



AMERICAN PUBLIC GAS ASSOCIATION

April 22, 2010

VIA E-MAIL: secretary@cftc.gov

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: "Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule," 75 *Fed. Reg.* 4144 (January 26, 2010).

Dear Mr. Stawick:

The American Public Gas Association ("APGA") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") "Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule," 75 *Fed. Reg.* 4144 (January 26, 2010) ("Notice"). The Notice proposes to implement speculative position limits for futures and options contracts and for certain contracts that are Significant Price Discovery Contracts ("SPDC") traded on an exempt commercial market on specified energy commodities. The Notice also proposes several related exemptions.

APGA

APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states and over 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

Proposed rules in general

The Commission proposed to set speculative position limits on four energy commodities: (1) Henry Hub natural gas; (2) light sweet crude oil (West Texas Intermediate); (3) New York Harbor No. 2 heating oil; and (4) New York Harbor gasoline blendstock. The Commission is proposing to set hard position limits in natural gas that, for the first time, would apply both across markets (the New York Mercantile Exchange ("NYMEX") and the Intercontinental

Exchange (“ICE”) as well as to each market individually. The Commission in setting the levels of the speculative position limits relied upon a formula derived from current rules that apply to agricultural commodities. In addition, the Commission has proposed a new exemption from position limits that would apply to swap dealers.

These rules were proposed following three days of hearings to gather opinion and data on this issue.¹ APGA applauds the Commission for holding these hearings and for bringing a high degree of transparency and public involvement to the discussion of the issue of speculative position limits. The Commission in the Notice reasons that, “Large concentrated positions in the energy futures and option markets can potentially facilitate abrupt price movements and price distortions.”² The Commission further states that, “when large speculative positions are amassed in a contract, or contract month, the potential exists for unreasonable and abrupt price movements should the position be traded out of or liquidated in a disorderly manner.”³ Finally, the Commission notes that, “concurrent trading in economically similar and equivalent energy futures and option contracts on multiple exchanges effectively creates a single but fragmented market for such contracts.”⁴ Based on these findings, the Commission has proposed aggregate speculative position limits that apply across multiple markets.

APGA’s members concur with these findings and with the Commission’s proposal to adopt Commission-set aggregate speculative position limits on natural gas contracts traded on NYMEX and ICE. APGA further agrees that the proposed speculative position limits, particularly the application of an aggregate limit across markets on which contracts on the same commodity are traded, are necessary to reduce or diminish the recent unwarranted price volatility in the futures and option markets for natural gas. Accordingly, APGA’s members believe that the Commission’s approach is a good first step in addressing the recent increased volatility in the natural gas markets.

History of speculative position limits under the Commodity Exchange Act

Systemized trading in contracts for the future delivery of agricultural commodities developed in the United States in the mid to late 1800s from an economic need for risk shifting. Glaring abuses were attendant with the advantages of trading, these included price manipulations, market corners and extreme and sudden price fluctuations on the organized exchanges. These abuses stirred repeated demands for legislative action to prohibit or comprehensively regulate futures trading. Although the first regulation of the grain futures markets dates from the 1920’s,⁵ the Commodity Exchange Act of 1936⁶ was the first statute to comprehensively regulate the futures markets.

Section 3 of the Act as it existed before the 2000 amendments explained the statute’s purpose in relevant part as follows:

¹ “CFTC to Hold Three Open Hearings to Discuss Energy Position Limits and hedge Exemptions,” CFTC Release 5681-09 (July 21, 2009)

² Notice at 4148.

³ *Id.* at 4149.

⁴ *Id.*

⁵ See, Grain Futures Act of 1922, Publ. L. No. 6-331, 42 Stat. 998 (1922).

⁶ Act of June 15, 1936, ch 545 §5, 49 Stat 1494.

Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as “futures” are affected with a national public interest. Such futures transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof. . . . The prices involved in such transactions are generally quoted and disseminated through the United States and in foreign countries as a basis for determining the prices to the producer and the consumer. . . .The transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer. . . .

Section 4a(a) of the Act echoes the Congressional finding of former section 3, providing that, “Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets . . . causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.” 7 U.S.C. §6a.

