United States Senate
WASHINGTON, DC 20510

May 11, 2011

U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler and Commissioners Dunn, Sommers, Chilton, and O'Malia:

We are writing to urge the Commission to take decisive action toward meeting its statutory deadline to implement new rules to protect consumers from excessive speculation and possibly manipulation in the energy futures and swaps markets. Given the burden oil price volatility places on every family and business in America and the corresponding threat to our nation's fragile economic recovery, the Commission (CFTC) should start with the key benchmark energy commodity—West Texas Intermediate (WTI) crude oil —for which it proposed position limits back in January, 2010 (75 Fed. Reg 4144-4172, January 26, 2010). After holding three public meetings on fuel prices, the CFTC abandoned this proposal after the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), which included new mandates for the Commission to establish comprehensive aggregate position limits in energy commodities.

As record high volumes of financial oil speculation spike retail gasoline prices to levels unwarranted by supply and demand fundamentals, the CFTC has fallen dramatically behind in meeting the new Dodd-Frank statutory deadlines and requirements to implement rules to "diminish, eliminate, or prevent" unwarranted changes in the price of oil that is an "undue and unnecessary burden on interstate commerce." Based on public comments filed with the CFTC, it also seems as though some in Wall Street and the financial industry are succeeding in their efforts to water down Congressionally-required boundaries on speculation in oil and commodity markets.

With the average retail price of regular grade gasoline now $3.95 nationwide, and well over $4 in many parts of the country, we have entered a time of economic emergency for many American families. While there has been little change in the world's oil supply and demand balance since 2008, oil prices have jumped around from $147 per barrel, to $31, to $86, to around $104 today. Just last week, WTI crude oil plunged 8.6 percent in one day, the largest drop ever in absolute terms, which according to multiple media outlets corresponded with a rapid withdrawal of positions by oil market speculators. During this same period, CFTC data shows that speculative positions have climbed to an all-time high—up 64 percent from June 2008 when crude oil prices reached $147 per barrel. The CFTC's failure to act may again be

saddling consumers with higher gas prices, higher food costs, and inflationary fears, all of which jeopardize our nation's economic turnaround. Federal Reserve Chairman Ben Bernanke recently reported to Congress that "sustained rises in the prices of oil or other commodities would represent a threat both to economic growth and to overall price stability, particularly if they were to cause inflation expectations to become less well anchored."

There is likely a "risk premium" incorporated in the current price of oil due to conflict in the Middle East, anticipated demand growth in developing countries, and fluctuations in the value of the dollar. Yet the growing volume of speculative positions --particularly those held by investors the CFTC does not classify as bona-fide hedgers-- are likely driving the wild and harmful oil price volatility, unwarranted Wall Street profits, and elevated gasoline and diesel prices at the pump. In a March 2011 research note, Goldman Sachs estimated "that each million barrels of net speculative length tends to add 8-10 cents to the price of a barrel of crude oil." As of May 3, speculators held positions in U.S. crude oil contracts equivalent to a near record 258 million barrels. On April 19, President Obama also noted that the crude oil markets are well supplied and that excessive speculation "spikes prices significantly" -- driving prices beyond that which is justified by actual availability of current or future oil supplies.

The Commodity Exchange Act makes clear that, unlike much larger equity and debt markets that provide capital for private sector growth, commodity contract markets exist solely to mitigate risk for producers and purchasers of physical commodities and for price discovery based on the current and predicted future availability of the underlying commodity. To that end, financial speculators undeniably have an important role to play in our free market system, but it must be limited to ensuring that physical hedgers have sufficient liquidity and oil consuming businesses are able to hedge their risk. A contract market dominated by speculators changes the market from one that serves a public purpose into a casino-like atmosphere consisting of bets on price direction unwarranted by underlying supply-and-demand fundamentals. Volatility induced by excessive speculation increases hedging costs for commercial hedgers, requiring consumers to put money in the hands of speculators who have no direct role or commercial interest in the production, manufacturing, refining, or consumption of the underlying commodity.

The Commodity Exchange Act recognizes that "excessive speculation" causes "sudden or unreasonable fluctuations or unwarranted changes" in commodity prices, resulting in "undue and unnecessary burden(s) on interstate commerce." This is the basis for the CFTC's mandate to implement meaningful position limits that draw the line between speculation that is needed to provide sufficient liquidity for commercial hedgers and excessive speculation that unmoors markets from price fundamentals – a mandate it proposed to address for key energy commodities in January, 2010. Unfortunately, to date and to the detriment of American consumers, energy market position limits have not been set at levels to sufficiently contain excessive speculation and the corresponding price volatility over the last decade.

As a result, under Dodd-Frank, Congress *required* —as opposed to merely authorized —the CFTC to implement aggregate position limits in energy commodities like oil within 180 days of

the July 21, 2010 enactment date in order to "diminish, eliminate, or prevent excessive speculation." Congress also directed the commission to ensure that comparable limits were imposed on American oil traded electronically in foreign jurisdictions, including the West Texas Intermediate contract traded in London on the Intercontinental Exchange. The intent of this provision was to utilize the lessons learned from the oil price spikes of the summer of 2008 and prevent them from happening again. Under the schedule proposed by the CFTC in its recent proposed rule, final position limits will not be imposed until the first quarter of 2012; almost a year from now and well past the statutory deadline.

Recognizing that oil futures and derivatives are now traded on many swaps and futures markets – not just a single contract at the New York Mercantile Exchange – Congress also directed CFTC to develop a new system that limits the aggregate speculative positions of traders across economically equivalent products. The CFTC – not the exchanges – will have the position data necessary to establish and enforce these limits.

While we fully agree that it is important for the CFTC to proceed to implement its position limit obligations and to gather additional data on all of the exempt and agricultural commodities markets that are covered by Dodd-Frank, the CFTC has ample basis to proceed now with select fuel commodities, beginning with crude oil. In addition to the extensive record that led up to issuance of the recent proposal, the CFTC also has an extensive record related to the earlier, January 2010 "energy futures" proposed position limit rule and the comments received on that proposal.

Each day the CFTC fails to act increases the financial sector's oil market profits, boosts the already substantial oil company windfalls, and enriches the treasuries of countries we import oil from, all harmful and unwarranted transfers of wealth directly from hardworking American families and businesses. As such, please respond no later than May 23, 2011 with your plan to:

1. Complete the effort the CFTC began in January 2010 to impose position limits on the key benchmark energy commodity—West Texas Intermediate (WTI); and
2. Strengthen the CFTC's January 2011 draft rule for aggregate position limits as required by the Wall Street Reform and Consumer Protection Act.

Sincerely,