

A Preliminary Investigation Regarding Position Limits  
Rulemaking Efforts Undertaken by the Commodity Futures  
Trading Commission Pursuant to the Dodd-Frank Act

REPORT OF PRELIMINARY INVESTIGATION

**REDACTED**

Prepared by the

Office of the Inspector General  
Commodity Futures Trading Commission

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## EXECUTIVE SUMMARY

The Office of the Inspector General for the Commodity Futures Trading Commission conducted a preliminary investigation of the process by which the Commodity Futures Trading Commission proposed and adopted rules governing position limits under the Dodd Frank Act.<sup>1</sup> We undertook this preliminary investigation upon the receipt of two anonymous communications alleging misconduct in connection with this rulemaking. We received the anonymous allegations on August 29 and 31, 2011. One arrived by physical delivery, the other by email. We sought more information from the anonymous emailer, and received one additional email.

The allegations were that the team leader for the position limits rulemaking “sneakily” got himself appointed team lead and thereafter removed from the team the most experienced members in order to use only newer CFTC employees that he could manipulate (presumably in order to improperly influence the substance of the rule). The team leader was also alleged to have engaged in improper communications with external entities while working on the rule. The anonymous allegations additionally asserted that the position limits rulemaking would be unworkable because it was not compatible with the large swaps trader reporting rule. In fact, the position limits rulemaking team originally was combined with the large swaps trader reporting team.

While vague, the allegations encompassed potentially criminal activity in a recent mission-critical undertaking required under the Dodd-Frank Act because they generally alleged dishonest conduct and corruption.

Finally, the anonymous submitters claimed they were afraid of retaliation (or renewed retaliation) in the Division of Market Oversight (DMO).<sup>2</sup> We determined to take a closer look in order to determine whether to make any referrals for further investigation.

We conducted interviews with 14 original members of the large swaps trader and position limits rulemaking team, and with one additional team member later added. In addition, we conducted additional interviews with seven CFTC employees also involved with the position limits rulemaking, including Chairman Gensler and members of his staff; Rick Shilts, Director of DMO (who supervised the team leads for the position limits and large swaps trader reporting rulemakings); and CFTC employees who were consulted in connection with the position limits rulemaking. We stressed to staff level employees that we would endeavor to keep confidential the identities of the sources of information provided in these interviews.

We found no evidence to sustain a preliminary finding of wrongdoing by any individual connected with the position limits and large swaps trader reporting rulemakings. No witness presented evidence of corruption or violations of law in connection with the drafting of the

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act” or “Dodd-Frank”).

<sup>2</sup> Please see Appendix 1 for a list of all acronyms used in this report.

position limits rule by the team lead or any other person who worked on the rule. The team lead for the position limits rulemaking received both praise and criticism for his management style.

Specifically, we found no evidence to indicate that the position limits rulemaking team leader “sneakily” had himself appointed team lead. Witnesses uniformly asserted that the need to split the teams arose from the volume of work involved with these two particular rules. Witnesses also were uniform in their assertion that the person who was appointed team lead for the position limits rulemaking team had superior experience with position limits, and did not ask for the assignment.

We found no evidence that the position limits rulemaking team was managed by the team lead so as to disregard more experienced CFTC employees in favor of less experienced ones that could be manipulated. Witnesses told us that team members – both experienced and less experienced – came and went with varying degrees of participation throughout the process, both due to the fact their involvement was issue-specific, and in order to keep up with ongoing CFTC work. The team members involved with drafting – the most time-consuming task – was comprised of one lawyer and one economist each with over 10 years financial regulatory experience; along with one lawyer with roughly two years industry experience dealing specifically with energy trading and fewer than two years financial regulatory experience; and one economist with fewer than two years’ experience. The core drafting team was small of necessity, as it would be time consuming to coordinate drafting and review by a large group and still meet deadlines. In addition, witness interviews as well as our examination of numerous email generated during the position limits rulemaking process show the team lead consulted not only with the other team members, but also with CFTC employees with over 20 years’ experience throughout the process.

Finally, witnesses uniformly stressed that the position limits rulemaking, more so than most other rulemakings, was heavily influenced throughout by the Chairman and Commissioners, with more than one witness stating that the team lead’s influence on policy for this particular rule was somewhat limited due to the Commission’s direct involvement.

We also found no evidence of improper communications with external sources; however, this allegation was vague. The CFTC documented over 100 meetings with external sources during the course of the position limits rulemaking process. No witness was aware of any improper communications.

We found no evidence that the position limits rulemaking is fatally flawed due to its incompatibility with the large swaps trader reporting rulemaking. The two rules are interrelated. Information collected from large swaps traders will enable the CFTC to see the entire market and will also be used to implement and enforce position limits in accord with the Dodd-Frank Act. Throughout the rulemaking process, Commissioners publicly acknowledged the potential complexity of the interrelation between these two rules, and acknowledged that large swaps trader reporting necessarily would be subject to later adjustment to facilitate both the calculation and enforcement of any position limits. The two rules initially were teamed together in order to facilitate this data coordination.

Witnesses told us that data coordination issues came to a head as the position limits rulemaking neared completion. Eventually it was determined that assuring the collection of adequate data to establish and enforce position limits would be worked out during the implementation stage of large swaps trader reporting. Based on our interviews we do not conclude that corruption, incompetence, or misconduct by CFTC staff contributed to these issues.

Finally, we found no evidence that CFTC employees in DMO who have raised issues or complained to management regarding the position limits rulemaking have been subjected to retaliation. CFTC employees serving on the combined team and later the separate teams seemed to have their preferred team lead throughout the rulemaking process for position limits and large swaps trader reporting, with some praising the team lead for large swaps trader reporting and others favoring the team lead for position limits. Moreover, we encountered witnesses who disliked or had some degree of disagreement with each team leader's management style. However, more than one witness told us that, when issues regarding the team leads were brought to the attention of DMO management, the response was effective and there was no retaliation.

Due to the uniform quality of information received from CFTC employees and management, we did not take steps to refer this matter for further investigation.