The CFTC in 1981 adopted a rule requiring all futures exchanges to impose speculative position limits for all commodities that were not subject to a Federal speculative position limit.⁷ In so doing, the Commission explained the danger that unchecked speculative positions can pose to the markets, saying:

It appears that the capacity of any contract market to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, i.e., the capacity of the market is not unlimited. Recent events in the silver market would support a finding that the capacity of a liquid futures market to absorb large speculative positions is not unlimited, notwithstanding mitigating characteristics of the underlying cash market.

“Establishment of Speculative Position Limits,” 46 *Fed Reg.* 50938, 509040 (October 16, 1981).

Subsequently, the Commission permitted a number of contracts to be exempt from the requirement that the exchange impose a speculative position limit, permitting instead that the exchange impose a “position accountability rule.”⁸ These exemptions were based on the liquidity of the futures and cash markets for such commodities. Tangible commodities, such as energy, were permitted to have a position accountability rule only for the back months; spot month speculative position limits were still required. The position accountability exemptions were codified by the Commission at 17 C.F.R. §150.5(e).

Finally, Section 13201 of the CFTC Reauthorization Act of 2008 provided that various core principles shall apply to exempt commercial markets on which Significant Price Discovery

⁷ The Commission subsequently modified this requirement, permitting contract markets to impose “position accountability rules” in lieu of speculative position limits for certain contracts, including the energy contracts.

⁸ See “Revision of Federal Speculative Position Limits and Associated Rules,” 63 *Fed. Reg.* 38525 (July 17, 1998) for an explanation of the position accountability exemptions.

Contracts (“SPDCs”) are traded. Core Principle IV requires such an electronic trading facility to adopt position limitations or position accountability for speculators in SPDCs, taking into account positions in other agreements, contracts, and transactions that are treated by a derivatives clearing organization as fungible with such SPDCs.

The rules that the Commission is proposing continues to build upon the foundation of these prior actions and of the new authority provided in the CFTC Reauthorization Act of 2008.

Necessity for Commission speculative position limits

As hedgers using both the exchange and the OTC energy markets, APGA’s members value the role of speculators in the markets. We also value the different needs served by the futures exchanges, markets trading SPDC contracts and the more tailored OTC markets. As hedgers, public gas systems depend upon liquid and deep markets in which to manage our risk. Speculators provide needed liquidity and depth to the markets.

However, speculative trading strategies may not always have a benign effect on the markets. For example, the dramatic collapse of Amaranth Advisors LLC and the impact it had upon prices exemplifies the adverse impact that speculative trading interests can have on natural gas supply contracts for local distribution companies (“LDCs”). Amaranth Advisors LLC was a hedge fund based in Greenwich, Connecticut, with over \$9.2 billion under management. Although Amaranth classified itself as a diversified multi-strategy fund, the majority of its market exposure and risk was held by a single Amaranth trader in the OTC derivatives market for natural gas.

Amaranth reportedly accumulated excessively large long positions and complex spread strategies far into the future. Amaranth’s speculative trading wagered that the relative relationship in the price of natural gas between summer and winter months would change as a result of shortages which might develop in the future and a limited amount of storage capacity. Because natural gas cannot be readily transported about the globe to offset local shortages, the way for example oil can be, the market for natural gas is particularly susceptible to localized supply and demand imbalances.⁹ A report by the U.S. Senate Permanent Committee on Investigations affirmed that “Amaranth’s massive trading distorted natural gas prices and increased price volatility.”¹⁰

Many natural gas distributors locked in prices prior to the period Amaranth collapsed at prices that were elevated due to the accumulation of Amaranth’s positions. They did so because their risk management policies require that they hedge part of their winter natural gas in the

⁹ Amaranth’s strategy was reportedly based upon a presumption that hurricanes during the summer of 2006 would make natural gas more expensive in 2007, similar to the impact that hurricanes Katrina and Rita had had on prices the previous year. As reported in the press, Amaranth held open positions to buy or sell tens of billions of dollars of natural gas. As the hurricane season proceeded with very little activity, the price of natural gas declined, and Amaranth lost approximately \$6 billion, most of it during a single week in September 2006. The unwinding of these excessively large positions and that of another previously failed \$430 million hedge fund—MotherRock— further contributed to the extreme volatility in the price of natural gas.

