INSTITUTE FOR AGRICULTURE AND TRADE POLICY

AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY • FAIRNESS • SECURITY

Comment on "Position Limits for Derivatives", 17 CFR Parts 1, 15, 17, 19, 32, 37, 38, and 150 (RIN 3038-AD99; 3038-AD82)[1]

Federal Register (FR) December 4, 2014, pp. 71973-71975

Commodity Futures Trading Commission ("CFTC" "Commission")

Steve Suppan, ssuppan@iatp.org

Institute for Agriculture and Trade Policy (IATP)[2]

January 22, 2015

Submitted electronically

The Institute for Agriculture and Trade Policy (IATP) and Americans for Financial Reform (AFR)[3] appreciate this opportunity to comment on the Commission's re-proposed position limit rule. We thank the CFTC for its consideration of our March 28, 2011[4] and February 10, 2014[5] comments on position limits and will not reiterate those comments here. Our interest in commodity market rules extends beyond agricultural commodities to include energy inputs to agricultural commodities, such as diesel fuel, fertilizer and propane gas, all of whose benchmark prices are set in the futures, options and swaps markets.

Introduction

In the following comment, we respond to some of the questions posed at the CFTC's Agricultural Advisory Committee meeting on December 9, 2014, concerning "Estimating Deliverable Supply in the Context of Spot Month Limits" (Position Limits Questions).[6] These questions are derived in part from the Code of Federal Regulations, Title 17, Chapter 1, Subpart X, Appendix C, "Demonstration of Compliance That a Contract Is Not Readily Susceptible To Manipulation" (Appendix C). The Commission proposes to "re-set the level of each spot month speculative position limit as no greater than 25 percent of the estimated deliverable supply submitted by the designated contract market (DCM or exchange) that lists a core referenced futures contract" (FR, 75728).[7] Our responses to these questions are framed by a substantiated belief that while the proposed spot month speculative position limit may suffice to prevent or deter price manipulation, it is set too high to achieve the other three objectives of the Commodity Exchange Act. As summarized in III.5 (Position Limits Questions, 4), these objectives are to "diminish, eliminate or prevent excessive speculation"; "ensure sufficient liquidity for bona fide hedgers" and "ensure that the price discovery function of the underlying market is not disrupted."

We agree with the Commission's method for selecting agricultural and other commodities to apply the position limits regime, since applying the regime to more commodities would require more budgetary and staff resources. However, we strongly feel that the Commission should increase its frequency of review of both position limit levels and estimated deliverable supply to once every six months, in order to be responsive to changing market conditions. The current frequency of review does not appear adequate to determine whether spot month position limits are properly set to eliminate market manipulation and ensure proper price discovery in the market. Even if one accepts that the current position limits, which are in our view set at an extraordinarily high level, are serviceable in today's market, there is no reason to believe that they will continue to be effective under different market conditions. Notwithstanding our criticisms of the re-proposed position limit rule, we appreciate the Commission's work to implement and enforce its rules in the midst of a virulent anti-regulatory environment.

One context of the Commission's request for comments

The Commission requests that "Comments should be limited to the following issues as they pertain to agricultural commodities: Hedges of a physical commodity by a commercial enterprise; and the process for estimating deliverable supplies used in the setting of spot month limits" (FR 71973-71974). This limitation to the re-opening of the comment period, follows the agenda of the December 9, 2014 meeting of the Commission's Agricultural Advisory Committee.

At that meeting, a CFTC staffer cited a CFTC Federal Register Notice from November 13, 1997: "The Commission believes that to meet the statutory requirement of tending to diminish or prevent price manipulation, market congestion or the abnormal movement of a commodity in interstate commerce, a futures contract should have a deliverable supply, that for all delivery months on the contract, is sufficiently large and available to the market participants that futures deliveries or the credible threat thereof, can assure an appropriate convergence of cash and futures prices."[8] In well-regulated markets, the futures prices forecast and set benchmarks for forward contract prices. Failure to converge results in a dearth of reliable benchmarks for forward contracting, and a credit freeze by rural banks to finance the forward contracting of grains, oilseeds and other agricultural commodities.

