

COMMODITY MARKETS OVERSIGHT COALITION

August 5, 2009

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 Capitol Building
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
H-204 Capitol Building
Washington, DC 20515

The Honorable Harry Reid
Majority Leader
United States Senate
S-221 Capitol Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230 Capitol Building
Washington, DC 20510:

A CALL FOR MEANINGFUL REFORM OF COMMODITIES TRADING

Dear Congressional Leaders:

The undersigned organizations, representing business, industry and consumer interests vital to the United States economy, urge you to take swift and meaningful action to improve federal oversight and transparency and to address regulatory inadequacies in the commodities markets. Our organizations and the public in general have lost confidence in these markets due to extreme price volatility, unwarranted price spikes and excessive speculation. It is time to restore confidence, stability and transparency in these markets.

This letter is a follow-up to our June 3, 2009 letter regarding needed reforms, which we have attached for your convenience. We now wish to take the opportunity to address some of the arguments being made by opponents of reform - namely, the financial services industry.

The CFTC Needs the Tools to Regulate

Today, the Commodity Futures Trading Commission (CFTC) will wrap up a series of hearings examining the use of its statutory authority to set limits on the size of positions that individual traders may take in the market, as well as who may receive exemptions from such limits. We commend Chairman Gensler and his fellow Commissioners for these hearings and for their commitment to greater transparency, accountability and oversight in the commodity markets. These hearings have brought to light some startling information.

For example, on the NYMEX, where only energy “accountability” limits exist (as opposed to hard limits that exist for agricultural commodities), 70 traders have held positions exceeding these limits – by as much as two to three times these limits - in the past 12 months for contracts such as crude oil, natural gas, heating oil and gasoline, and faced no disciplinary action. Commissioner Bart Chilton likened accountability limits to “suggested speed limits on a dark, desert highway.” We are pleased the CFTC is looking into this issue.

Furthermore, this information was made available only because the NYMEX is largely a transparent, regulated exchange. Most trading activity is conducted off-exchange, where the CFTC will require additional authorities from Congress in order to carry out its mandate to protect the American public from manipulation, excessive speculation and abusive trading activities. Many of its authorities over these markets were stripped by the Commodity Futures Modernization Act of 2000. Congress needs to restore these authorities and deliberate on whether additional authorities are needed. **We urge you to do so immediately following your return from the August Congressional recess.**

Many in the financial services industry strongly oppose meaningful reform. The reason is obvious. Aided by deregulation and lack of federal supervision, they have been able to transform the derivatives markets, from a tool used by commercial participants with a need to hedge against the risk of rising and falling commodities prices, into a method to invest in consumable commodities as an asset class and a currency hedge. This ensuing domination by financial speculators has undermined the commodity markets' function as a hedging and price discovery tool for commercial industry and end-users. **These markets were not designed as financial markets, they were designed for commodities hedging and price discovery and we urge that they be restored to this original purpose.**

Speculators Should Not Dominate the Markets

We recognize the role that speculators play in providing the *necessary* liquidity in order for commodity producers, distributors, processors and end-users to manage risk. However, when speculators are allowed to dominate the markets (i.e., *excessive* speculation) it undermines risk management for physical market participants. Excessive speculation distorts the ability of industry and end-users to determine a price for commodities based on supply and demand. The commodities bubble of 2008 contributed to the financial collapse we experienced in the fall. Another commodities bubble would stall or even kill any anticipated economic recovery.

Many opponents of reform outright oppose limits on speculation and argue that there can never be such a thing as *excessive* speculation. They held true to this belief, even as – despite the lack of correlating fundamentals - crude oil skyrocketed from \$68 in January 2008 to \$147 that July and \$33 in December 2008 to \$72 this June. They have claimed that such price spikes are a result of investor need to use commodities as a hedge against a devalued dollar. **Congress should not allow the financial services industry to use consumable commodities, that are a basis for our national security and economic welfare, as a hedge against fluctuations in the value of the dollar.** Such hedging artificially skews the supply and demand picture. The resulting price volatility and unanticipated spikes cause harm to American industry, struggling businesses and consumers at the pump.

Investors should use products other than oil, natural gas or food in order to hedge against inflation, such as precious metals or the foreign currencies markets. The currency markets are more efficient, liquid and much less costly for investors. Furthermore, we grow increasingly concerned about the role being played by exchange traded funds (ETFs) and exchange traded notes (ETNs). We believe Congress should be concerned as well and should continue to look into this issue.

