INSTITUTE FOR AGRICULTURE AND TRADE POLICY

Comment on "Review of the Markets in Financial Instruments Directive (MiFID)" consultation document of the European Commission Directorate General Internal Markets and Services

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"Many policymakers are seriously scared of making fundamental policy decisions. People in the banking industry have an interest in making the situation seem complex and difficult, even when it isn't."
Dennis J. Snower, President, Kiel Institute for the World Economy at the Davos World Economic Forum[1]

The Institute for Agriculture and Trade Policy (IATP), a U.S.-headquartered, nongovernment organization with offices in Geneva, Switzerland, is pleased to have the opportunity to comment on the proposed revision of the Markets in Financial Instruments Directive (MiFID). IATP, as a member of the Commodity Markets Oversight Coalition (CMOC), an alliance of over 80 commodity derivative users organizations, former Commodity Futures Trading Commission (CFTC) officials, hedge fund traders, farmer organizations and nongovernmental organizations, played a small role in proposing provisions that were incorporated into Title VII of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (Dodd-Frank). CMOC letters and testimony to Congress and the CFTC are posted at http://www.nefiactioncenter.com/commoditymarkets.php. IATP analysis on excessive speculation in commodities and related writing is posted at www.tradeobservatory.org.

It is on the basis of our experience with the CMOC and the U.S. legislative and regulatory process that we submitted a July 23 comment on the draft revision of the Market Abuse Directive and participated in the commission's September 20–21 hearing on over-the-counter (OTC) derivatives. We submit this comment to enhance further U.S.-EU regulatory cooperation on financial market regulation, particularly in commodities derivatives. The comment comprises a general comment and responses to some of the 148 questions posed in the consultation document.

General Comment

Since MiFID was approved in 2004, the shift of financial market volume and value weight from regulated exchanges to largely unregulated over-the-counter trading has been, as the consultation document notes, one factor that requires the updating of both MiFID and its 2007 implementing legislation and regulation (2). Most of OTC trading and the MiFID consultation document concerns financial derivative instruments that are beyond IATP's expertise. Nevertheless, the proposed MiFID revisions that affect commodity derivatives likewise are driven by a massive shift from regulated exchange trading to unregulated OTC derivatives that was even greater than the increase in equity derivatives. According to a recent study, "The ratio of the notional amount of commodity derivatives contracts in June 1998 to world GDP rose from 1.5 percent in 1998 to 21.6 percent in 2008. Over the same period, the ratio of equity derivatives to world GDP rose from 4.2 percent to 16.7."[2] Some OTC commodity derivative trading has shifted onto exchanges since the historic commodities price collapse of 2008. However, as of September 2010, long positions in commodity index funds had approached the record-high June 2008 levels.[3] As institutional investors continue to use commodity derivatives for portfolio diversification, these long-only positions have become a structural feature of commodity "bull runs," including the present one.[4]

In view of this massive shift in trading practices and values, the commission has anticipated in the consultation document "possible changes in the implementing legislation that would follow at a later stage" (1). In view of the financial industry resistance to regulation of the OTC markets[5], IATP believes that the commission should not delay in drafting implementing legislation and regulation, so that both can enter into effect, following the MiFID revision by the Parliament and Council, as soon as technically possible. In the impact study that the commission will publish with the revised directive, the impacts measured should concern not just the regulated industry, but also public interest impacts, e.g., the effects of transparent price formation and real time data reporting on food and energy security.[6]

In addition to revising MiFID implementing legislation and regulation, the commission should provide for the Parliament and Council the estimated budget and staffing levels required to implement and enforce the revised financial markets directives. We believe that these estimates will help foster the upward regulatory harmonization between EU member state chartered markets and the provisions applying to Foreign Boards of Trade in the U.S. financial reform bill, Dodd-Frank (Section 737). If the European Securities Market Authority (ESMA) is funded and staffed inadequately to perform a coordinating role among the Member State authorities charged with the data surveillance and enforcement of the revised financial market directives, the likelihood of excessive speculation will increase proportionately with the lack of effective supervision.