In 2007 and 2008, the failure of agricultural (and non-agricultural) futures and prices to converge, particularly in wheat markets, according to a 2009 U.S. Senate report[9], was one of the triggers for the research and legislative process that resulted in the enactment of Title VII of the Dodd Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (DFA). The DFA derivatives title was developed during a period of high and volatile commodity prices. The Organization for Economic Cooperation and Development/ Food and Agriculture Organization's Agricultural Outlook 2013 report forecasts a high price environment based on supply demand factors.[10] Yet DFA authorized rules must help bona fide agricultural hedgers also navigate price risks in the current and near term low agricultural price environment, such as the one that the OECD/FAO Agricultural Outlook 2014 forecasts out to 2023.[11]

In sum, the position limit regime, including position aggregation rules, must be built to serve effectively the price risk management needs of bona fide commercial hedgers, no matter what the supply/demand derived price outlook estimates may be for agricultural and other commodities. These outlook estimates can change rapidly and a position limit regime must enable price discovery for commercial hedgers in low, high or volatile price environments. The exemption of bona fide commercial hedgers from the position limits rule does not ensure the price risk management efficacy of their hedging in core referenced contracts dominated by non-commercial positions. Despite the Commission's request that commenters submit views only on the commercial hedging of agricultural commodities and the Commission's guidance on estimation of deliverable supply, we feel compelled to comment briefly on the non-commercial dominant trading environment in which commercial hedgers trade.

Dodd Frank Position Limit Requirements

The DFA requires the CFTC to set position limits not only to deter price manipulation, but also to "diminish eliminate or prevent excessive speculation,"[12] which may occur even in the absence of demonstrable price manipulation. The dramatic reduction in commercial hedger open interest in commodity markets following the take-off of Commodity Index Funds (CIF) in 2006, as commercial hedging became too expensive in the price-volatile environment created by CIF weight of money and rolling of positions, is a strong indicator of the degree of excessive speculation that the DFA obliges the CFTC to diminish, eliminate or prevent. The impact of energy dominant CIFs on prices and bona fide hedging of agricultural contracted bundled in the CIF has been particularly notable.[13]

The DFA does not give the CFTC discretion to set position limits for spot or non-spot months only for the purpose of preventing or deterring "market manipulation, corners or squeezes." Yet the orientation of the December 9th Agricultural Advisory Committee meeting was clearly and only to discuss non-convergence of futures and cash prices in terms of setting position limits solely to prevent and deter market manipulation. The "Position Limit Questions" posed by the CFTC about methods for estimating deliverable supply likewise appear to assume that a "sufficiently large and available to market participants" deliverable supply will assure price convergence. An assumption made in 1997, however, should not be assumed to suffice in current commodity markets, when exchanges are no longer public utilities but private corporations whose fiduciary duty is to maximize trading fees to maximize shareholder value[14], not to limit market participant positions and thus trading fees.

Prior to and since the December 9 meeting, agribusiness publications have publicized academic research that claims to have discovered, contrary to the U.S. Senate investigation and dozens of academic studies demonstrating excessive speculation in commodity derivatives[15], that non-convergence in wheat prices was the result of a too low storage rate set in the Chicago Board of Trade (CBOT) wheat contract. That research[16] claims to have refuted the evidence that excessive speculation by Commodity Index Traders (CITs) is a major post-2004 factor that explains the price non-convergence and the price volatility that correlates strongly with the CIT rolling of its mostly long-only positions.[17] A Better Markets critique of an Irwin Sanders study, cited in the position limit rule bibliography, denying the existence of excessive speculation, finds that Irwin and Sanders applied inappropriate statistical methods to analyzing the wrong data.[18]

The Commission notes a "lack of consensus" (FR 75695) among commenters, as would be expected among the economists who claim to find no evidence of excessive speculation in 2008 commodity derivatives data and the market analysts who do. Due perhaps to this claimed lack of consensus, the Commission has decided to err on the side of maintaining much of the pre-DFA status quo. It proposes to "re-set" the formula for determining position limits by expanding the number of core referenced contracts to which positions limits apply from the nine legacy (pre-DFA) agricultural contracts to contracts covering 16 agricultural commodities, four energy commodities and five metals commodities (FR 75725). However, expanding the number of core-referenced contracts to which position limits apply may allow excessive speculation to take place legally in more commodities. Such legalized excessive speculation would be enabled by a formula for setting position limits – 25 percent of the estimated deliverable supply as submitted by the DCMs or exchanges – that is oriented to preventing manipulation, per the Commission's Appendix C guidance.