Overall, we feel that investors that are unwilling to behave like traditional speculators, trade openly on regulated exchanges, play by the rules and report all trading data to the CFTC should not be playing in these markets and **gambling with the American economy.**

The Threat of Moving to Off-Shore Markets is a “Scare Tactic”

The financial services industry also continues to claim that if Congress and the CFTC impose strong reform of these markets, then investors will just move their activity overseas to take advantage of regulatory arbitrage. This is not a reason against action; it is a reason for even stronger and more comprehensive action. The CFTC will need adequate authorities from Congress, and will need to cooperate even more closely with overseas regulators. We are already seeing signs of cooperation between U.S. and overseas policymakers and regulators, including several European Union leaders. Even the G8 earlier this month made a strong statement when it ordered the International Monetary Fund, the International Organization of Securities Commissions and the International Energy Agency to coordinate on commodity market surveillance and hopefully, the drafting of new regulation.

Congress should also work with the CFTC to tighten existing rules regarding foreign boards of trade. In order to allow for an exchange to trade in U.S.-destined commodities or allow U.S. access to their trading platforms without federal oversight, the Congress and the CFTC should require the presence of foreign regulators with a comparable regulatory regime. The CFTC should also review all existing no action letters and withdraw them as necessary, including those given to foreign exchanges run by U.S. firms (e.g., Atlanta-based ICE runs an exchange in London and the Dubai Exchange is in part owned by the NYMEX). **If abusive activity is to flee elsewhere because of meaningful reform, then it is the responsibility of Congress and the CFTC to ensure that foreign markets are not allowed to compete unfairly with U.S. markets.**

Let us not forget that the American marketplace is the most sought after trading venue in the world. With so many foreign entities seeking counterparties in the United States, it is difficult to conceive of any firm wanting to do business elsewhere. Further, any contract with cash-settlement or physical delivery on American soil is under American jurisdiction. It is hard to imagine why *bona-fide* hedgers and large financial interests would even consider leaving the security and liquidity of the American marketplace to trade in an overseas market where they are exposed to uncertain counter-party risk.

“Dark Market” Trading is a National Security Risk

Additionally, Congress should be concerned about the national security risks posed by inaction. Dennis Blair, the Director of National Intelligence, has determined political instability caused by the global economic crisis to be the chief U.S. national security threat. Financial services industry deregulation and the lack of supervision over energy derivative markets have been recognized as triggers of that economic crisis. Insufficient regulation of global cash flows and investments presents a real challenge not only for economic recovery, but for stability and security of U.S. commodity markets.

The opaque nature of so many market participants, activities, products and environments provides more than just an easy opportunity for excessive speculation and potential manipulation. We fear that foreign persons, entities and governments unfriendly to the United States and its allies may take advantage of the “dark” nature of these markets in order to undermine our economies and commit commodity-trading-based sabotage. This issue was brought up briefly during last year in the Senate Committee on Homeland Security, and it should be examined more thoroughly. **Appropriate committees in Congress should thoroughly investigate foreign investment in the commodities markets and take all appropriate action.**

Congress Must Act Now

Our organizations again urge swift and comprehensive action in order to reform these markets. We urge members of Congress not to be dissuaded or distracted by the “scare tactics” of those in the financial services industry that are profiting from the status quo. Further, we encourage Congress to ignore calls for “watered down” legislation that is less than what is needed to bring real reform to these markets, including the recent proposal by the New Democrats.

We recognize that in requiring that opaque market activity move onto transparent and regulated exchanges, there may be some disagreement as to the appropriate way to deal with customized over-the-counter (OTC) derivative contracts that some commercial interests rely on to hedge. Congress should work with *bona-fide* commercial hedgers that require such products in order to find a solution, while also taking care not to create any new “loopholes” for non-commercial interests to exploit. This issue should not delay strong action and this coalition supports the Obama administration’s efforts to extend CFTC authority to the OTC markets.

Again, we are prepared to meet with you and your staff regarding these issues. Thank you again for your consideration.

Sincerely,

Agricultural Retailers Association
Air Transport Association
American Trucking Associations
California Independent Oil Marketers Association
Consumer Federation of America
Consumer Watchdog
Food & Water Watch
Florida Petroleum Marketers & Convenience Store Association
Friends of the Earth US
Fuel Merchants Association of New Jersey
Gasoline and Automotive Services Dealers of America
Grassroots International
Illinois Association of Convenience Stores
Illinois Petroleum Marketers Association
Independent Connecticut Petroleum Association
Independent Oil Marketers Association of New England
Industrial Energy Consumers of America
The Institute for Agriculture and Trade Policy
Louisiana Oil Marketers & Convenience Store Association
Maine Oil Dealers Association
Maryknoll Office for Global Concerns
Massachusetts Oilheat Council
Michigan Petroleum Association
Michigan Association of Convenience Stores
Mid-Atlantic Petroleum Distributors' Association
Missionary Oblates

