January 22, 2015

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

Re: Position Limits for Derivatives and Aggregation of Positions
(RIN 3038-AD99; 3038-AD82)

Dear Mr. Kirkpatrick:

Better Markets Inc.[1] appreciates the opportunity to comment on the above-captioned request for comment on the Position Limits for Derivatives and Aggregation of Positions ("Proposed Rule"), issued by the Commodity Futures Trading Commission ("CFTC" or "Commission").[2]

INTRODUCTION

The establishment of a robust and substantive position limits regime to combat the potentially devastating consequences of unrestrained excessive speculation in our commodity markets has been a priority of those aiming to safeguard the public interest in those markets for many years now. While our comments below address the specific narrow focus of this request for comment, the issues raised inevitably and necessarily impact and relate to the broader mosaic of regulation required for these markets. Therefore, the comments herein must be considered by the Commission in the context of the multiple previous comments Better Markets has submitted on this important topic over the past several years. Indeed, if not addressed, the significant loopholes and

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[1] Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

[2] While this letter responds specifically to this request for comment, it builds upon the information contained in the following comment letters filed by Better Markets, which are incorporated hereby as if fully set forth herein. *See* Better Markets Comment Letter, "Position Limits for Derivatives," (Feb. 10, 2014), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59715 ("Feb 10, 2014 Position Limits Letter"); Better Markets Comment Letter, "Aggregation of Positions," (Feb. 10, 2014), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59716 ("Feb 10, 2014 Aggregation Letter"); Better Markets Comment Letter, "Position Limits for Derivatives," (Mar. 28, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=34010 ("March 28, 2011 Letter"); Better Markets Comment Letter, "Position Limits for Futures and Swaps," (Jan. 17, 2012), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50076; *and* Better Markets Comment Letter, "Aggregation, Position Limits for Futures and Swaps," (Jun. 29, 2012), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58292.

carve-outs for many of the largest speculators in the Proposed Rule threaten to render the proposal largely ineffective.

Bona Fide Hedges should be linked to demonstrable physical positions

The primary goal of a position limits regime is the restriction of excessive speculative activity by non-commercial interests to protect the utility and, indeed, the viability of the market for genuinely and legitimately commercial interests. Therefore, exemptions must be provided only to those who can demonstrate physical positions, and therefore the specific need to hedge.

To this end, the CFTC has gone to great lengths to carefully consider and enumerate an array of circumstances under which activity in the futures market is a legitimate offset for the risks incurred in the physical market. However, the Commission's attempts to address and accommodate the complexity and variety of legitimate hedging strategies, present evermore opportunities for evasion.

In particular, any amendment to the bona fide hedge determination process must include an effort to remediate an enormous flaw in the Proposed Rule, which effectively allows financial hedges for commodity index funds to avail themselves of bona fide hedge exemptions. The financial risk management activities of swap dealers should not be considered bona fide hedges, and the requirement that such hedges be substantiated by activity in the physical market (***not*** by offsetting positions in swaps) would work to remedy this troubling loophole.[3]

Indeed, the fundamental objective of Position Limits is to restrain speculative activity that is unrelated to hedging of physical commodities. Swap dealers, financial derivative offsets, and purely speculative market participants should be universally subject to strict, comprehensive limits.

While there is merit to the concerns of legitimate end-users, who are frustrated with the prospect of retrofitting their activities, it is important to remember that these rules are in place precisely to protect their interests. The overwhelming influence of unbridled excessive speculation hijacked these important markets in 2008, and may do so again without proper oversight.

Deliverable Supply Estimates can and must be updated more frequently than every two years

According to the Proposed Rule, the spot month, non-spot month and all-months-combined position limits will be updated no less frequently than every 2 calendar years. Biennial updates to limits are completely inadequate, and the frequency must be reconsidered.[4]

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[3] On its own, this kind of hedge determination process would not remedy the inappropriate exclusion of the futures trades that facilitate commodity index funds from position limits. A complete remedy would require additional changes to the proposed Aggregation rule to prevent the netting of swaps and futures positions, as we suggested in the February 10, 2014 Position Limits Letter and February 10, 2014 Aggregation Letter.

[4] 150.2(e)(3).

When the Part 151 Position Limits rules were proposed in 2011, the proposed compliance frequency was yearly. End user groups and hedgers criticized this frequency, and rightly so: it's far too infrequent to adequately account for market changes. The Interim Final rule, however, followed the industry recommendation to further reduce the frequency from yearly to every two years. This is a mistake.

Updating position limits more frequently will have significant benefits to the marketplace. As market conditions change, and position limits set earlier become outdated, they can easily become a de facto "safe harbor" for excess speculative trading activity. As such, more frequent recalculations will undoubtedly discourage abuse by accurately reflecting current market conditions and more precisely serving the purposes behind the position limits rules.

Updating these limits more frequently than biennially is not difficult. The CFTC is in the midst of a major overhaul of its data regime, and the capacity to record, analyze, and quickly react to market data has never been greater and continues to expand. The vast data collected from Derivatives Clearing Organizations, Swap Data Repositories, and exchanges will allow the Commission to make adjustments to regulatory measures almost on demand.

It is now possible to create dynamic regulatory regimes that respond quickly and efficiently to changes in the marketplace, and the Commission should endeavor to do so.

CONCLUSION

We hope these comments are helpful in your consideration of the Proposed Rule.

Sincerely,

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