In this context, remedying the non-convergence of futures and cash prices that triggered the commodity derivatives provisions in the DFA is reduced to a problem of contract design. According to one publication, "To solve the non-convergence problem in wheat, the Commodity Futures Trading Commission approved a variable storage rate (VSR) in CBOT wheat futures contracts, beginning with the July 2010 contract expiration."[19] Does the CFTC believe that the VSR has eliminated price non-convergence in wheat contracts? Is the Commission persuaded by the academic analysis that claims to show CITs could not be a price divergence factor and that there is no evidence of excessive speculation in wheat and/or other referenced contracts?

We ask the CFTC to reconsider its decision that the "the definition of `reference contract' proposed in the current rulemaking also expressly exclude[s] commodity index contracts" (FR 75697), since agricultural contracts comprise a significant portion of reported commodity index trading. For example, for the week of October 31, 2014, the notional value of U.S. commodity index trading was $125.7 billion, of which agricultural contracts accounted for $55.9 billion.[20] The Commission requires index traders to report data but will evaluate only a "narrower data set" of referenced contracts to set position limits. By isolating the surveillance of position limit data in index traded agricultural contracts from other reported agricultural positions, the CFTC neglects to evaluate and make rules to prevent three uniquely market-disruptive characteristics of CIFs.

First, CIF contracts are almost always traded long regardless of price, unlike commercial hedgers and traditional speculators who offset their risks with long and short trades to discover prices. For example, in the week of January 13, 2015, swaps dealers, who are major CITs, accounted for 28.6 percent of open interest in Chicago Board of Trade Spring Wheat contracts traded long and just 1.4 percent traded short.[21] A long (almost) only strategy to increase prices injects price insensitive capital that does not offer information to enable bona fide commercial hedgers to discover prices. Even when index funds use an active strategy, such a strategy is not based on hedging needs that reflect actual commercial supply and demand, but instead may simply serve to amplify prevailing market sentiment. CIF positions detract from, rather than contribute to price discovery for commercial hedgers. Second, because of the long term investment horizons of CIF investors (e.g. pension funds, endowments), the repeated and structural volatility induced by the algorithmic rolling of CIF positions, reduces liquidity and increases collateral margin costs for commercial hedgers, forcing some of them to leave the market. Third, the CIF contract composition and weight of money causes price swings in referenced contracts that are otherwise inexplicable according to fundamental factors within each of those contracts.

As two researchers summarized CFTC data on commodity index trading, "At year-end 2008 these [commodity index] funds had grown to more than $250 billion, about one-fourth to one-third of the notional amounts of commodity futures traded on organized exchanges."[22] As commercial hedgers leave the commodity derivatives market, because CIT induced price volatility no longer enables them to effectively manage price risks, that market becomes structurally dominated by non-commercial investors (CITs and traditional speculators combined). It is unrealistic for the Commission to develop position limit rules and guidance to ensure the liquidity requirements and price discovery capacity of agricultural hedgers as if their positions were isolated from those of the dominant non-commercial competition. It is inconsistent with and even contrary to DFA objectives to re-set position limits solely in terms of estimated deliverable supply and contract design to prevent price manipulation.

Responses to some "Position Limit Questions" regarding the commercial hedging of agricultural contracts and estimating deliverable supply

I.1 In your view, is the Commission's guidance appropriate for estimating the deliverable supplies for all 19 core referenced agricultural commodities identified in the proposed rule? Why or why not?

The Commission should make clear that exchange and Designated Contract Market (DCM) capacity to estimate deliverable supply does not endow them with the authority to set position limits. The Chicago Mercantile Group (CME Group) writes, "as the Commission has previously noted, the exchanges have the expertise and are in the best position to fix position limits for their contracts. In fact, this determination led the Commission to delegate to the exchanges authority to set position limits in non-enumerated contracts, in the first instances, almost 30 years ago."[23] This delegation of CFTC authority occurred prior to the deregulatory Commodity Futures Modernization Act (CEMA) of 2000 and the ensuing failure of exchange managed position accountability to prevent excessive speculation and the disruption of price formation for commercial hedgers by non-commercial investors in commodities.[24] Although "[t]he Commission has long relied on the DCMs to protect the integrity of the exchange's delivery process in physical-deliver contracts," (FR 75712) the Commission should consider how it may improve verification of exchange estimated deliverable supply.

