

Commodity Speculation Reform Act of 2008

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- The legislation closes the “Swaps Loophole” and creates a seamless system of speculative position limits that applies to all food and energy-related contracts held by financial speculators, including over-the-counter holdings and futures positions on foreign exchanges.
 - In theory, position limits should curb excessive speculation in food and energy markets by imposing caps on the amount of futures contracts that may be held by any one investor. However, the position limits no longer serve their original purpose. Large institutional investors, such as pension funds, can circumvent the position limits by investing in over-the-counter markets. Through a regulatory “swaps” loophole, financial institutions that serve the over-the-counter markets also circumvent the position limits.
 - The bill will reduce excessive speculation by closing the swaps loophole and eliminating the exemptions that apply to investors that are not taking physical delivery of food and energy commodities. The bill applies the position limits if the position is not related to a bona fide hedging activity. The bill incorporates the CFTC’s definition of bona fide hedging, but clarifies that it does not include hedging financial risks associated with over-the-counter derivatives, such as swaps and structured notes.
 - In the evolving commodity marketplace, trading is increasingly occurring in unregulated over-the-counter markets or overseas. By extending the position limits to holdings regardless of where they are held, the position limits will no longer create an incentive to trade off-exchange or overseas. The bill would require the CFTC to develop a methodology that allows investors to aggregate their positions on the exchanges and in over-the-counter markets for purposes of regulatory enforcement of the position limits.
- The legislation requires the CFTC to set the individual position limits at amounts necessary to prevent excessive speculation while still ensuring sufficient market liquidity.
 - The CFTC currently sets the speculative position limits at amounts the Commission believes are necessary to prevent market manipulation by individual market participants. In contradiction with the original intent of the Congress, the CFTC does not set the position limits at amounts necessary to control the harmful inflationary effects of excessive speculation. The bill clarifies that the position limits should be set at amounts no greater than necessary to ensure sufficient market liquidity for the conduct of bona fide hedging activities.
- The legislation directs that the speculative position limits must be set by the CFTC, not the futures exchanges.
 - The bill would repeal the CFTC’s authority to delegate the responsibility for setting the position limits to the exchanges. The major exchanges are no longer nonprofit entities, but rather for-profit businesses. The position limits should be set by a regulatory entity that has a single mission – serving the public interest.

- The legislation repeals the authority that permits the CFTC to substitute reporting requirements for actual speculative position limits.
 - Currently, position limits apply to an investor's holdings in the spot month, any single month, and all months combined. With respect to energy futures contracts, the position limits are replaced with a simple reporting requirement, or "position accountability level", in the all-months time period. The bill would extend actual speculative position limits to the all-months time period.

- The legislation requires foreign futures exchanges to provide the CFTC with daily trading information comparable to the information provided by domestic exchanges.
 - Increasingly, foreign futures exchanges are offering cash-settled futures contracts that are based on commodity prices set by contracts traded on U.S. exchanges. These "look-alike" contracts arguably offer investors a competitive alternative to contracts that are traded and physically settled through U.S. exchanges. The CFTC recently indicated it will require foreign exchanges offering look-alike contracts to provide trading information comparable to the information provided by domestic exchanges. This provision codifies the new CFTC policy. The provision lays the statutory framework necessary for a seamless system of information reporting and improved transparency that will ensure the CFTC has the ability to monitor and enforce the new speculative position limits.

- The legislation increases the resources available to the CFTC to carry out its expanded responsibilities under the Act, including additional funds for staffing and technology.
 - The legislation constitutes a historic expansion of the CFTC's mission. Significant new resources will be needed to carry out these directives. As soon as practicable after the date of enactment, the legislation requires the CFTC to hire 100 additional full-time employees and authorizes such sums as are necessary to implement its new responsibilities. No later than 45 days after enactment, the CFTC must report to the Congressional appropriations committees with an estimate of the additional funding necessary to fully administer the Act.

- The legislation directs the CFTC to review trends in speculative activity related to metals, and report to Congress on whether the Commission's new authority should extend to trading in metals.