¹⁰ See “*Excessive Speculation in the Natural Gas Market*,” Report of the U.S. Senate Permanent Subcommittee on Investigations (June 25, 2007) (“PSI Report”) at p. 119

spring and summer. Accordingly, even though natural gas prices were high at that time, it would have been irresponsible (and contrary to their risk-management policies) to not hedge a portion of their winter gas in the hope that prices would eventually drop. Thus, the elevated prices which were a result of the excess speculation in the market by Amaranth and others significantly increased the cost of natural gas for many of APGA's members, and ultimately for their customer rate payers.¹¹

Additional concerns have been raised with respect to the size of positions related to, and the role of, passively managed long-only index funds. In this instance, APGA's concern is not whether the positions are being taken in order intentionally to drive the price higher, but rather whether the unintended effect of the cumulative size of these positions has been to push market prices higher than the fundamental supply and demand situation would justify. A similar concern arises from futures positions in natural gas that are held in connection with investment instruments traded on securities exchanges through Exchange Traded Funds or issues of Exchange Traded Notes which overlie those futures contracts.

Necessity for integrated, cross-market speculative position limits

The market for natural gas financial contracts is composed of a number of segments. Among APGA's members are active participants in all segments of the market for natural gas. For example, public gas systems depend upon the physical commodity markets in natural gas to source their supplies. Often, these contracts are long-term natural gas supply contracts at prevailing market prices. Many members hedge these long-term sourcing contracts in one or more of the exchange-traded, exempt commercial or over-the-counter ("OTC") market segments, actively trading on NYMEX, ICE or over-the-counter. Together, these markets play a critical role in our member-utilities securing natural gas supplies at stable prices for their communities. For this reason, APGA supports an integrated approach to the various market segments.

Cash-settled contracts in natural gas often are settled based upon NYMEX settlement prices and OTC contracts may draw upon the same physically-deliverable supplies as NYMEX contracts. Thus, cash-settled and physically-delivered contracts for the same commodity traded in all three markets are economically linked and can be arbitrated. This was vividly illustrated by Amaranth reestablishing its position on ICE when NYMEX voiced concerns over the excessively large size of Amaranth's position.

APGA believes that the recent acute volatility in the natural gas markets clearly demonstrates the need for a single, integrated speculative position limit that applies to both physical-delivery and cash-settled contracts traded on exchanges and exempt commercial markets set at levels that will accomplish the goal of diminishing, eliminating or preventing the burden of price volatility caused by excessive speculation.¹²

APGA believes that the proposed rules will provide enhanced protections to the markets and that the proposed Commission-set speculative position limits are important additional tools to assure the price integrity of these important markets. Nevertheless, APGA believes that

¹¹ One APGA member has quantified its loss due to this unwarranted price fluctuation as \$18 million.

¹² See 7 U.S.C 6a.

several modifications to the rules as proposed would enhance their effectiveness and more completely achieve the intended goals of Section 4a of the Act. APGA recommends that the Commission reconsider three aspects of the rules as proposed. These are:

- 1) Reduce the proposed levels of the speculative position limits. In this regard, APGA strongly believes that the Notice proposes to set the levels so high that the speculative position limits would be largely ineffective in achieving their purpose of reducing or diminishing excessive speculation and the unwarranted price movements caused thereby.
- 2) Apply a single, integrated spot month limit to all contracts on the same commodity, across markets and regardless of the nature of the settlement procedure. The very high level at which the limits are set is exacerbated by not applying an aggregate speculative position limit across markets in the spot month and by not applying a single unified speculative position limit to physically and cash-settled contracts.
- 3) Enhance the proposed large trader reporting system as a first step in addressing the issue of limiting the size and effect of passive, long-only traders. The Notice does not propose a means for addressing the important and significant challenges posed by passive, long-only traders. The first step in doing so is to collect and make public better data tracking the over-all size of passive, long only traders in the markets.

With this in mind, APGA offers the following specific comments on the proposed rules.

Proposed levels are too high

The Commission itself notes that “the proposed framework sets high position levels that are at the outer bounds of the largest positions held by market participants” Notice at 4161. The Commission further notes that had the proposed speculative position limit levels been in effect during the years 2008 and 2009, only one trader in natural gas would have been affected.¹³

The result of the Commission’s own analysis points to the fact that the proposed limit levels in natural gas will have no constraining effect on even the largest speculative traders in the natural gas markets. The proposed speculative position limit in natural gas in 2008-2009 would have only constrained the position of a single outlier, demonstrating that the limits as proposed will be ineffective in carrying out the Congressional mandate of section 4a of the Act.