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**BACKGROUND: THE LARGE SWAPS TRADER REPORTING AND POSITION LIMITS  
RULEMAKING TEAM**

Following passage of the Dodd-Frank Act, the Chairman and Division Directors created 30 rulemaking teams.<sup>3</sup> The position limits and large swaps trader reporting team began with 18 or 19 members, including the team leader, Bruce Fekrat. All were assigned various issues:<sup>4</sup>

Table 1: The Original Large Swaps Trader Reporting and Position Limits Rulemaking Team (in alphabetical order) with Issue Assignments

NAME	Job Title	CFTC Division	Years at CFTC (in 2011)	Aggregate Position Limits for Physical Commodity Futures and Swaps	Setting position limit levels	Significant Price Discovery Function Swaps	Hedge exemptions	Account aggregation	Foreign boards of trade (account aggregation)	Large Trader Reporting System ("LTRS") for Physical Commodity Swaps
[REDACTED]	Economist	DMO	1 to 2 years	✓	✓	✓		✓	✓	
	Attorney	International Affairs	1 to 2 years						✓	
	Economist	DMO	1 to 2 years	✓	✓		✓			✓
Fekrat, Bruce	Attorney	DMO	5 to 10 years	✓	✓		✓	✓	✓	✓
[REDACTED]	Senior IT	OITS	1 to 2 years							✓
	Risk Management	DCIO	20 to 25 years							✓
	Senior IT	OITS	5 to 10 years							✓
	Attorney	Enforcement	1 to 2 years (plus 5 years at FERC)			✓		✓		
	Attorney	DMO	1 to 2 years	✓		✓		✓		
	Economist	DMO	25 to 30 years	✓	✓					✓
	Attorney	OGC	5 to 10 years (plus 8 years SEC)	✓					✓	
	Attorney	OGC	1 to 2 years	✓					✓	
	Economist	DMO	1 to 2 years	✓	✓		✓			✓
	Associate Director	DMO	15 to 20 years							✓
	Economist	DMO	1 to 2 years	✓	✓		✓			✓
	Attorney	OGC	10 to 15 years						✓	
	Attorney	International Affairs	15 to 20 years						✓	
	Economist	OCE	1 to 2 years							
	Sherrad, Steve	Deputy Director	DMO	5 to 10 years	✓	✓		✓		

<sup>3</sup> A 31<sup>st</sup> team was later created and tasked with developing conforming rules to update the CFTC's existing regulations to take into account the provisions of Dodd-Frank. Testimony of Chairman Gary Gensler before the House Committee on Agriculture, February 11, 2011, available at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-68.html>.

<sup>4</sup> Bruce Fekrat, Memo re SUBJECT: Aggregate Position Limit Rulemaking for Physical Commodity Futures and Swaps (including amendments to the Commission's Large Trader Reporting Rules), August 2010. We noticed a minor discrepancy: while the opening memo lists 18 CFTC employees as team leaders or members, the accompanying discussion includes one additional attorney from OGC, [REDACTED]. The representative from OCE left the Agency early on; he was later replaced with [REDACTED], who also had 1 to 2 years' experience at CFTC during the relevant period during 2010-2011.

Rulemaking activities began after creation of the teams. On October 19, 2010, the Commission held a public meeting addressing, among other things, large trader reporting for swaps and physical commodities.<sup>5</sup> The Commission approved the proposed rule for large swaps trader reporting by unanimous vote that day, and the Federal Register published the proposed rule for large trader reporting for swaps and physical commodities on November 2, 2010.<sup>6</sup>

On December 16, 2010, the Commission held an Open Meeting on the Eighth Series of Proposed Rulemakings Under the Dodd-Frank Act.<sup>7</sup> The position limits rulemaking was discussed, and on January 26, 2011, the Federal Register published the proposed rule for position limits.<sup>8</sup>

The proposed rule for large swaps trader reporting proved relatively uncontroversial and generated low levels of interest. The CFTC received 1,165 items addressing this proposed rule.<sup>9</sup> In addition, Commission staff participated in four meetings with five outside entities<sup>10</sup> to discuss the rule.

In contrast, the position limits rulemaking generated more interest. The CFTC received 14,143 items addressing the proposed position limits rulemaking.<sup>11</sup> In addition, the Commission staff participated in 177 meetings with outside entities to discuss the rule.<sup>12</sup> Consequently, the large swaps trader reporting rule moved more quickly through the final rule drafting process than the position limits rule.

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<sup>5</sup> *Open Meeting on the Second Series of Proposed Rulemakings Under the Dodd-Frank Act*, Washington, D.C., October 19, 2010. Information on this meeting is available here:

[http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcdoddfrank101910](http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank101910).

<sup>6</sup> 75 FR 67258 (Nov. 2, 2010) (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-27538a.pdf>).

<sup>7</sup> Information on the *Open Meeting on the Eighth Series of Proposed Rules under the Dodd-Frank Act* is available here: [http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcdoddfrank121610](http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank121610).

<sup>8</sup> 76 FR 4752 (Jan. 26, 2011) (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-1154a.pdf>).

<sup>9</sup> This information is found on the CFTC website at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889>.

<sup>10</sup> This information is found on the CFTC website at <http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/XXXII.LargeSwapsTraderReporting/index.htm>.

<sup>11</sup> This information is found on the CFTC website at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=965>, and includes comments to the interim final position limits rule published on November 18, 2011 (76 FR 71626). In addition, the number of comments has been estimated at 16,000. *Open Meeting on Two Final Rule Proposals Under the Dodd-Frank Act* (Oct. 18, 2011), [http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7\\_101811-trans.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_101811-trans.pdf) (hearing transcript at page 146).

<sup>12</sup> This information is found on the CFTC website at [http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF\\_26\\_PosLimits/index.htm](http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_26_PosLimits/index.htm).

On July 11, 2011, the Commission held an Open Meeting on Five Final Rule Proposals Under the Dodd-Frank Act, and the large swaps trader reporting rule was included.<sup>13</sup> The rule passed by unanimous vote that day. The Federal Register published the final large trader swaps reporting rule on July 22, 2011, with an effective date of September 20, 2011.<sup>14</sup>

On November 18, 2011, the Federal Register published the Commission's final rules establishing federal position limits effective, in large part, 60 days after the term "swap" is further defined under Dodd-Frank.<sup>15</sup> A portion of the final rules, relating to the spot-month position limits, was designated as an "interim final rule," which provided for an additional 60-day comment period. Comments on the interim final rule were due on January 17, 2012.

On December 2, 2011, the International Swaps Dealers Association (ISDA) and the Securities Industry and Financial Markets Association (SIFMA) filed "challenges" to the position limits rule in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit.<sup>16</sup>

On December 12, 2011, the ISDA and SIFMA filed a motion to stay the effective date of the position limits rule pending judicial review. On January 3, 2012, the Commission denied the motion for stay.<sup>17</sup>

On January 20, 2012, the United States Circuit Court for the District of Columbia Circuit dismissed the challenges filed by ISDA and SIFMA, concluding that Dodd-Frank did not authorize challenges in that court. Litigation in the District Court is ongoing.