We join those who fear that a combination of reduced supervision resources, increased trade volume, High Frequency Trading, and broad regulatory exemptions and waivers will favor the fortunes of financial institutions deemed to be "systemically important" ("systemic internalizers" if we correctly understand the consultation document's terminology) but expose the rest of the financial system and the broader economy to unconscionable risk.[7] We fervently hope that the commission and the Member State authorities will resist the temptation to "protect" the national offices of transnational financial service firms by not providing sufficient resources to enforce regulations.

The consultation document does not request comment on whether a commodity regulatory authority separate from ESMA is needed to oversee implementation and enforcement of the provisions of MiFID and related directives pertaining to commodity derivatives. Nevertheless, we take this opportunity to request that the commission hold a public hearing on issues raised by the French government demarche of August 27, 2010, concerning the need for such a separate authority.[8]

IATP believes that the relation of physical commodities to commodity derivatives is materially different from that of financial assets and their derivatives, and poses different regulatory challenges that demand specialized regulatory expertise. For example, understanding how revisions to the Common Agricultural Policy will affect both market dynamics and valuations of inputs costs, land valuations, rural credit policies and other production factors is crucial to understanding what part of price formation may be attributed to market fundamentals versus the portion that may be ascribed to excessive speculation by financial entities. Fulfilling the public interest purposes of commodity derivatives markets, in the service of commercial hedgers and ensuring fair and transparent price formation, requires a specialized agency. The commission notes, "MiFID is predicated largely on markets in shares" (8). So too is ESMA largely predicated on equity markets, not on the expertise required to regulate commodity markets.

The commission's request for comment occurs in the midst of grave international concern about the consequences for food security of opaque physical and swaps markets in agricultural commodities. An emergency September 24 intergovernmental meeting hosted by the United Nations Food and Agriculture Organization (FAO) noted "unexpected price hikes and volatility" were "major threats to food security" and agreed that among the root causes of these threats are "lack of reliable and up-to-date information on crop supply and demand and export availability," "insufficient market transparency," and the "impact of "financialization" on futures markets."[9] Since that meeting, FAO's Food Price Index has spiked, and with it concern that Net Food Import Developing Countries will not have sufficient hard currency reserves to purchase adequate and timely agricultural imports at affordable prices to help prevent food price riots and attendant political instability, such as in Tunisia last month.

Responses to specific questions in the consultation document

Of the 148 questions in the consultation document, we have selected those questions which we believe affect the trading of commodity derivatives. We hope that the following responses contain opinions and information that market participants may not present to the commission and that will aid the commission in revising the MiFID.

(3) *What is your opinion on the definition of an organized trading facility? What should be included and excluded?*

We sympathize with the commission's objective of developing a broad definition of "organized trading facility" to prevent the regulatory arbitrage that could ensue, if financial "innovations" and new computer technology applications are employed to circumvent MiFID rules covering exchanges and Multilateral Trading Facilities. The general requirements the commission has outlined for all organized trading facilities seem reasonable. However, the acid test of all rule-making is whether a given rule is enforceable by the competent authority. IATP doubts whether the projected staffing level of ESMA and all other European supervisory authorities (150 total for the three agencies in 2011, doubling by 2015, according to the *Financial Times*[10]) would suffice to carry out the surveillance requirement for the proposed inclusion of trades executed by "voice and/or hybrid voice electronic execution" (9). We do not believe that a data stream of trades so executed could be effectively monitored by the projected ESMA staffing. In the United States, retail brokers cannot accept orders placed by voicemail. We fail to understand why institutional investors or broker dealers should be allowed to do so, particularly if such trades remain below the organized trading facility threshold of qualifying as an MTF. However, we are optimistic that greater post-trade transparency will partially compensate for whatever pre-trade transparency is lost if voicemail trading on OTFs is allowed.