The proposed regulation 150.2(e)(3) would require DCMs to submit estimated deliverable supplies for core referenced contracts "no less frequently than every two calendar years" (Position Limit Questions, 2). We do not understand why the required submission is so infrequent. Although some grains and oilseeds may be warehoused without damage for up to two years, other agricultural commodities among the core-referenced contracts cannot be stored for such a long period without violating exchange quality requirements. We urge the Commission to stipulate a more frequent submission of estimated deliverable supply, together with an appendix that describes how and the extent to which climate change is affecting both agricultural supply and transportation (e.g. barge carrying capacity in drought affected rivers) in the position limit referenced contracts.

We recommend that exchanges and DCMs submit estimated deliverable supplies every six months and that spot month position limits be reviewed for possible re-setting every six months. DFA mandated improvements in DCM and exchange data quality submission should enable both position limit re-setting at this frequency and surveillance of data to ensure compliance with position limits.[25] In our view, these position limits should be set low enough to restore a commercial hedger majority in open interest in each core referenced contract, as was the case prior to the CFMA.[26]

I.3 Regarding long-term supply contracts as confidential business information

Since the Commission relies on DCMs to provide estimated deliverable supply, and the DCMs rely on confidential business information concerning the amount of supply committed to long-terms contracts, the Commission should seek to verify the long-term contract data/information. Insofar as the DCM excludes long-term committed supply from the estimation of deliverable supply, the DCM should provide the Commission with documentation to enable the Commission to verify the aggregate of long-term committed supply for each core referenced contract. The

Commission should publish the aggregate (not contract party specific) long-term committed supply that is excluded from the estimated deliverable supply used to set the spot month position limit for each core referenced contract.

IATP could not find a regulatory definition of "long-term contracts." Because commodities supplied in long-term contracts are excluded from the estimated deliverable supply, the Commission should propose a definition that includes contract duration and other characteristics.

I.4 Regarding the incorporation of commodities that do not meet exchange delivery specifications in the estimated deliverable supply

If a core reference commodity "currently" fails to meet exchange specifications, e.g. the moisture content of CBOT No. 2 yellow corn is too high (enabling mycotoxin growth and deceptive weighing), we do not understand how such a commodity could be incorporated into the estimated deliverable supply for the purpose of setting a position limit that could be consistently enforced. At what point during a period of contract compliance would the exchange inform the CFTC that a shipment of the core referenced commodity had newly complied with exchange requirements? How would the CFTC verify such compliance? How would the CFTC resolve possible interagency disputes with the Grain Inspection Service concerning grain quality or with the Food Safety Inspection Service or the Animal and Plant Health Inspection Service? We advise the Commission not to include non-compliant commodities in the estimated deliverable supply, because doing so would add to the administrative burden of an agency that is under-budgeted and under-staffed relative to its statutory duties and the dramatic growth of markets under its authority.

II.1 What consideration, if any, should the Commission give to the settlement method (physical delivery or cash settled) for a particular contract in assessing whether the deliverable supply estimate and proposed spot month speculative position limit levels are reasonable?

We support the position of the Commodity Markets Oversight Coalition that the Commission should not establish a separate conditional spot month position limit for cash settled contracts that would be five times the proposed spot month for physically deliverable contracts, i.e. 125 percent of estimated deliverable supply.[27] It is unreasonable for the Commission to allow non-commercial investors, including CITs, to benefit from a yet higher position limit that is very likely to result in migration of physically deliverable contracts to the economically equivalent cash settled trades in the core-referenced contracts. This migration is very likely to disrupt price discovery and liquidation of physically deliverable contracts, thus failing to comply with at least three of the DFA objectives for commodity derivatives trading. Since cash-settled contracts are not required to have an estimated deliverable supply that is five times as great as that for physically deliverable spot month contracts, we advocate parity for spot month and conditional spot month limits, with the proviso that the Commission lower its spot month position limit formula from its proposed level of 25 percent of estimated deliverable supply for each core referenced contract.