### ANONYMOUS ALLEGATIONS

On August 29 and 31, 2011, anonymous allegations arrived at CFTC OIG, one by email and another ("the hard copy") simply slipped under the door to the OIG offices at CFTC headquarters.<sup>18</sup> Both allegations concerned a position limits rulemaking (PLR) currently ongoing as part of the CFTC's efforts to implement the Dodd-Frank Act. The hard copy<sup>19</sup> alleged as follows (regarding the ongoing position limits rulemaking):

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<sup>13</sup> *Open Meeting on Five Final Rule Proposals Under the Dodd-Frank Act*, Washington, D.C. (July 7, 2011), [http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcdoddfrank070711](http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank070711).

<sup>14</sup> 76 FR 43851 (July 22, 2011). <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-18054a.pdf>.

<sup>15</sup> 76 FR 71626, 71632 (Nov. 18, 2011).

<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-28809-1a.pdf>.

<sup>16</sup> *Int'l Swaps and Derivatives Ass'n v. CFTC*, No. 1:11-cv-2146 (D.D.C.); (*Int'l Swaps & Derivatives Ass'n v. CFTC*, No. 11-1469 (D.C. Cir.)). More information on these actions, including links to the complaint filed in the U.S. District Court for the District of Columbia and the petition for review filed in the U.S. Court of Appeals for the District of Columbia may be found here: <http://www2.isda.org/news/isda-and-sifma-file-lawsuits-challenging-commodity-futures-trading-commissions-rule-on-position-limits>.

<sup>17</sup> The motion to stay and the Commission's Order are available here:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/order010312.pdf>.

<sup>18</sup> CFTC Headquarters is located at 1155 21<sup>st</sup> St., N.W., Washington DC 20581.

<sup>19</sup> Attached as Exhibit 1.



- “It’s broken”
- “It cannot be implemented”
- The rulemaking effort includes “many internal mis-steps, waste, and improprieties”
- “The PLR can’t be connected to the Swaps reporting rule upon which it depends for implementation”
- “The leader of the PLR team is responsible for this wasted, misguided agency effort”
- The leader “culled experts from the original team because they disagreed with his point of view”
- “There was [sic] about 15 people from across the agency, now there are only about 6”
- “All the current team members have less than 18 months of CFTC tenure. 3 have less than 2 years of futures industry experience. 1 attorney and 1 statistician were hired within the last year.”
- The leader “selected these people because he knew they would not get in his way.”
- “The final rule is not a committee/staff product, it is his alone.”
- The leader “met with several industry lobby groups, so I suspect some fraud and dishonest effort here.”
- The leader “is unethical and dishonest in his pursuits in this and other matters.”
- “The rule effort has been a waste of agency resources and an abuse of power, and perhaps some fraud.”

The hard copy allegation did not identify the author by name, nor did the allegation state whether the author was a CFTC employee. The emailed allegation states the author is a CFTC employee. This employee alleged (concerning the position limits rulemaking):

- “I believe the team lead of a crucial rulemaking team has acted dishonestly and led his team to a point where [sic] their rule is not implementable.”
- “The team was gradually trimmed until it was left with only the most inexperienced staffers so that the team lead would have absolute control.”
- The position limits team “chose to forge ahead with a plan that required a completely different information set [from the swaps reporting rulemaking] and is thus planning to propose something that cannot possibly be implemented. I find it hard to believe this was by accident...and suspect the motives of this person.”
- “Gutting out the intent of Position Limits as required by Dodd-Frank, wasting taxpayer monies, steamrolling over other staff, proposing a rule that cannot possibly be implemented, is wasteful. More than that, it is dishonest.”

The anonymous source of this allegation also stated that he was writing through a pseudonym “since I am afraid of renewed retaliation.” He stated that the team lead for the position limits rulemaking “has acted dishonestly and led his team to a point where [sic] their rule is not implementable.” The allegation continued:

I am referring to the rulemaking on position limits. The team was gradually trimmed until it was left with only the most inexperienced staffers so that the team lead would have absolute control. The position limit rule depends for its implementation on the work of another rule, the swap large trader reporting. Since

you cannot limit positions unless you can measure them, the poslim rule is limited by what the SLTR requires traders submit. The SLTR was thoughtfully written and was out for comment, receiving just a handful of minor comments. It is to be implemented in three weeks. Yet, the poslim team lead chose to forge ahead with a plan that required a completely different information set and is thus planning to propose something that cannot possibly be implemented. I find it hard to believe this was by accident (Is utter incompetence something you look at too?) and suspect the motives of this person.

Gutting out the intent of Position Limits as required by Dodd-Frank, wasting taxpayer monies, steamrolling over other staff, proposing a rule that cannot possibly be implemented, is wasteful. More than that, it is dishonest. I hope you investigate before it is too late. Perhaps there is a chance to rectify before the CFTC damages markets and public confidence.

Because we had an email address associated with the anonymous allegation received by email, on September 7 we sent a "return" email requesting further information. On September 9 we received a second communication from the anonymous email-er which stated:

I am simultaneously terrified of complaining and appalled by what is going on with the rulemaking on position limits. By now it may be too late to do anything: a proposal has been circulated, meetings with Comms are taking place and a new draft with their comments and compromises is due end of next week.

Perhaps it is best to just let it come out and when you see all Comms distancing themselves from it and all parties outraged, you will have more time and sources to review how we ended in this mess.

In a nutshell, the rule on position limits depends on gathering information in a very peculiar way, alien to industry practice, even academic practice, and most importantly, alien to how the Large swaps Trader Reporting Rule was designed. So, it is not implementable unless the SLTR is modified. However, that rule was finalized with few comments and was supposed to be put in practice starting in two weeks. Now [the team lead] is asking that SLTR rule to change to fit his PosLim rule. This would require such major changes that it would have to be delayed, reopen for comments, etc. crucially, the new data would perhaps help his rule, but would make it nearly useless for any other purpose, like Risk Surveillance or even market Surveillance.

Simultaneously, [the team lead] is drafting the new rule to be a complete cave out [sic]. This way perhaps people out in industry will not notice the mess as much. When the limits are so high and position so easy to offset, they would NEVER get hit, How [sic] can anyone know that they are not really implemented?

This was a completely avoidable problem, the incompatibility of two rules that should work together, since both rulemaking teams used to work together

under [one team leader]. [The PLR team leader] sneakily got [Bruce Fekrat] kicked out and kept the PosLim staffed with inexperienced people whom he could bully. There was no check on him, he worked nearly secretly [sic] (as he always does) and upended the whole thing. Was this incompetence, mismanagement from above, or outright sabotage. [sic] That is the question.

For those of us that devoted over a year of our professional lives to rulemaking, it is devastating that we will have to hide in shame in our resume what should have been a signal effort for an attorney at CFTC.

If you want to know more now though, I would suggest chatting confidentially with the team on SLTR and some of the people in the PosLim rule .... I am way to [sic] scared to come out to OIG, specially [sic] if what I hear is true and [the PLR team lead] ends up there. He would be all over me and I would have to leave the agency.

