



October 7, 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

Dear Chairmen Frank and Representative Bachus:

The Commodity Markets Council (CMC) is the leading trade association for the commodity futures and option exchanges and their industry counterparts. CMC appreciates the opportunity to comment regarding "Reform of the Over-the-Counter Derivative Market: Limiting Risk and Ensuring Fairness."

As the organization representing the exchanges and their participants, CMC's objective is to ensure fair and efficient markets that work effectively for everyone – end users, market participants, exchanges, the general public, and regulators. 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.

Detailed reporting is necessary for greater market transparency and accountability. CMC was the industry's leading advocate to disaggregate data relative to index fund positions in the agricultural markets on the CFTC's *Commitment of Traders Report*. We support the extension of disaggregating data of futures positions into all physical futures markets.

- CMC supports increased reporting of certain OTC transactions to improve CFTC's ability to see the entire market and we will gladly work with the CFTC to identify these transactions.
- CMC supports increased reporting in energy markets and believes that an energy COT report will contribute to greater market transparency. Energy reports should generally be the same as reports for agriculture and CFTC should follow reporting criteria for other reporting markets to assure that individual trader positions are not inadvertently disclosed.
- CMC supports coordination and information sharing among international regulators. We believe this is an important step toward greater international regulatory cooperation in a global industry.

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 that are important components to deep and liquid markets. US markets must continue to serve as global benchmarks for world commodities markets.



One of the fundamental purposes of a futures market is price discovery and liquidity is essential to efficient price discovery. Futures markets grew immensely during the last decade because their products are relevant to international and domestic trading communities – including institutional investors. The increase in volume has boosted liquidity, aided price discovery, and enhanced market efficiency.

- Speculators play an important role in commodity markets by providing liquidity necessary for efficient market operation.
- Investment activity by institutional investors and index funds is legitimate “financial hedging” and has contributed to the overall success experienced by the commodity industry over the last decade. CMC urges lawmakers and regulators to avoid measures that could drive these legitimate hedgers from the markets.
- CMC supports that CFTC retain hedge exemptions for financial risk management positions of swap dealers, as well as for physical commercial risk management.
- 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.
- CMC supports reaffirmation of CFTC authority to set limits and exemptions for hedgers including financial hedgers.
- Announcement of revocation of no-action letters after the close of business, not during trading hours, and preferably on a Friday, to give the market time to adjust to implications of the action. Language in the announcement should make it clear that provisions are in place to provide an orderly market transition to minimize market shocks and volatility.

3. Financial Services Reform

CMC membership generally supports centralized clearing of standardized instruments. CMC strongly urges policymakers, however, to 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.

- Contracts should be standardized if the market is deep and highly liquid and if the trade of these contracts provides a significant price discovery function. Regulators should not force instruments to be cleared if they do not meet these criteria.
- Promote U.S. competitiveness and economic growth by ensuring that any financial services reform allows U.S. business to manage risks inherent to their businesses.
- Access to customized derivatives helps businesses maintain operations, invest in new technologies, build new plants and retain and expand workforces in today’s challenging economy.
- CMC supports maintaining the approach laid out in the Shad-Johnson Accord regarding stock index regulation.

4. Provide a Systemic View of All Markets



CMC supports creating a systemic view of the market to protect the entire financial system against broad risks. Such oversight should include the ability to create a comprehensive view of institutional risk portfolios in securities, commodities, futures, credit instruments, OTC traded and other exchange traded instruments.

- CMC would support the Fed as the analytical body tasked to monitor systemic risk.
- CMC also supports CFTC, SEC, and banking regulators maintaining front-line responsibility to take necessary and appropriate action to maintain public confidence in fair and efficient markets.

5. Increase CFTC Resources

Encourage Congress to ensure that CFTC has adequate resources and is fully staffed. Increase the Commission's resources to strengthen CFTC's oversight of regulated exchanges and linked markets.

Expanded monitoring and surveillance are critical to maintaining public confidence in the fairness and equity of futures markets and advances public interest by preventing situations from causing harm to the markets, their users, and the public.

6. Preserve Equitable tax Treatment for Futures and Options Transactions

"60/40" Repeal: CMC strongly opposes any proposal to repeal the long-standing "60/40 Rule," which allows market makers to pay a blend of capital gains and ordinary tax rates on their income for an effective rate of 23 percent. The 60/40 tax treatment was part of a balanced tax formula enacted nearly three decades ago to preserve the role of the market maker after the mark-to-market tax regime was implemented. Any proposal to repeal 60/40 would upset this balance and impair liquidity in U.S. futures markets. As a result the cost of government debt would increase as the ability of participants in treasury market auctions to hedge their exposures in fixed income and interest rate futures markets is reduced.

Transaction Tax: CMC vigorously opposes implementation of transaction taxes on futures and option contracts cleared on U.S. exchanges. Transaction taxes add costs, and if U.S. exchanges are not cost competitive market participants have alternative choices including a growing number of competitive foreign exchanges.

The proposed tax will also fragment liquidity, which is currently centralized on highly regulated markets, and will drive much of that liquidity, along with the price discovery function, onto other less regulated and less transparent offshore markets outside the purview of U.S. regulators.

Sincerely,

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

MICHAEL D. WALTER
President

cc: House Agriculture Committee
House Financial Services Committee
House Energy and Commerce Committee