The proposed formula-based approach to speculative position limits on its face has not yielded a meaningful result in respect of the natural gas markets. The Notice raises the question of whether customary position sizes held by speculative traders should be a factor in moderating the limit levels proposed by the Commission.¹⁴ APGA’s members believe that it is absolutely necessary that the Commission moderate the limits proposed if they are to have any effect whatsoever. Customary position size is a method for setting speculative position limits which

¹³ Statement of Steve Sherrod, Acting Director of Surveillance, http://www.cftc.gov/ucm/groups/public/@newsroom/documents/speechandtestimony/proposedrule011410_sherrod2.pdf, at 7.

¹⁴ See Question 6, Notice at 4162.

has been used by the Commission in the past as an alternative to the formula-based approach of the proposed rules. The Commission has available to it large trader data through which it is possible to observe the distribution of traders in a market ranked by the size of their positions. Using this approach, it is possible for the Commission to determine the size of positions customarily held in the market and to set a speculative position limit that is effective in constraining traders that are unduly large relative to most traders in the market. Such an approach is an effective means for ensuring that the speculative position limit will not be set a level that degrades the market's liquidity, but which is effective in curtailing excessively large speculative positions.

Integrated limits should apply in the spot month

The determination of whether to apply position limits consistently across all markets and participants is perhaps the single most important issue for the energy market. As we noted above, the various market segments for energy contracts are economically linked, and actions in one market segment can affect prices in the other segments. Recent events in the economically linked markets for natural gas have shown the danger of traders being able to move positions from one market to another in order to evade application of a market's position accountability rule or position limit.¹⁵ A unified limit administered by the Commission across all markets (in addition to the limits adopted and administered by each separate market) would effectively address this issue and provide an effective and meaningful limitation on the total size of positions that a trader could amass in the delivery month.

APGA therefore strongly supports the use of spot month speculative position limits aggregated across markets. Spot month limits are a proven and effective tool for addressing markets with constrained deliverable supplies, which is typical of the markets for natural gas. Under the Commission's proposal, however, the spot month speculative position limit is proposed to be set at 25% of open interest for each "class" of contract. "Contracts of the same class" are proposed to be defined as contracts on a particular commodity on a single reporting market that are delivered in the same manner. Moreover, cash-settled contracts that settle on separate days are each permitted a separate limit. Finally, as permitted under market rules, cash settled contracts are permitted a position that is five times the spot month limit if the trader files a special spot-month report on its activities and does not also hold physically-delivered positions in the spot month.

The Commission recognizes that spot month limits are vitally important because they apply during a concentrated period of time of "heightened potential for manipulation, corners, squeezes as well as excessive speculation." But yet, it is precisely during this time, when speculative position limits most matter, that the Commission proposes to back away from integrated limits that apply across markets. By not establishing an integrated cross market speculative position limit, the Commission is permitting a single trader to amass an outright position that is equivalent to one-half of the total available deliverable supplies.¹⁶

¹⁵ See "Excessive Speculation in the Natural Gas Market," Report of the U.S. Senate Permanent Subcommittee on Investigations (June 25, 2007) ("PSI Report").

¹⁶ APGA recognizes that the current SPDC contracts in natural gas listed on ICE are cash-settled, however, the linkage between the contracts will nonetheless exert pressure on the market even if only one market calls for

Moreover, a speculative trader with positions in cash-settled contracts could under this proposal, qualify for a conditional spot month limit as permitted under exchange rules which is five times the spot month limit. The effect of this provision is to permit a single speculator to amass a position in cash-settled contracts that is well in excess of total deliverable supplies. As proposed, such traders would be subject to an additional reporting requirement, which the Commission reasons “would facilitate the Commission’s surveillance program with respect to detecting and deterring trading activity that may tend to cause sudden or unreasonable fluctuations or unwarranted changes in the process of the referenced energy contracts and their underlying commodities during the spot month.”¹⁷

However, unlike enhanced reporting requirements, speculative position limits are a prophylactic tool to diminish and discourage manipulative and other abusive market activities. Experience tells us that there is never a shortage of individuals or interests who believe that they can, and will attempt to, affect the market or manipulate price movements to favor their market position. The significant penalties assessed by the Commission and the settlements it has accepted relating to abuse of the energy markets affirms this. However, it must be borne in mind that catching and punishing those that manipulate markets after a manipulation has occurred does not remedy the harm suffered by our members and their customers caused by manipulated natural gas prices. Thus, enhanced spot month reports are not a surrogate for spot month limits in cash-settled contracts that are set at the same level as physically-delivered contracts—one-quarter the available deliverable supply.