IATP is also puzzled by the exclusion of "pure OTC trading" (9) as a bilateral, ad hoc trading practice from the definition of "organized trading facility," if one purpose of the OTF is to avoid regulatory arbitrage. Assuming that a "pure OTC" trade is a bilateral swap that cannot clear because it purportedly cannot be standardized, "pure OTC" trades, if they are not to be banned, should be traded on OTFs with the strong pre-trade and post-trade reporting requirements required of MTFs, and stronger margin requirements than for standardized trades. The general principle for derivatives trading should be that if a trade can clear, it must clear. If a "pure" OTC counterparty is not subject to MiFID because it is excluded from the definition, how would aggregate position limits, contemplated in consultation document questions 145–148, be reported, calculated and enforced? Does the commission believe that rumors about large-scale "pure" bilateral swaps have no influence on price formation in regulated venues?

(8) *What is your opinion of the introduction of a requirement that all clearing eligible and sufficiently liquid derivatives should trade exclusively on regulated markets, MTFs, or organized trading facilities, satisfying the conditions above? Please explain the reasons for your views.*

The recommendation of the Group of 20 (G-20) that "standardized OTC derivatives move to exchanges or electronic trading platforms" and be cleared on Central Clearing Platforms surely requires that the commission's response to this question be "yes." However, the commission's proposed definition of "organized trade facility," with its inclusion of "voice-activated" trading and exclusion of "pure OTC trades" in the definition of "organized trading facilities," as noted above, opens up a field of questions that need answers in the MiFID revision.

First and most simply, are "pure OTC trades," customized or bespoke derivatives, and if so, what are the characteristics of customization that remove those derivatives from MiFID oversight and from the clearing requirement of the G-20 commitment for 2012? Secondly, if no clearinghouse will accept a customized OTC contract for trading, why should such contracts be admitted into trading at all? OTC traders seek to offset the risks of their purportedly customized contracts with bets in standardized and clearable versions of those contracts. Just four firms (JP Morgan, Goldman Sachs, Bank of America and

Morgan Stanley) were counterparties to 96 percent of U.S. OTC derivatives as of December 31, 2009. The EU OTC market is similarly, it not as intensively, concentrated in Credit Suisse, Deutsche Bank, HSBC, Rabobank and UBS.[11] How does the continuation of customized OTC contracts that must be offset in the highly concentrated OTC universe serve the purpose of a fair and transparent financial system? Surely, whatever benefits of financial information advantage may accrue to the counterparties' opaque, customized trades are not proportional to the undisclosed risks that are transferred to other traders and to the broader financial system. Although governments have spent trillions of dollars to bail out and back stop firms deemed too big to fail, allowing the risks of "pure OTC trades" to be passed on through standardized versions of these trades can serve only those firms' interests, and not the public interest in fair and transparent financial markets.

(31) *What is your opinion about keeping the large in scale waiver thresholds in their current format?*

OTC traders take advantage of the financial information that exchange traders provide to price discovery and price formation while providing no information of their own in the same time frame. Preserving the large in scale waiver of up to four days of delay in trade data reporting would maintain the opaque market practices that the G-20 has committed to making transparent. The consultation document justifies the waiver by noting, "Publishing a large trade immediately could move the market against the person taking the position and make it more costly to execute large orders" (footnote 72). Although this waiver protects institutional investors and senior executives who are looking to buy or sell large positions, IATP's belief is that commodity market integrity is best served if such large positions are not allowed to accumulate by one entity and its affiliates. We believe that if aggregate position limits are effectively implemented and enforced (see our responses to questions 145–148), positions will not become so large as to justifying the triggering of the waiver. Our understanding is that U.S. commodity futures and options data are reported to the CFTC with an average delay of about 15 minutes. If OTC derivatives are allowed an up to four day delay in trade reporting in EU markets, IATP believes that it will very difficult, if not impossible, for U.S. authorities to make a determination that U.S. and EU commodity market oversight is "equivalent," as required under Section 737 of Dodd-Frank.

(32) *What is your opinion about the suggestions for reducing delays in the publication of trade data? Please explain the reasons for your views.*

IATP agrees with the commission's proposals for "real time publication." We believe that the commission's proposals for "the deferred publication regime of large transactions" would represent an improvement over the current delays in large transaction trading. We are concerned, however, that these proposals still may not meet the regulatory harmonization requirements of Dodd-Frank for commodity derivatives.