I hope you do look into this for the credibility of the Agency. Working in the OIG, I hope you have the courage I cannot find.

Best of luck.<sup>20</sup>

We received no further allegations or complaints regarding the position limits rulemaking from any source.

#### METHODOLOGY

In order to complete our work, we reviewed drafts of the position limits rulemaking, staff email, internal memoranda, transcripts of Commission meetings, and external comments. In addition, we conducted interviews with 21 CFTC employees at staff and various management levels who were involved with the position limits or swaps reporting rulemakings, and the Chairman. Some were consulted multiple times. Witnesses generally were asked to describe their involvement in the position limits and/or swaps reporting rulemakings, in a narrative form. Depending on their level of involvement, they were also asked whether they had any information indicating whether (or not) the team lead maneuvered or schemed to be appointed team lead, reduced the team to its least experienced members, inserted himself improperly in the rulemaking process, or engaged in improper communications with outside entities. We asked whether the rule as constructed harmonized with the swaps reporting rule and, if not, to describe any compatibility issues regarding the collection of information under the swaps reporting rule and enforcement of position limits. We asked witnesses in DMO whether they feared retaliation or whether they had experienced or witnessed retaliation in the workplace, focusing on those witnesses who worked in the same division as the team lead. We asked generally if anything improper had occurred during the rulemaking.

While we had general allegations of fraud, dishonesty, improper communications and misconduct, we had no allegations of specific acts that would violate discrete federal criminal

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<sup>20</sup> The anonymous allegations received by email are attached as Exhibit 2.

prohibitions. For instance, reducing a rulemaking team to its least experienced members does not violate any statute or regulation of which we are aware, and so without additional evidence of violative conduct, reducing the team would in fact be legal. An allegation of improper control certainly may result in a serious management issue, but again there was no allegation of violative conduct resulting from the alleged inappropriate control. The allegation of suspected improper communications, without more, did not permit us to tailor our inquiry to uncover specific violations of information disclosure<sup>21</sup> or bribery or conflict of interest prohibitions.<sup>22</sup> Therefore we did not conduct this investigation as a criminal investigation. We conducted this as a preliminary investigation which might, or might not, result in detailed allegations sufficient to support formal investigative efforts (by appropriate law enforcement authorities, if necessary).

We began interviews on September 21, 2011. Interviews completed on November 9, 2011. We began review of records pertaining to the position limits rulemaking on December 22, 2011, which triggered a few follow up inquiries with witnesses. Document review completed in February 2012.

## FINDINGS

### Allegation #1: Improper Control of the Team

The anonymous allegations generally stated that the team lead for the position limits rulemaking “sneakily” got himself appointed team lead, and then reduced the team to a group of inexperienced individuals who would not question him and would permit him to control the rule. We found insufficient evidence to support either allegation.

Simply reviewing the public record for the position limits rule, it appears clear to us that Bruce Fekrat and Steve Sherrod were identified as leading the rulemaking effort throughout the rulemaking process while the teams were combined.

On October 19, 2010, the Commission held a public meeting addressing, among other things, large trader reporting for swaps and physical commodities in connection with the anticipated rulemaking under the Dodd-Frank Act.<sup>23</sup> Addressing the proposed rules for large swaps trader reporting on that day, the Chairman stated that Bruce Fekrat would be presenting, along with Steve Sherrod. Both Bruce Fekrat and Steve Sherrod participated at the hearing, with Bruce Fekrat giving an introductory statement and both employees answering questions posed by the Commissioners. The Commission approved the proposed rule for large swaps trader reporting by unanimous vote that day.

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<sup>21</sup> For instance, section 8 of the Commodity Exchange Act, 7 USC sec. 12, prohibits the Commission from publishing data and information that would separately disclose the business transactions or market position of any person and trade secrets or names of customers. The Privacy Act, 5 USC 522a, prohibits the disclosure of certain personal information.

<sup>22</sup> Criminal prohibitions against bribery, graft, and conflict of interest are located at 18 USC Chapter 11.

<sup>23</sup> See fn. 5.

The Federal Register published the proposed rule for position reports for physical commodity swaps (i.e., large trader reporting for swaps and physical commodities) on November 2, 2010.<sup>24</sup> The notice of proposed rulemaking listed both team leads as contacts available to discuss this rule, with Steve Sherrod listed before Bruce Fekrat.

On December 16, 2010, the Commission held an Open Meeting on the Eighth Series of Proposed Rulemakings Under the Dodd-Frank Act.<sup>25</sup> The position limits rulemaking was discussed, and both Steve Sherrod and Bruce Fekrat were present and were introduced together at the beginning of the discussion of the rule, with Bruce Fekrat noted as “the attorney who led most of the writing on the rule.”<sup>26</sup> On January 26, 2011, the Federal Register published the proposed rule for position limits for derivatives.<sup>27</sup> On this notice of proposed rulemaking, Steve Sherrod was placed before Bruce Fekrat in the list of CFTC contacts available to answer questions about the proposed rule.

One witness stated to us that, at the start of his attendance at meetings for the large swaps trader reporting and position limits rulemaking team, he did not know whether the lead was Bruce Fekrat or Steve Sherrod. Another witness told us that while he served on the combined team early on, he thought of Bruce Fekrat as the “back office” team lead and Steve Sherrod as the “front office” team lead because Steve interacted with the Chairman and Commissioners to a greater extent. Consequently, we are not sure of the impact or meaning of the title “team lead” in the context of this team. The public and other team members were consistently given the impression that both Bruce Fekrat and Steve Sherrod were leading the team.

The submitter of an anonymous allegation stated that the team leader “sneakily” managed to become team leader. The team member and non-team member witnesses told us there was a change in the team and its leadership which occurred after both the large swaps trader and position limits rules were proposed, and near the close of the comment period for position limits. Witnesses provided two reasons for the split. First, the two rules were proving to require too much work for one team given the volume of comments received for position limits. Second, the position limits rulemaking team was split from the large swaps trader reporting team after both rules were proposed and it became clear based on the number of comments that, as expected, position limits would prove controversial. That is, based on the number of comments the large swaps trader reporting rule would likely be finalized faster than position limits, so the team members working on swaps large trader reporting split off from the team members working on position limits.

Every single witness with knowledge and an opinion told us that Steve Sherrod did not ask for the position limits rulemaking team lead assignment because, as a Deputy Director, he felt he already had enough work and responsibility day to day. Instead, Steve Sherrod was assigned the position by his direct supervisor and the Chairman. According to each of the 22 witnesses we

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<sup>24</sup> 75 FR 67258 (Nov. 2, 2010) (<http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-27538a.pdf>).

