-developed independent trading strategies that hold or control positions for different clients in referenced energy contracts and who comply with the requirements of the Safe Harbor. These organizations maintain and enforce written procedures to ensure that no person or company within the conglomerate outside the trading entity itself has knowledge of or has access to the overall futures positions. As such, the CTA believes there is no need to oblige these organizations to aggregate their positions with positions of their affiliates. Nevertheless, under the Proposed Part 151 Regulations they would be bound to do so.

The CFTC has not articulated any legal or factual basis for not including the independent account controller exemption and the additional requirements for affiliated entities in the Proposed Part 151 Regulations. Rather, the CFTC only stated that an exemption "that would allow traders to establish a series of positions each near a proposed outer bound position limit without aggregation, may not be appropriate." If two or more traders were acting in concert, this would be an appropriate concern. However, where two or more traders have acted completely independently in establishing positions, each should be permitted to trade up to the applicable speculative position limit without aggregation with the other for contracts outside the spot month. The CFTC has historically exercised its enforcement authority when two or more persons acting in concert have exceeded speculative position limits. See for example Commodity Futures Trading Commission versus Nelson Bunker Hunt et. al, 591 F. 2d 1221, (January 8, 1979) and In the Matter of Volume Investors Corp., James Paruch, Gerald Westheimer and Valarie Westheimer, CFTC No. 85-25, Comm. Fut. L. Rep. P 25,234 1992 WL 25341 (February 10, 1992). As such, the CTA is of the view that the CFTC has the ability to effectively police speculative position limits. Furthermore, the CFTC has not identified any malfunction or instances of potential harm under the current independent account controller exemption for affiliated entities. Therefore, if the CFTC adopts the Proposed Part 151

Regulations, the rules should be revised to include an exemption for independent account controllers as well as further conditions for independent account controllers which are affiliates as currently codified in the Safe Harbor. As drafted, the Proposed Part 151 Regulations disregard a long-standing legitimate exemption from aggregation.

In addition, the CTA believes that not including an exemption from aggregation of positions in referenced energy contracts along the lines of the Safe Harbor will have the following adverse side effects that are, in part, contrary to the CFTC's stated mandate to prevent excess speculation and in conflict with what the CFTC's aims in a broader sense:

First, the Proposed Part 151 Regulations may lead to an effective decrease in the number of independent market participants. Affiliated trading advisors that operate independently with separately developed, executed and marketed trading strategies that trade for different clients would be forced to aggregate their positions in referenced energy contracts. As a consequence, these affiliates would be forced to share confidential information about the positions they control for clients and while doing so they will indirectly obtain access to each others' trading strategies. Besides this, such forced information sharing will create a disincentive for conglomerates and holding companies to permit more than a single trading advisor in the group to engage in trading the referenced energy contracts, thereby also reducing liquidity in the markets and increasing the potential for price volatility.

Second, the CTA believes that the Proposed Part 151 Regulations will lead to a decrease of market transparency because conglomerates will be stimulated to search for alternative means to optimize the use of narrow speculative position limits by way of in-house matching of trades or moving away from regulated exchanges to the less transparent OTC market. This will also have a negative effect on the number of independent market participants, the market liquidity and the potential for price volatility.

Third, the CTA believes that the Proposed Part 151 Regulations will significantly weaken information sharing walls within conglomerate organizations because under the Proposed Part 151 Regulations position information in referenced energy products would need to be shared between affiliates. This sharing will make such conglomerates more vulnerable to unintended disclosure of confidential information which would otherwise not be shared due to the information sharing walls. As such, instead of preventing affiliate entities within conglomerates from acting in concert, the Proposed Part 151 Regulations will force affiliates to work together in respect of aggregating positions and may increase the possibility of the misuse of such confidential information with possible attendant consequences of increased price volatility.

The foregoing adverse side effects will make for a less liquid market and will affirmatively require the sharing of information among affiliated entities in a way that would facilitate, whether intentionally or unintentionally, acting in concert.

Finally, because there are approximately 100 "referenced energy contracts," the CTA believes that if the Proposed Part 151 Regulations are adopted without an exemption from aggregation of positions along the lines of the Independent Account Controller Safe Harbor, an additional unintended and undesirable consequence will be a significant increase in infrastructure, IT and personnel costs to assure compliance.

In conclusion, the CTA urges the CFTC to adopt the independent account controller exemption, including the additional requirements for affiliates as set forth in CFTC Reg. § 150.3(a)(4)(i)(A)-(D), as part of the Proposed Part 151 Regulations to the extent that such regulations are approved.

The views expressed in this letter are those of the CTA and not of Akin Gump Strauss Hauer & Feld LLP or any other client of Akin Gump Strauss Hauer & Feld LLP.

On behalf of the CTA, we would like to thank the CFTC for the opportunity to be able to provide comments on the Proposed Part 151 Regulations.

Sincerely,

J.P. Bruynes

JPB/jms

Cc: William Morris, Esq.
Mark Barth, Esq.