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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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June 17, 2008

Mr. Walter Lukken
Acting Chair
Commodity Futures Trading Commission
1155 21st Street, N.W.
Three Lafayette Center
Washington, D.C. 20581

Dear Chairman Lukken:

With crude oil prices futures spiking from $68/barrel a year ago to nearly $140/barrel today, questions have been raised about whether the estimated $260 billion in commodity index investments has, in combination with supply and demand expectations, untethered oil and other commodity prices from supply and demand fundamentals. It is imperative to understand more clearly what dynamics are at work in the futures and bilateral markets, and whether a tipping point has been reached that has caused prices to deviate from economic fundamentals.

Although long overdue, we commend the Commodity Futures Trading Commission (CFTC) for issuing a Special Call to overcome its persistent lack of information regarding passive investments in commodity indexes and single commodities. We also support your efforts to secure additional information from the Financial Services Administration and ICE Futures Europe regarding the futures traded on that foreign board of trade. Despite these initiatives, the futures markets remain far from transparent to regulators or the public.

In particular, Congress needs to better understand the role and activities of Sovereign Wealth Funds in commodity markets in order to assess whether or if any of the oil producing nations may be contributing to the upwards pressure on commodity prices through undisclosed investment in energy or other commodities. We were interested to learn that all five commodity dealers represented at the CFTC's June 10, 2008, Energy Markets Advisory Committee meeting (Goldman Sachs, Moran Stanley, Merrill Lynch, Lehman Brothers, and D.E. Shaw) had Sovereign Wealth Funds as clients.

In addition, a number of experts have questions whether commodity index investments have distorted energy and agricultural commodity prices. In particular, these experts have questioned whether massive inflows of capital from pension funds, endowments, sovereign wealth funds, and other institutional investors are having a disproportionate effect on the comparatively small commodity markets because these investments are exclusively on the buy side and, unlike traditional speculators, are not price sensitive.

Buttressing our concern, a prominent Lehman Brothers oil analyst recently estimated that crude oil futures prices go up 1.6 percent for every $100 million of inflows into commodity indexes. Lehman estimated that $90 billion has moved into commodity index investments since January 2006.

Position limits were instituted by CFTC and exchanges to prevent excessive speculation and price distortion in commodity markets, and can be exceeded only when there is a bona fide need to hedge the price of a product or commodity. Since 1991, however, CFTC authorized a loophole that has allowed swap dealers with no physical commodity exposure to receive exemptions from these position limits. This was a remarkable departure from the spirit and intent of the Commodity Exchange Act, which only allowed purchasers, sellers, and users of commodities to "hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange."

The CFTC apparently abandoned this longstanding principle after J. Aron and Company (now Goldman Sachs) asked CFTC to provide them with exemptions from positions limits for corn, wheat, and soybeans futures in order to permit the company to offset price risk from swaps exposure related to the Goldman Sachs Commodity Index. On October 18, 1991, CFTC granted J. Aron an open-ended "bona fide" hedge exemption for these index investments—an exemption that has continued to this day.

In addition, exemptions from position limits have been granted at the futures exchange level. For example, the New York Mercantile Exchange (NYMEX) granted 117 hedging exemptions since 2006 for the West Texas Intermediate Crude (WTI) contract, according to recent CFTC communications. NYMEX is authorized under its rules to grant exemptions from the WTI position limits of 3,000 contracts in the final 3 days of trading, and has soft limits of 20,000 contracts for all months combined. Of the 117 exemptions granted, 48 were given to 18 companies based exclusively on swaps exposure, another 44 were issued to 24 companies for combined hedge/swap positions, but only 25 were granted to 11 companies based on a bona fide hedge exposure. The Committee would like to better understand the magnitude of these exemptions and the rationale behind them.

It is fair to ask whether large inflows from commodity index investors are distorting energy prices and undermining the price discovery function, and whether CFTC has the data to help answer this question. It is also fair to ask whether CFTC has been hobbled in policing the markets hedging exemptions, no action letters, and a plethora of exclusions and exceptions carved into law, regulations, and exchange rules.

In order to get a clearer understanding of the implications of these recent exemptions, and in preparation for the June 23, 2008, hearing before the Subcommittee on Oversight and Investigations, we request under Rules X and XI of the Rules of the House of Representatives, the following information by no later than Friday, June 20, 2008:

1. The names of the 18 companies that have secured 48 hedge exemptions from NYMEX based solely on swaps exposure.

2. The total number of futures contracts that these 18 companies were able to hold in excess of the NYMEX position limit for WTI under these exemptions. Please identify the number of long and short positions (without identifying any one company's position). Please advise if any of the swaps exposure involves exemptions related to commodity index investments or single commodity fund investments.

3. Identify the 24 companies that have secured 44 hedging exemptions based on a combined hedge/swap positions (without identifying any one company's position).

4. The total number of WTI contracts in excess of the NYMEX position limit for the 24 companies that have secured 44 hedging exemptions based on combined hedge/swap positions (without identifying any one company's position). Please identify the total number of short versus long contracts. Please advise if any of the swaps exposure is related to commodity index investments or single commodity fund investments.

5. The names of the 11 companies that have secured 25 bona fide hedge exemptions.

6. The total number of WTI contracts for the 11 companies that have secured 25 bona fide hedging exemptions in excess of the NYMEX position limits (without identifying any one company's position). Please identify the total number of short versus long contracts.

7. The number of traders holding positions for all months in excess of the WTI contract all month accountability level for June 6, 2008, and the aggregate amount of such positions in excess of the 20,000 all month accountability levels. Please provide information on short versus long positions.

8. In addition to the exemption letter granted to J. Aron and Company on October 18, 1991, how many other CFTC exemptions have been granted to companies that wish to exceed futures position limits to offset price risk from swaps exposure to a commodity index? Please provide copies of such letters.

9. Please provide a list of Sovereign Wealth Funds that have commodity investments including:

   a. An estimate of the open interest in futures and options held by Sovereign Wealth Funds.

   b. How many Sovereign Wealth Funds from countries that are net exporters of oil are taking positions in oil or other energy futures.

   c. In the event that CFTC does not have sufficient information to assess the size and extent of these investments, please issue a Special Call for information to obtain a list of the Sovereign Wealth Funds, identify their aggregate positions in commodities, and make this aggregated information public.

10. The Commission obtains quarterly reports from ICE Futures Europe and other foreign boards of trade pursuant to CFTC staff "no action" letters. The reports identify the overall volumes and the amount of U.S. originated trading activity in each contract. Please provide copies of these quarterly reports for the past two years for the foreign boards of trade that are trading futures contracts for energy with a delivery point in the U.S. (such as the WTI contract).

11. Please provide a side-by-side comparison of the market rules governing commodity trading under the Financial Services Authority and the CFTC.

Your assistance with this request is appreciated. If you have any questions, please contact us or have your staff contact Richard Miller with the Committee on Energy and Commerce staff at (202) 226-2424. Thank you for your consideration.

Sincerely,

John D. Dingell
Chairman

Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bart Chilton, Commissioner
Commodity Futures Trading Commission

The Honorable Michael V. Dunn, Commissioner
Commodity Futures Trading Commission

The Honorable Jill E. Sommers, Commissioner
Commodity Futures Trading Commission