The Commission also proposes to define as a separate class contracts that expire on separate days of the spot month. The Commission reasons that in this way, long and short positions in contracts expiring on different days “would be subject to spot-month position limits for each contract.” The Commission explained that in contrast, “outside of the spot month, each leg of this spread would be considered to be in the same class and therefore subject to netting.” APGA appreciates that the goal of the Commission in proposing this rule is to prevent speculative traders from constructing spread positions that when netted are below the overall spot month speculative position limit but which act as though they are economically independent on each separate settlement day. However, this also permits speculative traders to hold outright positions that are a multiple of the spot month limit.

The Commission has addressed a similar concern with respect to inter-crop year spreads in agricultural commodities by permitting the netting of positions within the same crop year but not across crop-years.¹⁸ Because each separate cash-settlement date during the delivery month acts independently, the Commission could apply the same rationale to natural gas contract as it does to agricultural contracts by applying the single spot-month limit to all cash settlement days in aggregate and to permit netting only for positions that settle on the same day. Positions that cash-settle on different days would not be permitted to be netted. In this way, the Commission

physically-delivered contracts. Moreover, if ICE were to adopt physical delivery contracts natural gas contracts, they would still be entitled to a separate spot month limit.

¹⁷ Notice at 4159.

¹⁸ See, 17 C.F.R. §150.3(a)(3).

could achieve the goal of the proposed contract class rule in the spot month without also permitting a speculative trader to hold an overall position that is a multiple of the limit.

Passive, long-only traders

The Commission has not proposed rules that would apply particular speculative position limits to passive, long-only traders. APGA notes, however, that passive, long-only traders are a relatively new, but increasingly significant category of trader. At least one commentator has observed that as of the middle of 2009, passive, long only traders had substantially increased their crude oil holdings over the previous year.¹⁹

Concerns have been raised with respect to the size of positions related to, and the role of, passively managed long-only index funds. In this instance, the concern is not whether the positions are being taken in order to intentionally drive the price higher, but rather whether the unintended effect of the cumulative size of these positions, has been to push market prices higher than the fundamental supply and demand situation would justify. Such long-only traders may trade directly in the futures markets or may affect the futures market indirectly through the long-only traders purchase of OTC swaps, the risk of which are then transferred to the futures markets. Similarly, investment instruments which overlie contracts on natural gas may also be traded on securities exchanges through Exchange Traded Funds or issues of Exchange Traded Notes.

The concerns raised with respect to these passive, long-only traders is that the additional inflows of speculative capital are creating greater demand than the market can absorb, thereby increasing buy-side pressure which results in advancing prices. As noted above, the Commission in its initial adoption of the requirement that exchanges implement speculative position limits, reasoned that

the capacity of any contract market to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, i.e., the capacity of the market is not unlimited.²⁰

APGA believes that although the Commission has not proposed a specific limit that would apply to passive, long-only investors, the issues raised by the growing presence of these traders in the markets will become increasingly significant over time. Accordingly, as a first step in answering the questions that the Commission has raised, APGA recommends that the Commission further refine its large trader reporting data and provide the market with greater transparency on the extent of passive, long only participation in the market through its Commitment of Traders Reports.

¹⁹ "Hearing on Speculative Position Limits in Energy Markets," <http://www.cftc.gov/newsroom/cftcevents/2009/oeaevent072809.html> (July 28, 2009)(testimony of Sean Cota, citing Moming Zhou, "As Oil Rallies, Passive Investors Increase Their Holdings," in MarketWatch, <http://www.marketwatch.com>.)

²⁰ "Establishment of Speculative Position Limits," 45 *Fed. Reg.* 5093850940 (October 16, 1981).