(63) *What is your opinion about requiring organized commodity trading venues to design contracts in such a way that ensures convergence between futures and spot prices? What is your opinion about other possible requirements for such venues, including introducing limits to how much prices can vary in a given time frame? Please explain the reasons for your views.*

IATP has no expertise in contract design and so cannot offer a technical comment. However to judge by the recent U.S. regulatory discussion of contract design in wheat, it appears to be difficult to ensure convergence through contract design alone. In the August 2010 and October 2009 meetings of the CFTC's Agricultural Markets Advisory Committee (AMAC), representatives of the Chicago Mercantile Exchange (CME) offered their views on how to repair the failure of wheat market price convergence through contract redesign.[12] At the October meeting, adjusting delivery points and warehousing receipt rates were among the contract design elements that the CME would incorporate in its new wheat contracts. However, after a lengthy CME technical presentation, a very brave baking industry lobbyist commented that excessive speculation by swaps dealers, and not contract design flaws, was the major factor driving the failure of futures and spot prices to converge. The CME opposes hard position limits to prevent excessive speculation, preferring instead exchange-enforced "position accountability."[13] It does not

believe that there was excessive speculation in 2008 contracts and that the failure for wheat futures and cash prices to converge was a contract design problem that can be remedied. At the August 2010 AMAC meeting to discuss, among other things, the new CME wheat contract, CFTC Chairman Gary Gensler asked when the wheat contract redesign would be ready for comment. By October or November was the answer. On the basis of a quick check of the CME website, we could not find a press release about the forthcoming contract. Whatever contract design emerges, we do not believe that a redesigned contract alone will enable price convergence if liquidity far in excess of commercial hedger and clearing requirements is driving prices.

Exchange or MTF "circuit breakers" to counter extreme price volatility are necessary, but they are second-best options that may be applied for a day or two if the markets are shocked by *force majeure* incidents, such as armed conflict or extreme weather events. But "circuit breakers," no matter how well designed or enforced, are no remedy for the longer term and structural price volatility of excessive speculation.

(70) *What is your opinion on the extension of the transaction reporting regime to transactions in all commodity derivatives? Please explain the reasons for your views.*

IATP believes that the commission's reasons for this extension are sound, both for reasons of regulatory coherence with the revised Market Abuse Directive and because of the potential for commodity derivatives cross-market manipulation with physical commodities. Because major swaps dealers are allowed to own physical commodities, particularly in oil, natural gas and precious metals, the potential for derivatives price movements resulting from their physical stocks trading exists even without manipulative intent. Transaction reporting for all commodity derivatives in as close to real time as is technically possible is a necessary first step for regulator surveillance to ensure fair and orderly markets.

(138) *In your opinion, is it necessary to introduce a third country regime in MiFID based on a principle of exemptive relief for equivalence jurisdictions? What is your opinion on the suggested equivalence mechanism?*

(139) *In your opinion, which conditions and parameters in terms of applicable regulation and enforcement in a third country should inform the assessment of equivalence. Please be specific.*

(140) *What is your opinion concerning the access to investment firms and market operators only for non-retail business?*

Since third-country firm access to EU markets markets is at the discretion of the Member States, IATP agrees that an equivalence provision should be included in MiFID. The commission proposes that "strict equivalence regimes" be modified through a "principle of exemptive relief" whose characteristics remain to be defined by commission implementing regulations. IATP is unfamiliar with how this principle operates in EU law and regulation, but it appears to give the commission considerable discretion to negotiate Memoranda of Understanding (MoU) with third countries.

