May 15, 2020

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street NW
Washington, DC 20581

Dear Mr. Kirkpatrick,

The Americans for Financial Reform Education Fund ("AFR") appreciates the opportunity to comment on the above referenced Proposed Rule (the "Proposal") concerning the Commodity Futures Trading Commission's ("CFTC" or "Commission") implementation of position limits for derivatives. Members of AFR Education Fund include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.

In the 2010 Dodd-Frank Act, Congress amended Section 4(a) of the Commodity Exchange Act to mandate that the Commission "establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market."

This seemingly straightforward directive, which built on many decades of precedent establishing the CFTC's power to limit speculative positions in commodity derivatives, has resulted in a ten year odyssey involving two proposals, a supplemental proposal, a re-proposal, and now a third entirely new proposal. Throughout this process, the Commission has seemingly been moving in reverse with respect to the clarity and efficacy of its proposals. This new proposal delegates critical elements of the position limits framework to for-profit exchanges who face major conflicts of interest in making decisions that could limit demand for their own exchange services. It also voluntarily undermines the Commission's own authority with respect to position limits by finding that the position limits mandate in the Dodd-Frank Act requires the Commission to make a "necessity finding" regarding the need for position limits for any specific commodity, a finding made through the notice and comment process and subject to legal challenge. This implies that the intent of Congress in the Dodd-Frank Act was to *restrict* the Commission's ability to establish position limits as compared to its pre-existing authority. We agree with the dissents of Commissioners Benham and Berkovitz regarding the convoluted and highly implausible nature of the Commission's legal analysis in interpreting the Dodd-Frank Act to require this new hurdle to establishing position limits.

The original position limits mandate in the Dodd-Frank Act was rooted in the experience of the impact of the financialization of commodity assets on markets originally designed for hedging bona fide production risks. The growth of speculative commodity interests by large financial institutions, funds selling commodity investment products to the public, and sophisticated hedge funds contributed to wild swings in commodity prices that were either untethered from core supply and demand considerations or significantly amplified swings in supply and demand. AFR and our member organizations have reviewed the evidence on the impact of the financialization of commodity markets on prices in a number of previous comments.[1] The speculative inflation of oil prices in past years has had a profound and lasting impact on energy markets. More recently, as oil prices deflate, speculation continues to contribute to market dislocations and destructive price volatility.[2]

While this Proposal would nominally institute commodity position limits, it does so in a way that is likely to make them completely ineffective in controlling commodity speculation. The Proposal:

- Sets Federal spot month position limits that are higher than existing Federal and exchange-set spot month limits.
- Does not impose Federal position limits outside of the current spot month for most commodities (except for legacy agricultural commodities).
- Substitutes discretion by exchanges and delegation to such exchanges for Federally imposed position limits and Federal enforcement, despite the fact that exchanges directly profit from trading volume and thus have an economic incentive not to impose strict limits on speculation.
- Substantially increases the flexibility of exchanges and market participants to determine whether positions qualify for bona fide hedge exemptions or to propose and institute new hedge exemptions not enumerated by the Commission, despite the clear conflicts of interest involved.
- Reduces reporting requirements to the Commission concerning cases where position limits are exceeded by eliminating Form 204 reporting, thus delegating even more enforcement and oversight responsibilities for position limits to exchanges.

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[1] See Americans for Financial Reform and Public Citizen, "Comment on Position Limits for Derivatives", March 28, 2011, available at https://bit.ly/3cxvmbn; Americans for Financial Reform, "Comment on Position Limits for Derivatives; Aggregation of Positions", February 10, 2014, available at https://bit.ly/2WAsBAl; Americans for Financial Reform and the Institute for Agriculture and Trade Policy, "Comment on Position Limits for Derivatives", January 28, 2015, available at https://bit.ly/3fWQTMD; Americans for Financial Reform, "Comment on Position Limits for Derivatives: Certain Exemptions and Guidance", July 13, 2016, available at https://bit.ly/3bDui4z
[2] Ngai, Catherine, "What an Oil ETF Has to Do With Plunging Oil Prices", Washington Post, April 22, 2020, available at https://wapo.st/2WCsc0g

It is highly questionable whether a position limit regime that is so lax and contains so many opportunities for evasion will be of any use in constraining excessive commodity market speculation.

The Commission's decision to proceed rapidly with this rulemaking even as the ability of the public to respond thoughtfully to the proposal was greatly reduced by the current pandemic crisis raises doubts as to whether the CFTC will be willing to reconsider any of the elements of this Proposal. Not only has the current economic crisis put demands on public interest organizations that make it more difficult for organizations such as ours to provide comment on this rulemaking, it has also contributed to commodity market disruptions that cast new light on the need for controls on market speculation. It seems obvious that the Commission should wait for the results of investigations into recent disruptions in crude oil markets and livestock markets before proceeding with this rule, as information gathered through such investigations may be highly relevant as to the need for position limits. We agree with Commissioner Berkovitz's dissent from the extremely brief comment extension offered for this Proposal, in which he stated that:

> "Today's extension of two weeks for the position limits rulemaking—a rule that has been a decade in the making—is insignificant given the scope and magnitude of the proposed changes to the existing position limits rules. Further, the commodity markets have experienced unprecedented price movements and stresses over the past several weeks and commenters and the Commission would be well-served to review and take into account how the markets performed in this environment in fashioning and considering public comments. There is no compelling reason to require public comments on a position limits rule that has been ten years in the making without fully considering how the market has performed in the recent conditions of extreme stress."

Although we expect the Commission to continue its rush to deregulate even in the face of the current pandemic crisis, we would urge reconsideration of this extremely lax position limits rule, with its restriction of the CFTC's authority and oversight and its excessive reliance on self-regulation by market participants. Position limits seek to limit speculative disruptions in pricing of numerous crucial commodities, and the predictability and stability of this pricing are even more important in what may be an extended period of economic disruption.

Thank you for the opportunity to comment on the Proposal. If you have questions, please contact Marcus Stanley, AFR's Policy Director, at 202-466-3672 or marcus@ourfinancialsecurity.org

Sincerely,

Americans for Financial Reform Education Fund