The Commission recently began reporting the positions of swaps dealers separately in its Commitment of Traders Reports for agricultural commodities. This has provided greater understanding of their significance to the market and has better informed the debate of exempting such entities from speculative position limits. Although the Commission is providing quarterly data with respect to passive, long only traders, providing such information on a more frequent basis with respect to energy commodities, for example as part of the Commission's Commitment of Trader's Report, would assist in shaping proposed speculative position limits rules that would apply specifically to this class of trader.

Swap-dealer exemption

The Commission has proposed an exemption applicable to swap-dealers of twice the applicable speculative position limit. In proposing this exemption, the Commission reasons that,

swap dealers can perform an important economic function by taking on risks to accommodate the specific hedging and risk management needs of various customers. Swap dealers often are able to aggregate and standardize these otherwise particularized risks, and in turn, enter in commodity futures and option contract to manage them.

Notice at 4160.

As a consequence, the Commission is proposing that swaps dealers be permitted to apply to the Commission for an exemption for non-spot months of up to twice the speculative position limit. This exemption would require the swap dealer to file specified information with the Commission, would require the swap dealer to include all of its trading activity, within the applicable exemption level and would prohibit swaps dealers from also trading speculatively. APGA supports the proposal to grant swaps dealers an exemption from speculative position limits outside of the spot month. Moreover, APGA's members support the enhanced transparency of the special reporting and application requirements as proposed by the Commission.

The Commission requested comment on whether it should look through the swap dealer's transaction and determine whether to grant hedge treatment based upon the nature of the swaps end-user's transaction. As noted above, many of APGA's members use the OTC swaps markets to hedge their price exposure to natural gas. Accordingly, it is reasonable to APGA members that the swap dealer be able to claim a hedge exemption for the dealer's associated, covering futures transactions. However, APGA recognizes that such an approach might require additional, complex classification, bookkeeping and reporting duties on the swap dealer. APGA believes that the ultimate characterization of the position should reflect the nature of the counterparty, (i.e., commercial market end-user ("hedger") and speculative market end-user ("speculator")). Accordingly, contracts that are entered into by a swap dealer as counterparty to a commercial market end-user would be denominated as "hedging" contracts because the swaps dealer is facilitating the commercial market end-user's hedging transactions. As a corollary, transactions by a swap dealer with a speculative market end-user in support of a speculative investment would be categorized as speculative and would be subject to speculative position limits. This

would prevent a single speculative end user from transforming speculative positions into hedge positions through the use of an OTC counterparty.

Although APGA sees merit in looking through to the end-user in order to classify the swap dealer's futures transactions as "hedging" or "speculative," APGA does not oppose the swap-dealers exemption as proposed.

Partial solutions are preferable to none

APGA recommended in its testimony during the recent hearing on speculative position limits that the Commission adopt its own speculative position limits, particularly in the spot-month, for economically-related SPDCs that are traded on more than one registered entity. As APGA noted in its testimony, by adopting Commission-set speculative position limits, the Commission would be able to aggregate positions across markets and enforce unified position limits, thus preventing a trader from amassing unduly large positions in the spot month by entering positions in economically equivalent markets on different markets.

APGA applauds the Commission for taking this important first step in implementing meaningful, unified speculative position limits that include futures and SPDC positions. Of course, including additional OTC positions that are entered into bilaterally and those contracts traded on a foreign board of trade that also settle to a U.S. registered entity's prices would be even more effective, but including linked futures and SPDC contracts under unified speculative position limits is a significant first step. Although not all market segments will be brought under a unified speculative position limit under this proposal, that is not a reason to refrain from taking this very significant first step in more effectively curbing the abuses arising from excessive speculation. Recent events in the economically linked markets for natural gas have shown the danger of traders being able to move positions from one market to another in order to evade application of a market's position accountability rule or position limit.²¹ A unified limit administered by the Commission across all markets (including OTC transactions to the extent within the Commission's jurisdiction), in addition to the limits adopted and administered by each separate market would effectively address this issue and provide an effective and meaningful limitation on the total size of positions that a trader could amass in the delivery month.