<sup>25</sup> See fn. 7.

<sup>26</sup> *Open Meeting on the Eighth Series of Proposed Rules under the Dodd-Frank Act*, transcript p. 157. (The transcript is available here: [http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission13\\_121610-transcri.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission13_121610-transcri.pdf)).

<sup>27</sup> See fn. 8.

spoke with who had an opinion, it made sense to have Steve Sherrod, who had a strong background in position limits in energy products, head the position limits rulemaking. Nobody suggested that someone else was better qualified.

Our discussions with Bruce Fekrat and Steve Sherrod, as well as our review of relevant email spanning the relevant period for both rulemakings, demonstrates that the two consulted throughout the process, including after the teams split. Email records for the position limits rulemaking also show that Bruce Fekrat was included on email regarding the position limits rulemaking and was given drafts of the position limits rulemaking throughout the drafting process.

We also asked team members and others about the allegation that the team was whittled down to a few inexperienced individuals so that the team lead could control the position limits rulemaking. Team members and other witnesses uniformly told us that active members on the position limits and large swaps trader reporting rulemaking team fluctuated during the rulemaking process. Many team members limited their involvement to the issue to which they were assigned, largely out of necessity because they had other job duties. It appears most members did not have comprehensive mastery of the entire rule.

In any event, the team started out in 2010 with 18 or 19 members, with subgroups assigned discrete issues. Our breakdown of the relative experience of the original members of the position limits and swaps large trader rulemaking team can be found below:

Table 2: Experience on the Large Swaps Trader Reporting and Position Limits Rulemaking Team

NAME	Job Title	CFTC Division	Years at CFTC (in 2011)
	Economist	DMO	1 to 2 years
	Attorney	OIA	1 to 2 years
	Economist	DMO	1 to 2 years
	Senior IT	OITS	1 to 2 years
	Attorney	DMO	1 to 2 years
	Attorney	OGC	1 to 2 years
	Economist	DMO	1 to 2 years
	Economist	DMO	1 to 2 years
	Economist	OCE	1 to 2 years
	Economist	OCE	1 to 2 years
	Attorney	DOE	1 to 2 years (plus 5 years at FERC)
Fekrat, Bruce	Attorney	DMO	5 to 10 years
	Senior IT	OITS	5 to 10 years
Sherrod, Steve	Deputy Director	DMO	5 to 10 years
	Attorney	OGC	5 to 10 years (plus 8 years SEC )
	Attorney	OGC	10 to 15 years
	Associate Director	DMO	15 to 20 years
	Attorney	OIA	15 to 20 years
	Risk Management	DCIO	20 to 25 years
	Economist	DMO	25 to 30 years

While the original large swaps trader reporting and position limits rulemaking team was set out in the team opening memo in August 2010, there appears to have been no official memorialization of the new position limits rulemaking team created from the split.<sup>28</sup> Moreover, we were not able to get a date certain for the decision to split the team.

Steve Sherrod stated that his core team dedicated to drafting consisted of himself, [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] had a combined 15 years of experience with CFTC and SEC. [REDACTED] had 1 to 2 years experience at CFTC, and additional derivatives and energy transactional experience in the private sector dating to 2006. [REDACTED] had 1 to 2 years' experience with CFTC, [REDACTED], he was the youngest member of the core drafting team.

The economist from the Office of Chief Economist who took the lead drafting the cost-benefit analysis started at CFTC in 2010 and [REDACTED]; however, email addressing the position limits rulemaking demonstrated and confirmed [REDACTED] that [REDACTED] was supervised directly by the Division Director, Andrei Kirilenko, specifically in connection with this rule.

Mr. Sherrod did not work on the position limits rule during part of the summer of 2011 while on leave of absence, and [REDACTED] took over in his absence as lead during the comment review process. The remaining members of the position limits rulemaking team "core" reviewed the over 14 thousand comments with assistance, and witnesses and email reviewed by OIG confirmed that during the Summer of 2011 approximately 15 people reviewed the thousands of comments received; however, at the end of this process the team returned to its core to begin drafting the final rule.

Steve Sherrod and others told us that drafting of the proposed and final rule, the most intensive work performed by team, was performed by fewer team members somewhat of necessity, there being little time to circulate portions of the draft to so many people during the process. Witnesses volunteered that the newer employees on the team often would be in a better position to put in the long hours drafting a single issue or a single document, while more experienced (and knowledgeable) employees would usually be too busy doing their regular supervisory and technical work at CFTC. The ebb and flow of team members throughout the process was described to us as an ordinary aspect of rulemaking. Team members told us that members would drop in and drop out as their specific areas of expertise and issues were addressed, and as they were pulled on to other CFTC work during the relevant period. Witnesses certainly described a variety of issues and disputes among staff during the process, along with hurt feelings, but we did not receive any specific allegations of misconduct, abuse, or improper control. Witnesses both praised and criticized the management styles for both the large swaps trader reporting and position limits rulemaking team leaders.

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<sup>28</sup> However, Steve Sherrod publicly thanked the following CFTC employees during the Open Meeting on Two Final Rule Proposals Under the Dodd-Frank Act (October 18, 2011): Rick Shilts, Salman Banaei, Ken Danger, Tom Littlefield, Martin Murray, John Forkkio, David Kass, Dave Amato, Vincent Varisano, Raphael Martinez, Jordan Grimm, Jim Outen, Gary Martinaitis, Hannah Ropp, Stephen Kane, Andrei Kirilenko, Dan Berkovitz, Neal Kumar, Carlene Kim, and Mark Higgins.  
[http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7\\_101811-trans.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_101811-trans.pdf) (hearing transcript at page 135-136).

Steve Sherrod told us the draft proposed and final rule was circulated to the larger team for review and proofreading. The completed draft was then circulated to the Chairman's staff for review and comment. Requested amendments from the Office of the Chairman were performed by the Team Lead and the smaller group that had participated in drafting. The revised draft was then submitted to the Commissioners for review and comment. The Commissioners were briefed on the draft rule, as requested. Changes requiring re-drafting were performed again by the core group that performed the drafting.

Multiple witnesses told us that the position limits rulemaking, more than most, generated input from the Commissioners and the Chairman. One witness remarked that he considered Steve Sherrod to be more a "technical" team leader because, due to the input by the Commission, he was not recommending policy as much as would normally be the case in a rulemaking. Another team member joked that he believed Steve Sherrod could never win debates with the Chairman for this rule.