III.1 What standard should be applied to the Commission's verification of whether an exchange's estimated deliverable supply is reasonable?

The first standard is whether the exchange or DCM submits to the Commission comprehensive data and information requested in the Appendix C guidance. If such data and information is not supplied in full and in time for the Commission to determine whether the estimate is reasonable, the Commission should give the exchange a one-time extension to submit the missing or faulty data/information. If that data/information is still not forthcoming, the Commission should begin an independent auditing process for determining the estimated deliverable supply per contract and DCM.

III.2 If the Commission does not verify a DCM's estimate as reasonable, what discretion should the Commission exercise in adopting its own spot month speculative position limit level given a particular deliverable supply estimate?

Should the Commission find that deliverable supply estimates from DCMs are not reasonable, the Commission can and should exercise its own discretion to ensure that the statutory objectives for proper market functioning are met. Triggers for exercising that discretion could include 1.) an unusual portion of estimated deliverable supply excluded by DCMs due to claims of long-term commitment or an "uneconomical" supply of a core referenced commodity; 2.) repeated violations of a spot month position limit or conditional spot month limit that could call into question whether the DCM's estimated deliverable supply is reasonable; 3.) discovery that an unverifiable and erroneous DCM estimate of deliverable supply is preventing realization of any or all of the four main DFA objectives for commercial hedging of commodity derivatives contracts.

III.3 Is the guidance in Appendix C in Part 38 sufficiently specified to be used as a method by the Commission, in the event the Commission determines to rely on its own estimate of deliverable supply in re-setting the levels of the spot month limits?

In general, the Appendix C guidance is sufficiently specified to be used by the Commission as a method for estimating deliverable supply. However, the Commission should develop additional guidance on the definitions and criteria for the exclusion from deliverable supply estimates of long-term commitments of supply. The Commission should ask the DCMs to submit the criteria and definitions according to which they exclude "uneconomical" supplies from the estimated deliverable supply, including the duration of the exclusions and the conditions under which such supplies might be included in the estimated deliverable supply. The DCMs should also provide an annual estimate of what portion of supplies of a core-reference contract are excluded as "uneconomical" from the estimated deliverable supply. The Commission should evaluate the effect of the long-term and uneconomical supply exclusions on the efficacy of the position limit regime for achieving the four objectives of the CEA, as modified by the DFA.

III.4 What concerns do you have regarding the use of estimated deliverable supply as a basis for setting spot month speculative position limits?

Financial Holding Companies (FHCs) are permitted by the Federal Reserve Bank to own, warehouse and trade physical commodities as "complementary activities" to their main business. Information provided to the Federal Reserve about these "complementary activities" is remarkably sparse, and the federal oversight of the owning and trading of physical commodities by banks is even sparser, and honeycombed with interagency jurisdictional conflicts.[28] FHC's are thus legally able to influence the deliverable supply that is a basis for setting position limits in the core referenced commodities that are traded by their swaps, futures and options desks. FHCs already have huge competitive advantages over both commercial hedgers and non-commercial market participants, e.g. access to credit at the Fed's lowest rates, and the implicit subsidy such access provides for their cost of credit. FHCs are also particularly well-positioned to inform the DCMs to exclude from the estimated deliverable supply commodities in the core-reference contracts supplies that they judge to be uneconomical, e.g. currently WTI crude oil.[29]

The Commission should consult with the Federal Reserve Bank about how to obtain data/information on the FHC deliverable supply of core-referenced commodities in order to determine whether, to what extent and when FHC physical trading and control of commodity delivery infrastructure might influence the estimated deliverable supply for the core referenced contract commodities.

III.5 Regarding estimated delivery supply in the core referenced commodities for setting spot month position limits in order to achieve the four main objectives of the Commodity Exchange Act, as modified by the DFA

As noted above, we believe that in order to realize all four of the main objectives of the CEA, as modified by the DFA, the Commission should include CIFs as core reference contracts subject to position limits. The proposed position limit spot month rule and the Appendix C guidance are designed only to prevent or deter price and supply manipulation, a necessary but insufficient objective.

