



October 9, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Comments Specific to the Financial Services Committee's Draft Legislation

Dear Chairmen Frank and Representative Bachus:

CMC is a trade association that represents commodity futures exchanges, regional boards of trade and numerous industry counterparts in the agriculture, energy, metals and finance sectors. Our members include domestic and multinational commodity merchandisers, processors, millers, refiners, commercial and merchant energy companies, precious and base metal trading firms, bioenergy producers, futures commission merchants, food and beverage manufacturers, major transportation companies and financial institutions.

Representing the complete spectrum of commercial uses of the agricultural and energy futures markets, the activities of our members range from grain and energy hedging by local country grain elevators to highly sophisticated, high-volume hedging activities that support domestic and international commodity merchandising, exporting, and processing operations. The businesses of all our non-exchange members depend upon the efficient and competitive functioning of the risk management products traded on U.S. futures exchanges.

Tested by unprecedented challenges during the past year, regulated exchanges have performed extremely well. Ensuring that exchanges continue to provide transparent and liquid markets is vital to sustaining the slowly emerging economic recovery.

1. Enhance Market Transparency

Exchange-traded markets are transparent and regulated. Reform measures that provide additional transparency through reporting and clearing should target less transparent markets. Additional transparency will provide useful information and allow regulators to effectively police commodities markets. The draft bill requires that OTC swaps that are not accepted for clearing be reported to a swap repository or the CFTC. CMC supports increased reporting of OTC transactions to improve transparency and market oversight.

2. Preserve Deep and Liquid Commodity Markets to Ensure Reliable Price Discovery

The businesses of all CMC members depend on efficient and properly functioning markets. Effective market oversight and greater transparency ensure market confidence and participation which are important components in building and sustaining deep and liquid markets. U.S. markets must continue to serve as global benchmarks for world commodities markets.



The draft bill would amend provisions adopted under the Commodity Futures Modernization Act of 2000 thereby eliminating the advantages of the CFMA's principles-based regime and inhibiting the ability of U.S. futures exchanges to develop innovative and sound ways to operate and regulate their markets. It would also repeal the provisions allowing for Exchange self-certification and implementation of rules and new product listings which effectively facilitated U.S. market competitiveness. Care should be taken to avoid repealing the flexible core principles approach brought about under the Commodity Futures Modernization Act of 2000 which has allowed U.S. futures market to grow and remain competitive in a dynamic global environment.

One of the fundamental purposes of a futures market is price discovery. Liquidity is essential to efficient price discovery. Speculators play an important role in commodity markets by providing liquidity necessary for efficient market operation.

The draft bill would authorize the CFTC to establish aggregate position limits across commodity contracts listed by designated contract markets, FBOTs and swap contracts that perform a significant price discovery function. It also gives the CFTC authority to exempt any swap transaction from position limit requirements that it imposes. The debate is ongoing as to the impact of speculators on the markets and the necessity to impose position limits. However, position limits, if mandated, should not be used as a political tool to impose limits in the hope of controlling the underlying prices in the cash market. Not only will this not work, but it will have a devastating impact on the U.S. futures industry and participants that rely on these markets to manage risk.

Position limits across U.S. futures and OTC derivatives should be set and assessed consistent with maintaining a market that is deep and highly liquid and that is providing significant price discovery. If limits are set too low, volume and liquidity will be negatively impacted and users will not be able to hedge risk.

3. Financial Services Reform

CMC membership generally supports centralized clearing of standardized instruments. The draft bill requires that standardized swaps between swap dealers and major swap participants be executed on a DCM, a registered swap facility or a regulated foreign swap execution facility. This language effectively eliminates the mandated exchange trading and clearing requirements for end users who are not swap dealers or major swap participants.

The bill responds to concerns raised by end users concerning the difficulties the mandated trading and clearing requirements would pose for their businesses. It is consistent with CMC's position that policymakers should preserve the ability of companies to manage individual risk exposures by ensuring access to reasonably priced and customized over-the-counter (OTC) derivative products. Business end-users rely on OTC derivatives to manage risks including fluctuating currency exchange, interest rates, and commodity prices. By insulating companies from risk, customized OTC derivatives provide businesses with access to lower cost capital—enabling them to grow, make new investments and retain and create new jobs.



The bill also appears to allow the DCO to establish appropriate standards for determining the eligibility of agreements, contracts or transactions submitted to the DCO for clearing. This is consistent with CMC's view that regulators should not force instruments to be cleared if they do not meet established risk management criteria.

The draft bill retains the Shad-Johnson jurisdictional divide for OTC swaps. CMC supports maintaining the approach laid out in the Shad-Johnson Accord regarding OTC swaps regulation.

Thank you for the opportunity to submit comments regarding the proposed draft legislation. CMC will continue to monitor the progress of legislative and regulatory proposals for modifying and strengthening market regulation. As the leading trade association for the commodity futures and option exchanges and their industry counterparts, CMC stands ready to provide input and perspective from the complete spectrum of commercial users of all futures markets including agriculture, energy, metals and financials. CMC looks forward to working with lawmakers and industry on additional improvements.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Walter".

MICHAEL D. WALTER
President

cc: House Agriculture Committee Chair and Ranking Member