At the end of the process, the final draft was circulated to a larger group of reviewers, including two CFTC employees with more than 20 years' experience, each, at CFTC. Table 3, on the next page, expands on the original team shown at Table 1, and shows all CFTC employees identified as working on the position limits and large swaps trader reporting rules:



Table 3 – Everyone Who Worked on or Were Consulted in Connection with the Position Limits and Large Swaps Trader Reporting Rulemaking

NAME	Job Title	CFTC Division	Years at CFTC (in 2010)	Aggregate Position Limits for Physical Commodity Futures and Swaps	Setting position limit levels	Significant Price Discovery Function Swaps	Hedge exemptions	Account aggregation	Foreign boards of trade (account aggregation)	Large Trader Reporting System ("LTRS") for Physical Commodity Swaps	Assisted or supervised team member(s)	consulted or asked to review final	core drafting team	Left Agency and did no work
	Attorney	DMO	1 to 2 years	✓		✓		✓						
	Attorney	OIA	1 to 2 years						✓					
Bruce Fekrat	Attorney	DMO	5 to 10 years	✓	✓		✓	✓	✓	✓				
	Attorney	OGC	5 to 10 years (plus 8 years SEC)	✓					✓				✓	
	Attorney	OGC	10 to 15 years						✓					
	Economist Associate Director	DMO	25 to 30 years	✓	✓					✓				
		DMO	15 to 20 years							✓				
	Economist	OCE	1 to 2 years										✓	
	Senior IT	OITS	1 to 2 years							✓				
	Economist	DMO	1 to 2 years	✓	✓		✓			✓				
	Senior IT	OITS	5 to 10 years							✓				
	Economist	DMO	1 to 2 years	✓	✓		✓			✓				
	Attorney	ENF	1 to 2 years (plus 5 years at FERC)			✓		✓						
	Economist	OCE	1 to 2 years											✓
	Attorney	OGC	1 to 2 years	✓					✓				✓	
	Attorney	OIA	15-20 years						✓					
	Economist	DMO	1 to 2 years	✓	✓	✓		✓	✓				✓	
	Sup'vy Risk Analyst	DCIO	20 to 25 years							✓				
Steve Sherrod	Deputy Director	DMO	5 to 10 years	✓	✓		✓						✓	
	Economist	DMO	1 to 2 years	✓	✓		✓			✓				

Table 3 – Everyone Who Worked on or Were Consulted in Connection with the Position Limits and Large Swaps Trader Reporting Rulemaking (continued)

NAME	Job Title	CFTC Division	Years at CFTC (in 2010)	Aggregate Position Limits for Physical Commodity Futures and Swaps	Setting position limit levels	Significant Price Discovery Function Swaps	Hedge exemptions	Account aggregation	Foreign boards of trade (account aggregation)	Large Trader Reporting System ("LTRS") for Physical Commodity Swaps	Assisted or supervised team member(s)	consulted or asked to review final	core drafting team	Left Agency and did no work
Andrei Kirilenko	Director	OCE	3 to 5 years								✓	✓		
	Attorney	ENF	2 years (plus 18 years FERC)									✓		
	Sup'vy Economist	DMO	15 to 20 years									✓		
	Attorney	DMO	20 to 25 years									✓		
	Attorney	DMO	25 to 30 years									✓		
	Attorney	COM	5 to 10 years									✓		
	Economist	ENF	2 years (plus 6 years at DOE)									✓		
	Economist	OCE	5 to 10 years									✓		
	Economist	DMO	1 to 2 years									✓		
	Economist	DMO	30-35 years									✓		
	Economist	DMO	3 to 5 years									✓		
Rick Shilts	Director	DMO	35 to 40 years									✓		
	Attorney	DMO	1 to 2 years									✓		
	Economist	OCE	1 to 2 years									✓		
	Attorney	DMO	20 to 25 years									✓		
	Deputy Director	ENF	10 to 15 years									✓		
	Sup'vy Economist	DMO	15 to 20 years									✓		
	Law Clerk	DMO	1 to 2 years									✓		

We find that the position limits rulemaking team was created by the Chairman after publication of the notices of proposed rulemaking issued for the large swaps trader reporting and position limits rulemaking. The position limits rulemaking team was created because the two rules were too much work for one team, and because the position limits rulemaking was proving to have thousands more comments to digest and, therefore, issues to address in the final rulemaking. We find the Chairman appointed Steve Sherrod to be the leader of the new team upon his own recommendation and the recommendation of Rick Shilts, Director, DMO. We find that Steve Sherrod did not of his own volition endeavor to be made the head of this rulemaking team, “sneakily” or otherwise.

The new position limits rulemaking team started out with approximately 15 members who reviewed the thousands of comments received for the proposed rule, then got small for drafting with a core of four individuals drafting the final rule, and then large again for the last reviews, including inclusion of CFTC employees with over 20 years’ experience to give fresh eyes to the draft. Where a young economist with 1-2 years’ experience had a key drafting role for the cost-benefit consideration, she was supervised directly by the Division Director. While the core team performing the drafting was small, we do not find that the team lead committed any misconduct. We are influenced also by the fact witnesses were uniform in expressing their view that the Commission, and not the team lead, had the greater influence in policy for the position limits rulemaking.

#### Allegation #2: Improper External Meetings

One of the anonymous allegation stated that the position limits rulemaking team leader “met with several industry lobby groups, so I suspect some fraud and dishonest effort here.” A review of the public record for the position limits rulemaking shows that there were 177 external meetings in which this rule was discussed.<sup>29</sup> The source of the anonymous allegation offered no detail whatsoever regarding the date of or parties to any meeting where “fraud and dishonest effort” took place, nor did we receive any description of what the “fraud and dishonest effort” specifically involved. We asked each witness about external meetings, specifically whether they witnessed anything improper. Each witness stated that they had not witnessed anything improper happening at any external meeting. Due to the lack of specificity in the allegation, we were not able to probe the allegation in any real depth.

#### Allegation #3: The Position Limits Rule is not Workable Because it Conflicts with the Large Swaps Trader Reporting Rule

The anonymous allegations contained the following assertions:

- “The PLR can’t be connected to the Swaps reporting rule upon which it depends for implementation”

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<sup>29</sup> This information is found on the CFTC website at [http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF\\_26\\_PosLimits/index.htm](http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_26_PosLimits/index.htm).

- The position limits team “chose to forge ahead with a plan that required a completely different information set [from the swaps reporting rulemaking] and is thus planning to propose something that cannot possibly be implemented. I find it hard to believe this was by accident...and suspect the motives of this person.”
- In a nutshell, the rule on position limits depends on gathering information in a very peculiar way, alien to industry practice, even academic practice, and most importantly, alien to how the Swaps Large Trader Reporting Rule was designed. So, it is not implementable unless the SLTR is modified. However, that rule was finalized with few comments and was supposed to be put in practice starting in two weeks. Now [the team lead] is asking that SLTR rule to change to fit his PosLim rule. This would require such major changes that it would have to be delayed, reopen for comments, etc. crucially, the new data would perhaps help his rule, but would make it nearly useless for any other purpose, like Risk Surveillance or even market Surveillance.