Most equivalence agreements involve document reviews and on-site audits, particularly to determine the implementation and enforcement capacities of competent authorities. As part of the document review, the commission should review its commitments and third-party commitments in the World Trade Organization General Agreement on Trade in Services and the 1997 Understanding on Financial Services. Furthermore, the commission should consider how, proposed in the GATS Working Party on Domestic Regulation, disciplines on governments to regulate will affect both parties of any MoU in financial services, particularly where commitments have been made in commodity derivatives and physical markets. The proposed revisions to the commission's financial services directives require a thorough analysis of EU Member States GATS commitments as well as of prospective third country parties to MoUs.[14]

IATP believes that on-site audits should include at least one annual unannounced audit, as well an audit with agreed terms of reference with third countries' competent authorities. IATP does not believe that

MoU's should be negotiated with industry associations having self-regulatory powers granted by competent authorities, since enforcement must remain a prerogative of the competent authority with whom the MoU is negotiated.

IATP agrees that any equivalence MoU's negotiated should concern only non-retail business. We do not believe it would be possible for ESMA to monitor third country retail transactions in Member States markets, particularly in commodity derivatives.

(145) *If regulators are given harmonized and effective powers to intervene during the life of any derivative contract in the MiFID framework directive, do you consider that they could be given the power to adopt hard position limits for some or all types of derivatives contracts whether they are traded on exchange or OTC? Please explain the reasons for your views.*

(146) *What is your opinion of using position limits as an efficient tool for some or all types of derivative contracts in view of any or all of the following objectives: (i) to combat market manipulation; (ii) to reduce systemic risk; (iii) to prevent disorderly markets and developments detrimental to investors; (iv) to safeguard the stability and delivery and settlement arrangements of physical commodity markets. Please explain the reasons for your views.*

Apologists for a continuation of light touch regulation claim that there was no excessive speculation by financial institutions in commodity markets in 2007-08. For example, in response to a CFTC hearing on releasing for comment a draft position limit rule, Michael Cosgrove, managing director of GFT Groups, a large commodity trading firm, recently stated, "Position limits are a dangerous cure for an imagined disease which even the proponents admit has never been diagnosed or detected." [15] Cosgrove's "imagined disease" is excessive speculation in U.S. commodity markets, i.e., the exceeding of the liquidity levels required to fulfill the transparent price discovery and orderly market requirements of the Commodity Exchange Act for specific commodity contracts. Contrary to Cosgrove's characterization of the proponents of position limits, excessive speculation has been detected, despite the regulatory exemptions and waivers that limited and distorted both the type and scope of trading data that regulatory economists could analyze. Because at least one commission communication[16] presents a more technocratic version of Cosgrove's allegation, IATP would like to explain first and briefly why the "conclusive evidence" of excessive speculation demanded by the commission communication is not available. Then we review some of the strong circumstantial evidence for the extent of excessive speculation. Finally we review the use of position limits in terms of the commission identified objectives.

During the Bush administration, exchanges failed to enforce "position accountability" rules, the weak form of position limits. Furthermore, swaps dealers were exempted from position limits.[17] As a result, for example, commercial hedgers were able to control just 11 million bushels of March 2008 Chicago Board of Trade corn (maize) contracts, while those trading in the exempted OTC commodity index funds of Goldman Sachs and Morgan Stanley indices controlled about 1.5 billion bushels of the March 2008 corn contracts.[18] OTC energy traders, under the notorious Enron and Dubai loopholes, were not required by the Bush administration to report trades at all. Oil contract–dominant index funds drove prices in physical markets.[19] Oil contracts made up to 70 percent of the price influential Standard and Poors/Goldman Sachs Commodity Index in 2008 and averaged a 40 percent weight from 2007 to 2010.[20] Agricultural contracts in this energy-dominant index swung up and down as index investors rolled in and out of contracts until commodity prices began their historical collapse in July 2008.[21]

In the absence of standardized OTC energy trade data, comparable to the data that exchanges must report daily, analysts have sought to explain the speculative factor of price volatility in correlative terms of the composition of trading positions, the huge increase in OTC commodity trading, and the lack of proportionate supply and demand factors to account for trends in market price volatility. According to an analysis by Michael Masters and Adam White of CFTC Commitment of Traders reports and other data, from 1998 to 2008, "Physical Hedger positions have risen 90%. During this same time, Speculator positions have grown by more than 1300%."[22] This analysis underestimates the disparity between physical hedgers and speculators because, as Masters and White state in a footnote, "Any Traditional

