Alternative Investment Management Association

AIMA's summary of comments on

Position Limits for Derivatives

AIMA understands the Dodd-Frank Wall Street Reform and Consumer Protection Act mandates the CFTC to impose position limits "as appropriate". For this reason, we appreciate the consideration the CFTC Commissioners have given to the appropriateness of position limits, and their commitment to gather sufficient market data before finalising rules in this area. Our primary concern is that any final rules are workable in practice, and we have concerns that, as proposed, the provisions regarding aggregation of position limits, while proposed for valid reasons, may not be workable in practice, may likely result in unintended consequences, and replaces well functioning common sense approaches in Part 150. When the CFTC considers the appropriateness of position limits, and if it decides to implement position limits, it should ensure that its goals are clear and should not seek to impose position limits as a tool to address market abuse or market manipulation, which require more targeted provisions and which we would expect to support.

AIMA's summary comments on the CFTC's proposed rules are as follows:

- We believe that position limits should only be set when the CFTC has all necessary and available market data to impose appropriate and reasonable limits, and that will not unduly impact the efficiency or liquidity of markets.

- We support the implementation of spot-month limits that prevent "corners and squeezes" at settlement, as are currently used on designated contract markets.

- We believe cash-settled contracts have much less of an impact on underlying commodity prices than physically-settled contracts – therefore we believe the CFTC should consider much higher position limits for cash-settled contracts than for physically-settled contracts.

- The CFTC may wish to consider whether restricting parties that hold cash-settled contract positions from also holding positions in physical-settled contracts is necessary or appropriate – this may lead to a reduction in market liquidity in either cash-settled or physically-settled markets, and potentially a corresponding distortion of market prices.

- We believe there is little evidence to support the case that position limits in non-spot-months are necessary to prevent volatility and excessive price movements in the underlying commodities, or to prevent 'corners and squeezes' at settlement. In light of the potential impact on market liquidity of such proposed limits, we would encourage the CFTC to reconsider the appropriateness of implementing non-spot-month position limits.

- Separate position limits for cleared and uncleared swaps are not necessary. Whether or not a swap is cleared should not impact the underlying commodity price. To introduce separate position limits in this way would unduly complicate the position limit rules, and would likely require constant updating to address the changing state of whether a swap is deemed clearable and/or must be cleared.

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Aggregation

- The rules around aggregation of position limits should be formulated in such a way that takes into account the relationships (i.e., independence, trading authority or trading knowledge, etc.) between a commodity trading adviser, a commodity pool and the investors, and ensure that, while preventing circumvention of position limits, unintended consequences do not result. In this regard, we believe a common-sense approach is both desirable and achievable, including the retention of existing rules and principles. We suggest this may be done by either:

    - retaining the existing 'independent account controller exemption' in Part 150; or
    - changing the proposed "owned non-financial entity exemption" in section 151.7(f) into an "owned entity exemption", and thus broadening its applicability.

- The requirement on parties to apply to the CFTC for the use of any applicable exemption from the aggregation rules is likely to be both administratively burdensome for the CFTC and unmanageable for smaller traders and investors. The details around applying for applicable exemptions are currently unclear, and the CFTC should consider retaining the self-executing nature of existing position limit exemptions.

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