Interdependency between the large swaps trader reporting and the position limits rulemakings was acknowledged in Commission publications during the rulemaking process for both rules. Indeed, in the first sentence of the proposed rule titled “Position Reports for Physical Commodity Swaps”<sup>30</sup> – the large swaps trader reporting rule – stated:

The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing reporting regulations that are reasonably necessary for implementing and enforcing aggregate position limits for certain physical commodity derivatives.

The notice of proposed rulemaking also stressed that swaps reporting will assist market surveillance.<sup>31</sup> The final large swaps trader reporting rule continued to acknowledge that large trader reports would be used for both surveillance and enforcement purposes:

The Reporting Rules, as finalized and adopted herein, will allow the Commission to administer its regulatory responsibilities under the Commodity Exchange Act (“CEA or Act”) by implementing and conducting effective surveillance of economically equivalent physical commodity futures, options and swaps. The Reporting Rules will directly support the Commission's transparency initiatives such as its dissemination of Commitments of Traders and Index Investment Data Reports and will allow the Commission to monitor compliance with the trading requirements of the Act.<sup>32</sup>

Likewise, the notice of proposed rulemaking for the position limits rule recognized the importance of the large swaps trader reports, stating that the position limits would be set in the future, based on information reported by large swaps traders:

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<sup>30</sup> 75 FR 67258 (Nov. 2, 2010).

<sup>31</sup> Id. at 67264.

<sup>32</sup> 76 FR 43851 (July 22, 2011).

Because the Commission will not be able to implement a comprehensive system for gathering swap positional data for some time, this notice of proposed rulemaking does not propose to determine the numerical non-spot-month position limits for exempt and agricultural commodity derivatives resulting from the application of the open interest formulas in proposed Sec. 151.4. Rather, this notice of rulemaking provides for the determination of such limits when the Commission receives data regarding the levels of open interest in the swap markets to which these limits will apply.

The Commission anticipates fixing initial position limits pursuant to the formulas proposed herein through the issuance of a Commission order. As proposed, CFTC-set position limits after the transitional period would be recalculated every year based on the formulas set forth in proposed Sec. 151.4, subject to any changes to the formulas that may be proposed and adopted based on the Commission's surveillance of the markets for referenced contracts. In this regard, as discussed in further detail below, the proposed position visibility regulations, which would effectuate reporting requirements that are similar to current reporting requirements for large bona fide hedgers, may facilitate evaluating the efficacy and appropriateness of the proposed position limit framework if adopted.<sup>33</sup>

In addition, the interrelationship between the large swaps trader reporting and the position limits rulemakings was discussed at length in public meetings held to address both rules. In an October 2010 public meeting to discuss the large swaps trader reporting rule it was clearly recognized that the large swaps trader and position limits rulemakings would be interrelated:

If the Commission adopts aggregate position limits, the swaps data will be essential for staff to conduct surveillance and determine compliance with such limits.<sup>34</sup>

By July 2011, the discussion was drilling into the discrepancies and difficulties of coordination between large swaps trader reporting and position limits enforcement:

COMMISSIONER DUNN: I'm a little concerned because this data is what we will be basing position limits on and if we don't have a clear idea of what the total universe is out there, won't it be difficult for us to be establishing these position limits based on that proposed rule?

MR. SHILTS: As we go to make a proposal on limits, the idea is that we would be getting this information and/or

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<sup>33</sup> 76 FR 4752, 4753 (Jan. 26, 2011).

<sup>34</sup> Transcript, *Open Meeting on the Second Series of Proposed Rulemakings Under the Dodd-Frank Act* ("Second Open Meeting"), Washington, D.C., October 19, 2010, page 36-37.  
[http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission19\\_101910-transcri.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission19_101910-transcri.pdf).

have this available. And I think as Bruce said, as this starts coming in and as we do further work working with the potential swap data repositories, we should be getting a much better feel for the scope of the information that we're getting. And as I said, I think in some areas I think we do have a pretty good feel for roughly the amount of swaps that potentially would be captured because, as I said, for some commodity areas there is a significant amount that's already being cleared through the various initiatives of the clearinghouses, but it's something that we'll have to continue to focus on and see how as we get the information and as we do further with the swap data repositories, we should get a much better handle on that.<sup>35</sup>

Even early on, Commissioners realized certain unavoidable difficulties attendant to issuing large swaps trader reporting rules prior to position limits:

Commissioner Sommers: Even if the proposed rule we are discussing today were effective by November 30th, it will not provide complete information sufficient to impose position limits. Under these circumstances, when considering the imposition of aggregate position limits on exempt and agricultural commodities, I believe that the Commission should find that imposing such limits is not appropriate in the absence of full and complete data and analysis of the open interest of each market. I believe it is a mistake to interpret the arbitrary 180- and 270-day deadlines as somehow trumping the requirement that the Commission make an appropriateness determination before imposing any position limit.

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Commissioner Chilton: I'm actually somewhat sympathetic to the predicament that we're in that Commissioner Sommers described, sort of putting the cart before the horse to some extent. Even when we have talked about this, you know, a year ago in

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<sup>35</sup> Transcript, *Open Meeting on Five Final Rule Proposals Under the Dodd-Frank Act*, Washington, D.C. (July 7, 2011), page 100-101.  
[http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmissionmult\\_070711-trans.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmissionmult_070711-trans.pdf).

our hearings and then in January, one of the suggestions I had in general on limits was that we do no harm....<sup>36</sup>

We believe the fact that the interrelationship between the two rules was made public may explain why the discrete issue raised in the anonymous allegation apparently was not raised in any of the more than 14,000 comments received for the position limits rulemaking.

We asked the team members whether there were compatibility problems between the large swaps trader reporting and position limits rulemakings. We learned from witnesses that the issue was very technical and does not go to the actual calculation of position limit amounts that the Commission may impose. Instead, the issue goes to the type of swap transaction that will be counted toward the tally of each large trader's position when determining whether limits are violated.

In order to conduct market surveillance, the Commission wants to see a very broad class of swaps; however, we were told that for purposes of calculating position limits, the Dodd-Frank Act exempts certain swaps, such as swaps that pre-date the Dodd-Frank Act and swaps positions that contribute to certain technical hedging strategies. This means that, in some instances, the transaction type is relevant. Identifying the subset of swaps that will be counted by each large trader for purposes of calculating compliance with position limits that may eventually set by the Commission was not covered in the swaps reporting rule. Nevertheless, separate identification of the subset of swaps that count toward the Agency's calculation of each large trader's compliance with position limits will necessarily be a part of large swaps trader reporting.

