<u>COMMODITY MARKETS OVERSIGHT COALITION</u>

An Alliance of Commodity Derivatives End-Users and Consumers

March 30, 2015

<u>Via Electronic Submission</u>

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

Re: Reopening of Comments Periods, Notice of Proposed Rulemaking, "Position Limits for Derivatives and Aggregation of Positions," RINs 3038-AD99 and 3038-AD82, 80 *Fed. Reg.* 10022, *et seq.* (February 25, 2015).

Dear Mr. Kirkpatrick:

The Commodity Markets Oversight Coalition ("CMOC") and its member organizations appreciate the opportunity to provide additional comments the Commodity Futures Trading Commission ("CFTC") on the Notice of Proposed Rulemaking for *Position Limits in Derivatives and Aggregation of Positions* ("Proposed Rule"). Please note that this comment letter is meant to supplement, not supplant, comments previously submitted by CMOC on February 10, 2014 and January 22, 2015. We urge the CFTC to review our previously submitted comments as it begins work to draft final rule. Please also note that this letter does not preclude the submission of additional comments by various CMOC-affiliated organizations or their constituent industries or member companies.

The CMOC is a non-partisan alliance of industry groups and other organizations that represent commodity-dependent American businesses, end-users and consumers. Our members rely on functional, transparent and competitive commodity derivatives (i.e., futures, options and swaps) markets as a hedging and price discovery tool. As a coalition we favor policies that promote market stability and confidence, prevent fraud and manipulation, and preserve the interests of *bona fide* hedgers and American consumers.

The CFTC is reopening the comment period to provide stakeholders the opportunity to respond to questions raised and points made at the Energy and Environmental Markets Advisory Committee ("EEMAC") meeting held on February 26, 2015. It is worth noting that this advisory committee was established at the urging of CMOC and its member organizations in late 2007.[1] The original membership of the EEMAC included several CMOC-affiliated organizations. Upon learning that the advisory committee was to be reconstituted, several of these organizations asked that they be allowed to retain their seats. These petitions went unanswered and the EEMAC met on February 26th without their representation. The EEMAC would benefit from the participation of CMOC-affiliated organizations and the perspectives of their constituents, and we therefore urge that they be added to the committee's membership roster prior to the next meeting.

Despite minimal representation, the CMOC appreciates the opportunity to provide the CFTC with the below comments on some of the issues raised at the February 26th meeting.

[1] The advisory committee was original chartered by then-Acting Chairman Walt Lukken as the Energy Markets Advisory Committee ("EMAC") and held its first meeting on June 10, 2008; and was later renamed the Energy and Environmental Markets Advisory Committee ("EEMAC").

Speculative Position Limits are both 'Necessary and Appropriate'

Several statements made during the EEMAC meeting and in subsequent comment letters argue that the Commission has not adequately demonstrated the statutory necessary and appropriateness of position limits. They further argue that academic analysis into the impact of excessive speculation is insufficient, and that the CFTC has yet to fully appreciate the costs and benefits of the proposed rule. Our coalition continues to argue that positon limits are both necessary and appropriate, and as was detailed exhaustively in our comment letter on February 10, 2014, this fact is well established and is a matter of public record.

Congress decided on a bipartisan basis to include the position limit mandate in the Dodd-Frank Act after holding dozens of hearings on the matter between 2006 and 2010. During these hearings it heard testimony from organizations representing American businesses and industries that use commodity derivatives or that are otherwise exposed commodity price risks. These organizations expressed concern over market opacity and extreme volatility, the lack of oversight in the swaps markets, and the absence of a speculative position limits regime in most futures and swaps markets. Many witnesses testified that they had lost confidence in price discovery and that the markets had become unhinged from supply and demand fundamentals. They were also alarmed by a flurry of enforcement actions against market manipulation. In the five years leading up to Dodd-Frank (2007-2010), there were at least twenty enforcement actions against manipulation in the natural gas, crude oil, gasoline, heating oil, propane, cattle, dairy, and metals markets.[2] This list does not even include *alleged* manipulation, particularly in the opaque and unregulated over-the-counter and off-shore markets.