Municipal Gas Systems of Oklahoma
National Association of Truck Stop Operators
National Family Farm Coalition
National Farmers Union
National Latino Farmers & Ranchers Trade Association
Nebraska Petroleum Marketers & Convenience Store Association
New England Fuel Institute
New Jersey Citizen Action Oil Group
New Mexico Petroleum Marketers Association
New York Oil Heating Association
Ohio Petroleum Marketers & Convenience Store Association
Oilheat Council of New Hampshire
Oil Heat Institute of Long Island
Oil Heat Institute of Rhode Island
The Organization for Competitive Markets
Petroleum Marketers Association of America
Petroleum Marketers & Convenience Stores of Iowa
Propane Gas Association of New England
Public Citizen
Public Power Association of New Jersey
R-CALF USA
Tennessee Oil Marketers Association
United Egg Producers
Utah Petroleum Marketers and Retailers Association
Western Peanut Growers
Vermont Fuel Dealers Association

cc: All Members of the United States House of Representatives
All Members of the United States Senate
The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission
The Honorable Michael Dunn, Commissioner, Commodity Futures Trading Commission
The Honorable Jill E. Sommers, Commissioner, Commodity Futures Trading Commission
The Honorable Bart Chilton, Commissioner, Commodity Futures Trading Commission

COMMODITY MARKETS OVERSIGHT COALITION

June 3, 2009

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 Capitol Building
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
H-204 Capitol Building
Washington, DC 20515

The Honorable Harry Reid
Majority Leader
United States Senate
S-221 Capitol Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230 Capitol Building
Washington, DC 20510

Dear Congressional Leaders:

Members of this coalition remain concerned that inadequate oversight of the commodities markets and excessive speculation will continue to erode public confidence in the ability of these markets to establish fair prices for energy, agricultural products and other commodities that are reflective of market fundamentals. **We urge Congress to act decisively to bring full transparency to all trading environments and platforms, to prevent excessive speculation, and to close the door to potential manipulation.**

2008 saw the most dramatic rise in commodities prices in history, resulting in inflated costs for energy and consumer goods in the United States. Internationally, millions of people were suddenly unable to feed themselves due to rising food commodity costs. Congressional hearings and reports revealed that inadequate or non-existent oversight of off-shore and over-the-counter (OTC) markets, ineffective oversight of on-exchange participants and activity, and an under-funded and under-staffed Commodity Futures Trading Commission (CFTC) had opened-the-door to excessive speculation and opaque trading activity. Additionally, members of this coalition voiced growing concern that passively-managed index funds, exchange-traded funds and actively traded hedge funds, swaps and derivatives were turning our commodity markets into a highly volatile “asset class.”

We again urge the Congress to pass strong new legislation to restore our confidence in these markets as a risk management and price discovery tool for *bona-fide* commercial players.

Congress has taken some positive steps in the right direction, including last year’s CFTC Reauthorization Act, which returns to the CFTC some authority over exempt commercial markets it had lost under the “Enron Loophole” in 2000. Appropriators have steadily increased CFTC funding levels in recent years to allow for much-needed staff, resources, and technology investments and we commend the President’s FY2010 budget request of \$161 million. We commend the Senate for swift consideration of CFTC nominees, including the recently-confirmed Chairman Gary Gensler. We are also pleased that on May 13, 2009, President Obama announced his support for full transparency, accountability and oversight in the OTC markets.

But absent strong and sweeping reform, we will continue to witness extreme price volatility and excessive speculation. Trading will continue to grow in “dark” or unregulated markets and investment speculators will continue to elude federal oversight, data reporting requirements and position limits. Families, businesses, farmers and laborers at home and abroad will continue to “pay the price” in many ways, including volatile and unpredictable energy, food and raw materials prices; impeding economic growth, development, investment, and job creation.

Therefore, we urge Congress to work swiftly and approve legislation that will:

- **Address market activity for *all* commodities**, including energy, agriculture, livestock and metals;
- **Fully close the “Enron Loophole”** by requiring that large over-the-counter trades comply with data reporting requirements and are made subject to speculative position limits;
- **Close the so-called “Foreign Markets Loophole” or “London Loophole”** by requiring the presence of foreign regulators with comparable oversight in order for an off-shore exchange to obtain regulatory exemptions (i.e., no-action letters);
- **Close the “Swaps Loophole”** by limiting hedging exemptions to *bona-fide* commercial participants and requiring that swap traders, index funds and institutional investors comply with all CFTC speculation limits and data reporting requirements;
- **Limit exchange traded fund** investments in physical commodities and their derivatives;
- **Require across-the-board aggregate speculation limits** to prevent traders from taking a controlling position in a commodity by taking large positions on multiple platforms;
- **Require the CFTC to review all current regulatory exemptions** and require Commissioners to withdraw them as appropriate or in accordance with existing or new authorities granted by Congress;
- **Require a thorough review of all new and existing rules and regulations** designed to protect market users and the public from fraud, manipulation and excessive speculation, including position limits, margin requirements, data reporting requirements, and public availability of data; and
- **Require a thorough review of emerging environmental markets**, emissions trading and related Wall Street products and instruments, including derivatives, index funds and exchange traded funds.