Speculators [as opposed to Index Speculators] using the swaps loopholes show up here as Physical Hedgers."[23]

To illustrate the commodity-specific effect of this broad change in trader composition, in 1998, physical hedgers held about two-thirds of wheat contracts bet to increase in price (long open interest): by 2008, they controlled only about 16 percent, with commodity index speculators controlling about two-thirds.[24] Commodity index funds ballooned from $20 billion in 2002 to $250 billion in 2008.[25] Index fund speculator "weight of money" adds liquidity to the market. However, excess liquidity, whether invested in equity or commodity instruments, can swamp a market, rather than provide the means for executing and clearing trades.[26] Whether index funds or notes are traded OTC or on exchanges, their excess liquidity distorts commodity prices for the *bona fide* physical hedgers who, unlike index speculators, actively manage their contracts with respect to market fundamentals and their commodity uses.

Agricultural economists, accustomed to working with standardized exchange reported data, could not "detect," in Cosgrove's words, the excessive speculation that could be readily observed in the huge long bet composition of agricultural and non-agricultural contracts summarized above. For example, Irwin and Sanders' detection of "no excessive speculation" in a study for the Organization for Economic Cooperation and Development (OECD) was predicated on both empirical and methodological errors for which they were cogently criticized in a Better Markets Inc. review.[27]

Positions limits are "dangerous" for traders such as Cosgrove only in the sense that if they are based on reliable trading data and are effectively enforced, position limits restrain the ability of his firm and its investors to profit from the "weight of money" effect that occurs when there are no limits or when swaps dealers are exempted from position limits. Position limits based on uniformly coded and daily reported data and applied indiscriminately to all traders ensures as fair and transparent a market as is humanly and technically possible. Position limits are a precautionary measure against the disruption of price discovery function of the underlying assets. Once aggregate position limits are set for commodity derivatives traded in EU member state markets, the surveillance of exchange and OTC data by adequately resourced commission and competent national authorities should be able to detect excessive speculation and take measures to reduce it without having to demonstrate the intentionality of market manipulation. Position limits are not a panacea against extreme price changes that result from investor decisions based on fundamental factors. But if enforced, position limits should aid commodity producers and users to hedge commercial risk, and in so doing enable commodity processors to control costs and plan investments with more reliable calculations of costs and rates of return on investments.

The discussion of reduction of systemic risk usually concerns the defaulting of so-called too-big-to-fail financial institutions, who, not coincidentally, are also major swaps dealers. Derivative end-user opponents of position limits and other regulations of OTC swaps argue that even if they were to default, the size of those defaults would not pose a systemic risk.[28] While this argument is likely true, it is irrelevant to the systemic risks faced by derivatives end users, who are hedging commercial risks in commodities. When everyone from Cargill to the local grain elevators stops forward contracting, and farmers without financial reserves face cash-flow crises because nobody can tell them why wheat and corn futures prices are so volatile, as happened in the United States in 2008—that too is a systemic risk. When futures prices no longer serve as a reliable benchmark for forward contracting prices, rural banks stop lending to grain elevators. Representative Colin Peterson, then Chairman of the House of Representatives agricultural committee, recognized this risk to agricultural production and its financial system. In April 2008 he began to hold the hearings that eventually resulted in the House passage in September 2008 of the "Commodity Markets Transparency and Accountability Act of 2008 (H.R. 6604) by a not-quite Presidential veto–proof 283-133 vote.[29] The bill became the foundation for key sections of the Dodd-Frank.