Application of limits to both cleared and non-cleared SPDC contracts

APGA notes that the speculative position limit in natural gas as proposed by the Commission would apply to all contracts entered into on ICE, regardless of whether the contract is cleared or is uncleared. APGA strongly supports including both cleared and uncleared SPDC contracts under the Commission's aggregate speculative position limit in natural gas. Including both cleared and uncleared contracts is essential in ensuring that speculative position limits are effective. It would be a major and obvious loophole to set speculative position limits only with respect to cleared SPDCs, particularly where both cleared and non-cleared contracts are traded on the same platform.

²¹ See "Excessive Speculation in the Natural Gas Market," Report of the U.S. Senate Permanent Subcommittee on Investigations (June 25, 2007).

However, the Commission in its recent rule making to require exempt commercial markets on which SPDCs are traded to adopt their own speculative position limits or position accountability rules deferred action to make spot month speculative position limits or back month position accountability rules apply to both cleared and uncleared transactions.²² Despite recognition of the important role that uncleared transactions play in price formation, the individual market's speculative position limits currently are required by the Commission only to apply to cleared transactions. This clearly weakens the prophylactic protection that spot month speculative position limits are intended to provide. Accordingly, APGA suggests that the Commission take this opportunity to include linked, non-cleared SPDCs within the speculative position limit requirement that would apply to the speculative position limits that the individual SPDC must apply.

Conclusion

APGA commends the Commission for its focus on the possible impact speculative investment has on the price of natural gas and other energy commodities and for asking these tough questions. Natural gas is a lifeblood of our economy and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that the price those consumers are paying for natural gas comes about through the operation of fair and orderly markets and through appropriate market mechanisms that establish a fair and transparent marketplace. As noted above, as hedgers, public gas systems rely on speculative traders to provide liquidity and depth to the markets. Thus, APGA does not wish to see steps taken that would discourage speculators from participating in these markets using bona fide trading strategies. But more importantly, APGA's members rely upon the prices generated by the futures to accurately reflect the true value of natural gas.

The CFTC's conclusion in 1981 was that the ability of liquid markets to absorb excessively large speculative positions without suffering from artificial upward pressure on prices is not unlimited, and based on that reasoning, required exchanges to adopt speculative position limits for all contracts. That question, whether liquid markets have the ability to absorb excessively large speculative positions without suffering from artificial upward price pressure, is the same question that is before the Commission today.

Accordingly, APGA believes that the Commission's conclusion reached in 1981 remains equally true today. For this reason, APGA supports the Commission's determination to adopt aggregate speculative position limits on the referenced energy commodities. APGA strongly encourages the Commission to take strong remedial action by: 1) modifying its proposal to reduce the proposed levels of the speculative position limits; 2) applying a single, integrated spot month limit to all contracts on the same commodity, across markets and regardless of the nature of the settlement procedure, and 3) by enhancing the proposed large trader reporting system as a first step in addressing the issue of limiting the size and effect of passive, long-only traders.

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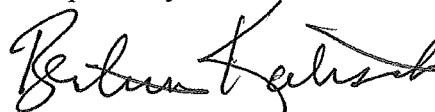
²² "Significant Price Discovery Contracts on Exempt Commercial Markets; Final Rule," 74 *Fed. Reg.* 12178 (March 23, 2009).

Following the activities of Amaranth Advisors LLC, APGA has consistently called for greater controls on excessively large speculative positions and for greater transparency in these markets. The activities of Amaranth Advisors LLC have demonstrated, and underscore, the economic relation between the futures markets and the OTC markets.

APGA strongly supports effective speculative position limits. Natural gas is a lifeblood of our economy and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that the price those consumers pay for natural gas comes about through the operation of fair and orderly markets and through appropriate market mechanisms that establish a fair and transparent marketplace. APGA applauds the Commission's proposed speculative position limit rules and urges it to incorporate the enhancements that we have identified in this letter in the final rules in order to ensure that the Commission has the fullest panoply of tools possible.

We would be happy to discuss our comments or any of the issues raised by the proposed rules at greater length with the staff. Please feel free to contact Bert Kalisch, President and CEO of APGA or David Schryver, Executive Vice President of APGA.

Respectfully submitted,



Bert Kalisch
President & CEO

cc: Chairman Gensler
Commissioner Dunn
Commissioner Chilton
Commissioner Sommers
Commissioner O'Malia
Daniel Berkovitz, General Counsel
Richard A. Shilts, Director DMO
Stephen Sherrod, Acting Director of Surveillance
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