CIFs that are structured, marketed and traded by the swaps, futures and options desks of FHCs merit the particular scrutiny of the Commission, if the FHCs hold positions in the core referenced contracts of commodities that they also warehouse, control and trade physically.

IV.2 How, if at all, should the Commission consider seasonality of the core-referenced agricultural commodities – legacy and other agricultural commodities -- in the implementation of newly determined spot month speculative position limits?

The Commission has ample experience with the estimated deliverable supply of the legacy contracts, and so understands seasonality issues with those contracts. The Commission should request that the DCMs provide information about seasonality for the non-legacy core-referenced agricultural contracts, insofar as seasonality complicates submission of the documentation to verify the estimated deliverable supply for each core-referenced contract.

IV.3 Should there be a restriction on how much the Commission could reduce a spot month speculative position limit for a particular commodity in one biennial cycle?

We do not believe that there should be a restriction on the extent to which a spot month speculative position limit may be reduced. The proposed spot month limit level is set so high that few traders will violate it, so frequency of violation should not be the trigger for lowering. The Commission should survey commercial hedgers anonymously and periodically to determine if the position limit regime enables successful hedging at reasonable costs in the core referenced contracts. Seeking such information in Commission Advisory Committees about the efficacy of the position limits regime in achieving all four of the DFA objectives will not produce the full and frank evaluation of the re-set position limits that the Commission requires. Commercial hedgers, especially smaller scale traders, likely will be reluctant, for commercial competitive reasons, to criticize position limits endorsed by the DCMs, associations representing the interests of FHCs and other non-commercial investors, and the largest commercial hedgers, who also trade swaps in all asset classes, not just commodities.

If open interest in the core referenced contracts continues to be dominated by CIFs and traditional speculators, the Commission should gradually re-set position limits to enable commercial hedgers to become the dominant class of traders in the core-referenced contracts and their economic equivalents. The CFTC should oversee the DCMs to enable them to serve the needs of commercial hedgers first and foremost. Commodities are too important an asset class for the Commission to allow them to be used for purported portfolio diversification for investors with no commercial interest in commodities.

Conclusion

We hope that our comments and responses to questions will assist the Commission as it finalizes the long overdue re-setting of the position limit regime. We believe that the Commission will find it necessary to reduce position limit levels, and hope that they will not wait two years to review position limit levels to determine the need to do so. As stated above, position limits should be reviewed on a much more frequent basis, and we suggest doing so every six months. Equally important is that all market participants provide the Commission with uniformly coded data with agreed data elements to ensure that computer enabled surveillance of that data will prevent excessive speculation and violation of the position limits before the Commission has to write no action reprimands or undertake enforcement actions.

Endnotes

1. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-27200a.pdf.

2. IATP is a nonprofit, 501(c)(3) nongovernmental organization, headquartered in Minneapolis, Minn., with an office in Washington, D.C. Our mission states, "The Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems." To carry out this mission, as regards commodity market regulation, IATP has participated in the Commodity Markets Oversight Coalition (CMOC) since 2009, and the Derivatives Task Force of Americans for Financial Reform since 2010. IATP has submitted several comments on CFTC rulemaking, and on consultation papers of the International Organization of Securities Commissions, the Financial Stability Board, the European Securities and Markets Authority, and the European Commission's Directorate General for Internal Markets.

3. AFR is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups. A list of AFR member organizations is available at http://ourfinancialsecurity.org/about/our-coalition/.

4. http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=33809&SearchText=Institute%20for%20Agriculture%20and%20Trade%20Policy.

5. http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59711&SearchText=Americans%20for%20Financial%20Reform

6. http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/generic/aac_positionlimitsquestions.pdf

7. Ibid., footnote 3.

8. Christa Lachenmayr, "Deliverable Supply: Agricultural Commodities," Commodity Futures Trading Commission, December 9, 2014, Slide 2 (without author's emphases). http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/aac120914presentations_lachenm.pdf.

9. "Excessive Speculation in the Wheat Market," Permanent Subcommittee on Investigations, U.S. Senate, June 24, 2009 http://levin.senate.gov/newsroom/supporting/2009/PSI.WheatSpeculation.062409.pdf.

10. http://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-agricultural-outlook-2013_agr_outlook-2013-en

11. http://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-agricultural-outlook_19991142.