(148) *How could the above position limits be applied by regulators: a) To certain categories of market participants (e.g. some or all types of financial participants or investment vehicles?; (b) To some types of activities (e.g. hedging vs. non-hedging)?; (c) To the aggregate open interest/notional amount of a market?*

Although EU commodity markets differ from U.S. markets in the kinds of commodities and the volume and value of open interest in those commodities, IATP nevertheless hopes that the commission will continue to study closely how the CFTC is developing its aggregate position rule, as well as how it applies the rule. The CFTC, in releasing its draft proposed rule on position limits[30], states that Dodd-Frank "requires aggregate position limits for swaps that are economically equivalent to DCM [Derivatives Clearing Mechanism] futures and options contracts with CFTC-set position limits."[31] The agency acknowledges that due to a lack of OTC derivatives data, the initial phase of spot-month position limits will be expressed in formulas based on existing DCM futures and options contract exchange data. Only in a subsequent rule-making phase, after CFTC-authorized Swaps Execution Facilities report trading data on a daily basis and with the same degree of disaggregation as exchange trading data, will it be possible to compile and evaluate data to set aggregate position limits for specific commodities based on open interest outside the spot months. These limits will be revised periodically in response to the liquidity needs of bona fide hedgers hedging commercial, and not all financial, risk, as proposed by the International Swaps and Derivatives Association (ISDA).[32] ISDA is rightly concerned that however the commission defines, develops and applies position limits, it bear in mind the Section 737 Dodd-Frank requirement that Foreign Boards of Trade be able to demonstrate a comparable regulatory system with comparable enforcement mechanisms, in order to access U.S. markets.

Conclusion

IATP would like to thank the commission for this opportunity to comment on a wide-ranging and very challenging consultation paper. We would be pleased to respond to any questions that commission staff may have about these comments. We look forward to participating in future commission hearings about the revision of commodity market directives and their implementing legislation and regulation.

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[1] Cited in Jack Ewing, "Few Signs of a United Approach to Financial Regulation," *The New York Times*, January 28, 2011.

[2] Parantap Basu and William T. Gavin, "What Explains the Growth in Commodity Derivatives?" *Federal Reserve Bank of St. Louis Review*, January-February 2011 (93)1, 43.

[3] Ibid., Figure 1B.

[4] E.g., Gregory Meyers, "Large bets fuel commodity bull run," *Financial Times*, January 15-16, 2011.

[5] E.g., "Wall Street Lobbyists Besiege CFTC to Shape Rewrite of Derivatives Rules", Bloomberg News, October 14, 2010; Hal Weitzman, "CME predicts OTC opacity will remain," *Financial Times*, July 30, 2011; Ilan Moscovitz, "The Weekly Walk of Shame: Wall Street Lobbyists and Your Money," *The Motley Fool*, June 23, 2011; Patrick Jenkins, "JP Morgan warns on regulation doomsday," *Financial Times*, February 17, 2010 etc.

[6] It may be worth noting that agencies promulgating rules under Dodd-Frank may, but are not required to "conduct cost-benefit analyses for their economically significant rules, and do not have to show that the benefits of their significant rules "justify" the costs." Curtis W. Copeland, "Rulemaking requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act," Congressional Research Service, November 3, 2010, 22. Available at http://www.crs.gov.

[7] E.g., Simon Johnson, "Citi Weekend" shows that too-big-too-fail endures," Bloomberg Opinion, January 18, 2011, commenting on the special U.S. inspector general report "Extraordinary Financial Assistance Provided to Citigroup Inc.," available at

http://www.sigtarp.gov/reports/audit/2011/Extraordinary%20Financial%20Assistance%20Provided%20to%20Citigroup,%20Inc.pdf

[8] For the original French language proposal, see http://www.tradeobservatory.org/library.cfm?refID=107769. For an unofficial English translation of this proposal, see http://www.tradeobservatory.org/library.cfm?refID=107771.

[9] "Final Report," Extraordinary Joint Intersessional Meeting of the Intergovernmental Group on Grains and the Intergovernmental Group on Rice, Committee on Commodity Problems, United Nations Food and Agriculture Organization, September 24, 2010 (CCP:GR-RI 2010/2), paragraph 2.

[10] Nikki Tait "Traders fear threat of political agenda," *Financial Times*, January 5, 2011.