Since January, 2009, the CFTC has proposed three separate position limits rules; held more than a dozen public hearings, roundtables, forums and advisory committee meetings on the subject; received thousands of substantive comment letters; and held hundreds of private meetings with market stakeholders. Commission staff have reviewed scores of academic studies and expert analyses that have concluded that the failure to properly monitor and limit speculative activity can exacerbate price volatility, unhinge markets from real world supply and demand fundamentals, and create the opportunity for market manipulation. Opponents of position limits are not and will never be persuaded on the merits. The CFTC should consider the matter of necessity and appropriateness of position limits conclusive and move forward with the rulemaking.

Ceding CFTC Authority to Commodity Exchanges

Some are suggesting that the CFTC cede its authority to impose speculative position limits to the exchanges. Some commenters are suggesting that the CFTC abandon its proposal to impose position limits on single- and all-month contracts and allow the exchanges to impose limits on these contracts as appropriate. However, statements made at the EEMAC meeting imply a more general bias towards exchange-imposed accountability limits and broad exchange-defined hedge exemptions. We oppose these proposals as they conflict with Congressional intent.

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[2] Natural Gas: AEP Energy Services, Inc., (2005); Andrew Richmond (2005); Michael Witney (2005); Paul Atha, et al. (2005); CMS Energy (2005); Coral Energy Traders (2005); Erserco Energy (2005), Energy Transfer Partners (2007), Amaranth (2007), and UBS AG (2010). Crude Oil: Marathon Petroleum Company, LLC. (2007); Optiver (2008). Gasoline: Optiver (2008). Heating Oil: Optiver, (2008), UBS AG (2010). Propane: BP Products North America (2007). Cattle: Todd Delay, et al. (2005). Milk: Dairy Farmers of America (2008). Metals: Moore Capital (2010) and UBS AG (2010).

Unlike the CFTC, commodity exchanges are not regulatory agencies established under law to protect the public interest. They are publically-traded firms that benefit from higher trading volumes and a large number of market participants. In writing Dodd-Frank, Congress recognized that exchanges have a profit motive to make positon limits voluntary or unreasonably high, and to institute broad hedge exemptions that may include non-commercial market participants (such as financial speculators). We strongly oppose these suggestions. They clearly run contrary to the intent of Congress, which is that the CFTC – not the exchanges or self-regulatory organizations – should be tasked with setting position limit levels as appropriate and define who should be eligible for bona fide hedge exemptions.

Hedge Exemptions and Position Aggregation

We understand that questions have been raised regarding the efficacy of the CFTC's proposed enumerated hedge exemptions and changes to position limit aggregation rules. We will not comment on these issues except to encourage the CFTC to carefully consider the concerns of legitimate end-users of commodity derivatives and to address these concerns as appropriate in a final rule. Industries that are large-scale consumers of energy commodities or that produce, transport, store or sell energy commodities must be able to manage risks with minimal costs and regulatory burdens. However, we caution the CFTC not to broaden the bona fide hedge exemption in such a manner that would allow non-commercial entities – including speculators, financial institutions and index funds – to evade position limits.

Conclusion

Again, thank you for the opportunity to provide additional comments on this matter. We hope the CFTC will move forward with a robust position limits rule that ensures stability and confidence in the commodity markets and that preserved the ability of bona fide commercial hedgers to manage commodity price risks. If you would like additional information or to discuss these issues further, please feel free to contact coalition co-chairs Jim Collura (jim.collura@nefi.com) or Sherri Stone (sstone@pmaa.org).

Sincerely,

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New England Fuel Institute
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Sherri Stone

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Note: A list of current CMOC members can be found at the very end of our February 10, 2014 comment letter.