U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581
www.cftc.gov

Gary Gensler
Chairman

(202) 418-5050
(202) 418-5533 Facsimile

May 23, 2011

The Honorable Maria Cantwell
U.S. Senate
Washington, D. C.

The Honorable Dianne Feinstein
U.S. Senate
Washington, D.C.

The Honorable Bill Nelson
U.S. Senate
Washington, D.C.

The Honorable John D. Rockefeller, IV
U.S. Senate
Washington, D.C.

The Honorable Amy Klobuchar
U.S. Senate
Washington, D.C.

The Honorable Jeanne Shaheen
U.S. Senate
Washington, D.C.

The Honorable Mark Udall
U.S. Senate
Washington, D.C.

The Honorable Benjamin L. Cardin
U.S. Senate
Washington, D.C.

The Honorable Jeff Merkley
U.S. Senate
Washington, D.C.

The Honorable Ron Wyden
U.S. Senate
Washington, D.C.

The Honorable Susan M. Collins
U.S. Senate
Washington, D.C.

The Honorable Mark L. Pryor
U.S. Senate
Washington, D.C.

The Honorable Bernard Sanders
U.S. Senate
Washington, D.C.

The Honorable Mark Begich
U.S. Senate
Washington, D.C.

The Honorable Robert Menendez
U.S. Senate
Washington, D.C.

The Honorable Patty Murray
U.S. Senate
Washington, D.C.

The Honorable Richard Blumenthal
U.S. Senate
Washington, D.C.

Dear Senators:

Thank you for your May 11 letter regarding the Commodity Futures Trading Commission's (CFTC) proposed rule to establish position limits in the agricultural, energy and metals derivatives markets. I am pleased to respond on behalf of Commissioner Michael Dunn, Commissioner Scott O'Malia and myself.

Each part of our nation's economy relies on a well-functioning derivatives marketplace. It is essential so that producers, merchants and other end-users can manage their risks. It allows those entities to lock in prices for the future. Thus, it is critical that market participants have confidence in the integrity of these price discovery markets.

Though the CFTC is not a price-setting agency, rising prices for basic commodities highlight the importance of having effective market oversight that ensures integrity and transparency.

Since 1936, the Commodity Exchange Act has prescribed position limits to protect against the burdens of excessive speculation, including those caused by large concentrated positions. Between the CFTC and the futures exchanges, there are currently position limits in the spot month on physical delivery contracts in the agricultural, energy and metals markets. There also are a number of agricultural contracts that have single-month and all-months-combined position limits. The exchanges had set all-months-combined limits in energy markets until 2001, after which the limits were replaced with position accountability regimes.

In January 2010, the Commission proposed a rule to set position limits on four energy contracts. The Dodd-Frank Act broadened the CFTC's position limits authority to include aggregate position limits on certain swaps and certain linked contracts traded on foreign boards of trade (FBOTs) in addition to U.S. futures and options on futures. Further, the Dodd-Frank Act modified the definition of bona fide hedging for physical commodities. Thus, in August 2010, the Commission announced the withdrawal of the January 2010 proposal with plans to re-propose pursuant to the Dodd-Frank requirements.

To fulfill the Dodd-Frank Act's statutory requirements, the CFTC proposed a rule in January 2011 to set position limits for 28 commodities. Title VII of the Dodd-Frank Act requires the CFTC to establish position limits for certain physical commodity derivatives.

The CFTC's proposed rule includes one position limits regime for the spot month and another regime for single-month and all-months combined limits. If finalized, the rule would implement spot-month limits sooner than the single-month or all-months-combined limits. Single-month and all-months-combined limits, which currently are only set for certain agricultural contracts, would be re-established in the energy and metals markets and be extended to certain swaps.

Position limits in the swaps markets will be facilitated by the Dodd-Frank Act's provisions to bring market transparency to both regulators and the public. Prior to the Dodd-Frank Act, the Commission had only limited authority to obtain data regarding the swaps market. At this point, the Commission does not have the same comprehensive data for the swaps markets as it has for the futures markets.

On October 19, 2010, the Commission proposed a rule under the Dodd-Frank Act on large trader reporting for physical commodity swaps. The proposal would require position reports on economically equivalent swaps from clearing organizations, their members and swap dealers. These reports will allow the Commission to gather data that could be used to implement position limits as well as conduct surveillance of the markets for economically equivalent swap contracts.

In response to the January 2011 proposed rulemaking on position limits, the CFTC received nearly 12,000 public comments. The Commission has dedicated significant staff resources to reading and summarizing the comment letters, and staff is working to complete reviewing comments shortly. The Commission will begin considering a final rulemaking after staff can analyze, summarize and consider comments and after the Commissioners are able to discuss the comments and provide feedback to staff.

In addition to providing enhanced position limits authority, the Dodd-Frank Act brings new oversight to the swaps markets. Importantly, the Act includes several transparency initiatives that will shine a light on the swaps market, which is roughly seven times the size of the futures market.

Further, the Act enhanced the Commission's enforcement authorities in both the futures and swaps markets. It extended the Commission's anti-manipulation authority to cover swaps. It provides the Commission with new anti-fraud authority and anti-manipulation authority based upon similar authority that the Securities and Exchange Commission, the Federal Energy Regulatory Commission and the Federal Trade Commission have for securities and certain commodities.

In addition, the Dodd-Frank Act provides the CFTC with new authority to register foreign boards of trade that provide direct access to traders in the United States. The Act specifies that a foreign board of trade seeking registration must establish position limits, have authority to liquidate positions and share data on large traders with the Commission that the Commission could use for surveillance and to publicize aggregate reports on trader positions. This new authority enhances the Commission's ability to ensure that U.S. traders cannot avoid position limits on U.S. futures contracts or transparency requirements by directly trading economically equivalent contracts on a foreign board of trade.

Again, thank you for your letter regarding the CFTC's proposed position limits rulemaking. The agency takes its mission seriously with regard to all markets and is committed to having effective market oversight that ensures integrity and transparency.

Sincerely,

Gary Gensler
Chairman