[11] Thijs Kerckhoffs, Roos van Os and Myriam Vander Stichele, "Financing Food: Financialisation and Financial Actors in Agricultural Commodity Markets," SOMO, April 2010, 7. Available at http://www.somo.nl.

[12] See http://www.cftc.gov/PressRoom/Events/oeaevent102909.html and http://www.cftc.gov/PressRoom/Events/opaevent_aac080510.html.

[13] E.g., "Statement of Craig Donohue, Chief Executive Officer, CME Group, Inc. Before the Commodity Futures Trading Commission Hearing on Energy Position Limits and Hedge Exemptions," July 28, 2009 http://cmegroup.mediaroom.com/index.php?s=115.

[14] See Myriam Vander Stichele and Roos van Os, "Business As Usual?: How Free Trade Agreements Jeopardise Financial Sector Reform," SOMO, December 2010 at http://somo.nl/publications-en/Publication_3611/at_download/fullfile.

[15] Cited in Christopher Doering and Roberta Rampton, "CFTC's position limit plan gains needed support," Reuters, January 4, 2011.

[16] "Tackling the Challenges in Commodity Markets on Raw Materials," COM (2011), Communication from the Commission to the Council and the European Parliament, 7.

[17] Testimony of Michael Greenberger on behalf of Americans for Financial Reform before the Commodity Futures Trading Commission on Excessive Speculation: Position Limits and Exemptions, Commodity Futures Trading Commission, August 5, 2009, 21. Available at http://www.michaelgreenberger.com/files/CFTC_AFR_Sign_On_Testimony_August_3.pdf.

[18] "A Big Move Lies Ahead," *The Brock Report*, May 23, 2008.

[19] E.g., http://www.princeton.edu/~wxiong/papers/commodity.pdf http://accidentalhuntbrothers.com/wpcontent/uploads/2008/09/mitceeprspeculationstudy062008.pdf

[20] Parantap Basu and William T. Gavin, "What Explains the Growth in Commodity Derivatives?" *Federal Reserve Bank of St. Louis Review*, January-February 2011 (93)1, 39 and Figure 3.

[21] IATP, "Commodities Market Speculation: The Risk to Food Security and Agriculture," IATP, November 2008. Available at http://www.tradeobservatory.org/library.cfm?refID=104414.

[22] Michael Masters and Adam White, "How Institutional Investors Are Driving Up Food and Energy Prices," The Accidental Hunt Brothers, July 31, 2008, 34, http://www.loe.org/images/080919/Act1.pdf.

[23] Ibid., footnote to Table 10, at 34.

[24] Ibid.

[25] Parantap Basu and William T. Gavin, "What Explains the Growth in Commodity Derivatives?" *Federal Reserve Bank of St. Louis Review*, January-February 2011 (93)1, 39.

[26] Gillian Tett, "Debate on the structure of the equity market is long overdue," *Financial Times*, August 20, 2010.

[27] David Frenk and staff, "Review of Irwin and Sanders 2010 OECD Reports 'Speculation and Financial Fund Activity' and 'The Impact of Index and Swap Funds on Commodity Futures Markets,' June 30, 2010, http://www.iatp.org/tradeobservatory/library.cfm?refID=107621.

[28] Coalition for Derivatives End-Users, Comments to the U.S. Senate Banking Committee on Title VII of The Restoring American Financial Stability Act of 2009," December 3, 2009, http://www.tradeobservatory.org/library.cfm?refID=107145.

[29] "Bipartisan Measure Increasing Market Transparency Passes 283-133," U.S. House of Representative Committee on Agriculture, press release, September 18, 2008, http://agriculture.house.gov/list/press/agriculture_dem/pr_091808_HR6604.html. The text of the bill is available at http://agriculture.house.gov/inside/Legislation/110/CMTAA.pdf.

[30] Federal Register, Vol. 76, No. 17, Proposed Rules, January 26, 2011, available at http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-1154a.pdf.

[31] Ibid., at 4752.

[32] ISDA, "Proposed Regulations Regarding Position Limits for Derivatives," International Swaps and Derivatives Association, January 11, 2011, 4.