12. CEA section 4a(a)(3); 7 U.S.C. 6a(a)(3).

13. David Frenk and Wallace Turbeville, "Commodity Index Traders and Boom/Bust in Commodities Prices," Better Markets, 2011, at 6-29. https://www.bettermarkets.com/sites/default/files/Better%20Markets-%20Commodity%20Index%20Traders%20and%20Boom-Bust%20in%20Commodities%20Prices.pdf.

14. http://www.professorbainbridge.com/professorbainbridgecom/2012/05/case-law-on-the-fiduciary-duty-of-directors-to-maximize-the-wealth-of-corporate-shareholders.html.

15. E.g. see the bibliography compiled by Markus Henn, "Evidence on the Negative Impact of Commodity Speculation by Academics, Analysts and Public Institutions," November 26, 2013, WEED. Available at http://www2.weed-online.org/uploads/evidence_on_impact_of_commodity_speculation.pdf and in particular, Benoit Guilleminot, Jean-Jacques Ohana and Steve Ohana, "The Interaction of Speculators and Index Investors in Agricultural Derivatives Contracts," March 18, 2013, revised December 30, 2013. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2253374.

16. Irwin and Sanders, OECD Food, Agriculture and Fisheries Working Paper No. 27, "The Impact of Index and Swap Funds on Commodity Futures Markets," 2010, available at http://www.oecd.org/dataoecd/16/59/45534528.pdf.

17. For data on the effect of the rolling of Commodity Index Fund positions on price volatility, see Better Markets, “Comment on Position Limits for Derivatives,” February 10, 2014, at 15-17. https://www.bettermarkets.com/sites/default/files/CFTC-%20CL-%20Position%20Limits-%202-10-14-%20Final.pdf.

18. David Frenk et al, “Review of Irwin and Sanders 2010 OECD Reports,” https://www.newconstructs.com/wp-content/uploads/2010/10/FrenkPaperReutingOECDStudy_IrwinAndSanders.pdf.

19. Krissa Welshans, “Non-convergence in grain markets solved,” Feedstuffs, January 12, 2015.

20. “Index Investment Data: In U.S. Dollars and Futures Equivalent Contracts,” Commodity Futures Trading Commission, October 31, 2014. http://www.cftc.gov/ucm/groups/public/@marketreports/documents/file/indexinvestment1014.pdf

21. Commitment of Traders, Commodity Futures Trading Commission, January 13, 2015. http://www.cftc.gov/dea/futures/ag_lf.htm.

22. Parantap Basu and William J. Gavin, “What Explains the Growth in Commodity Derivatives?” Federal Reserve Bank of St. Louis Review, January-February 2011, at 39. http://research.stlouisfed.org/publications/review/11/01/37-48Basu.pdf.

23. FR 75695, footnote 147.

24. Eric Lipton, “Gramm and the Enron Loophole,” The New York Times, November 17, 2008.

25. The current failure of Swaps Data Repositories to make data on agricultural swaps available to the Commission is unacceptable. Since DFA authorized rules apply to swaps, as well as to futures and options contracts, the lack of timely and detailed reporting on agricultural swaps impedes the implementation and enforcement of the Commodity Exchange Act, as modified by the DFA.

26. Better Markets, “Comment on Position Limits for Derivatives”, February 10, 2014, at 6-8.

27. “Supplemental Comments on Proposed Conditional-Spot-Month Limits”, Commodity Markets Oversight Coalition, August 31, 2011. http://www.nefiactioncenter.com/PDF/cmocltraugust2011conditionalspotmonthlimits.pdf.

28. Saule T. Omarova, “The Merchants of Wall Street: Banking, Commerce and Commodities”, Minnesota Law Review, Vol. 98 (2013), 265-355, and Bartlett Naylor, “Big Banks, Big Appetites: The Consequences When Banks Swallow Commodities”, Public Citizen, April 4, 2014. http://www.citizen.org/documents/banking-commodities-consequences-repport.pdf.

29. For more on this issue, see IATP’s April 15, 2014 comment letter to the Federal Reserve Bank at http://www.federalreserve.gov/SECRS/2014/May/20140506/R-1479/R-1479_041514_123608_376251926537_1.pdf