The ability to determine a fair price for commodities based on market fundamentals is vital to the success of recent efforts to address energy security, climate change, and the needs of the poor, low income and unemployed. It is essential to the welfare of farmers, truckers, laborers and small businesses, to new job growth and to the overall recovery of an economy that has been wounded by insufficient transparency and oversight of the financial services industry.

In recent weeks, energy commodities including natural gas, crude oil and refined petroleum products have been trading substantially higher despite record inventories and low demand. Internationally, some predict a tight food commodity market in the year ahead. According to a recent Barclays Capital survey, 79 percent of investors plan to increase holdings in these markets. Congress must do its part to help prevent another speculator-driven run-up in energy, agriculture, and other vital commodities.

In both chambers of Congress, several bills have been introduced to address the issues discussed in this letter. It is our hope that members can work out their differences and, working with members of this coalition, move forward to pass strong and comprehensive legislation, put an end to excessive speculation and “dark market” trading, and restore confidence in our commodity markets.

Thank you for your consideration.

Sincerely,

Agricultural Missions, Inc.
Agricultural Retailers Association
Air Transport Association
American Association of Crop Insurers
American Cotton Exporters Association
American Cotton Shippers Association
American Public Gas Association
American Trucking Associations
Arkansas Oil Marketers Association
Atlantic Cotton Association
California Black Farmers and Agriculturalists Association
Caney Fork Headwaters Association
Colorado Wyoming Petroleum Marketers Association
Columban Center for Advocacy and Outreach
Congregation of Holy Cross
Consumer Federation of America
Consumer Watchdog
Cumberland Countians for Peace & Justice
Family Farm Defenders
Florida Petroleum Marketers and Convenience Store Association
Food & Water Watch
Friends of the Earth US
Fuel Merchants Association of New Jersey
Gasoline & Automotive Service Dealer's of America
Grassroots International
Holy Cross International Justice Office
Illinois Association of Convenience Stores
Illinois Petroleum Marketers Association
Industrial Energy Consumers of America
Independent Oil Marketers Association of New England
Institute for Agriculture and Trade Policy
Justice and Witness Ministries, United Church of Christ
Louisiana Oil Marketers & Convenience Store Assn.
Maine Oil Dealers Association
Maryknoll Office for Global Concerns
Massachusetts Oilheat Council
Mid-Atlantic Petroleum Distributors Association
Missionary Society of St. Columban

Montana Petroleum Marketers Association
National Association of Convenience Stores
National Association of Oil Heat Service Managers
National Association of Truck Stop Operators
National Catholic Rural Life Conference
National Family Farm Coalition
National Farmers Union
National Latino Farmers & Ranchers Trade Association
Nebraska Petroleum Marketers & Convenience Store Association
Network for Environmental & Economic Responsibility, United Church of Christ
New England Fuel Institute
New Jersey Citizen Action Oil Group
New Mexico Petroleum Marketers Association
New Rules for Global Finance
New York Oil Heating Association
Ohio Petroleum Marketers & Convenience Store Association
Oil Heat Council of New Hampshire
Oil Heat Institute of Long Island
Oil Heat Institute of Rhode Island
Petroleum Marketers Association of America
Petroleum and Convenience Marketers of Alabama
Petroleum Marketers and Convenience Store Association of Kansas
Petroleum Marketers and Convenience Stores of Iowa
Platform ABC (Earth, Farmer, Consumer), Netherlands
Public Citizen
Quixote Center
Ranchers-Cattlemen Legal Action Fund / R-CALF USA
Rural Coalition/Coalición Rural
Sisters of the Holy Cross Congregation Justice Committee
Sisters of Notre Dame de Namur Justice and Peace Network
Society of Independent Gasoline Marketers of America
Southern Cotton Association
Texas Cotton Association
United Egg Association
United Egg Producers
Utah Petroleum Marketers and Retailers Association
Vermont Fuel Dealers Association
West Virginia Oil Marketers and Grocers Association
Western Cotton Shippers Association
Western Peanut Growers Association
Wisconsin Crop Production Association
World Cotton Exporters Association

cc: All members of the United States House of Representatives and the United States Senate
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