At some point during the process of drafting the position limits rulemaking, the disparity between the reports required under the final large swaps trader reporting rule that facilitate market surveillance, and the narrower class of swaps that contribute to position limit calculations -- specifically how to define the data fields and regulate reporting in the implementation phase of the swaps reporting rule -- became an issue after the large swaps trader reporting rule was finalized. Witnesses told us that implementation would present a real challenge because the large swaps trader reporting rule as finalized did not support position limit reporting. During staff-level debates at the end of Summer 2011, some people were dismayed at the amount of work left to be done to implement large swaps trader reporting and certainly staff differed on how best to resolve the attendant issues.

During our interviews, staff and management opined that it will be possible to address these issues during the implementation phase of swaps large trader reporting, as well as through the use of special calls and staff interpretations.

On September 16, 2011, the Commission issued temporary and conditional relief from certain requirements of the regulations regarding large swaps trader reporting. Specifically, by delegated authority the Director of the Division of Market Oversight determined to relieve clearing organizations and clearing members as a class from certain reporting requirements until

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<sup>36</sup> Transcript, *Open Meeting on the Second Series of Proposed Rulemakings Under the Dodd-Frank Act* ("Second Open Meeting"), Washington, D.C., October 19, 2010, page 44-45.  
[http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission19\\_101910-transcri.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission19_101910-transcri.pdf)

November 21, 2011, for cleared swaps, and until January 20, 2012, for uncleared swaps.<sup>37</sup> The reason for the relief follows:

Division staff is actively engaged in ongoing compliance and implementation discussions with clearing organizations, clearing members, potential swap dealers, and data service providers, both separately and through the International Swaps and Derivatives Association and the Futures Industry Association. The Division believes that the participants in these discussions are representative of the parties that will be subject to the reporting rules. The Division further believes that the continuing participation of expected reporting parties in discussions to address compliance and implementation issues raised by the reporting rules represents a good faith attempt to comply with the requirements of part 20. Accordingly, consistent with the authority delegated by § 20.8(a)(5), the Director of the Division has determined to relieve clearing organizations and clearing members as a class from the reporting requirements of §§ 20.3 and 20.4 until November 21, 2011 for cleared swaps, and January 20, 2012 for uncleared swaps.

On November 18, 2011, the Commission again issued temporary and conditional relief from certain requirements of the regulations regarding large swaps trader reporting. Specifically, by delegated authority the Director of the Division of Market Oversight determined to relieve clearing organizations and clearing members as a class from certain reporting requirements until March 20, 2012.<sup>38</sup> The reason for the relief follows:

Division staff is actively engaged in ongoing compliance and implementation discussions with clearing organizations, clearing members, potential swap dealers, and data service providers, separately and through the International Swaps and Derivatives Association and the Futures Industry Association. The Division believes that the participants in these discussions are representative of the parties that will be subject to the reporting rules.

The Division also believes that substantial progress has been made towards finalizing reporting guidance and an XML-based reporting format and record layout, and facilitating the ability of reporting parties to comply with such guidance and format requirements. The Division intends to issue and publicly distribute in the coming days a guidebook for part 20 reports to provide formal reporting guidance. The guidebook will include a final XML-based reporting format and record layout. The Division notes that an additional XML-based reporting format and record layout for §§ 20.3 and 20.4 reports may be accepted prior to March 20, 2012.

On December 17, 2011, the Commission announced the publication of a Guidebook for Part 20 Reports providing additional guidance and detailed instructions for submitting large

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<sup>37</sup> [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/relief\\_letter\\_091611.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/relief_letter_091611.pdf).

<sup>38</sup> [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/relief\\_letter\\_111811.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/relief_letter_111811.pdf).



swaps trader reports to the Commission.<sup>39</sup> The 45-page guidebook contains detailed technical instructions for large trader swaps reporting.<sup>40</sup>

The swaps large trader reporting rule, as adopted, currently does not address all complexities specific to position limit establishment and enforcement. However, it is clear that the Commissioners and Commission staff were aware of these issues to a sufficient extent throughout the rulemaking process, and made public this awareness, and it appears that issues pertaining to position limit monitoring and enforcement will be addressed during the implementation phase for large swaps trader reporting. We do not detect any cause for these issues that may be attributed to misconduct by CFTC staff.

#### Allegation #4: Fear of Retaliation

The anonymous allegations generally conveyed a fear of retaliation in DMO, but did not give specific examples of acts of retaliation against named individuals in response to protected disclosures or complaints. We asked each witness who works in DMO to tell us whether they believe there is a fear of retaliation. They all replied in the negative. To be sure, team members on both teams, as well as other witnesses, held both positive and negative opinions of Bruce Fekrat and Steve Sherrod. We received praise and complaints about both regarding their leadership and management styles. However, team members told us that, when DMO management was notified of perceived issues with either team lead, steps were taken by management within DMO that resolved the situation. No team member stated that they believed Steve Sherrod (or Bruce Fekrat) had committed any illegal acts.

### CONCLUSIONS

We encourage the submission of allegations to the CFTC Office of Inspector General. Although the allegations at issue here were very serious, the lack of specificity regarding acts that would violate statutory or regulatory provisions, or amount to fraud, waste, abuse, or retaliation, made our task somewhat difficult in connection with this preliminary investigation. We offer no opinion on the position limits rule or pending legal challenges. We did not find any improper conduct by CFTC staff and management in connection with the creation of this rule.

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<sup>39</sup> <http://www.cftc.gov/PressRoom/PressReleases/pr6156-11>.

<sup>40</sup> <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook120711.pdf>.

# APPENDICES

## Appendix 1: Acronyms

Acronym	Title
DMO	Division of Market Oversight
OIA	Office of International Affairs
OITS	Office of Information Technology Services (now the Office of Data and Technology)
DCIO	Division of Clearing and Intermediary Oversight
DOE	Division of Enforcement
OGC	Office of General Counsel
OCE	Office of Chief Economist
COM	Office of the Chairman and Commissioners
OIG	Office of Inspector General
CFTC	Commodity Futures Trading Commission

During the summer 2011, the CFTC replaced the Division of Clearing and Intermediary Oversight with two new divisions:

Division of Clearing and Risk

Division of Swap Dealer and Intermediary Oversight

In addition, the CFTC replaced the Office of Information Technology Services, which previously acted as a sub-division of the Office of the Executive Director, with the new Office of Data and Technology. The Office of Data and Technology is separate from the Office of the Executive Director, and is restructured to include some data specialists formerly working in other CFTC Divisions.

We are using the division names and acronyms that were in place during the majority of the relevant period (July 2010-December 2012) for reasons of convenience.

## Appendix 2: Disclosure

On March 31, 2011, the Office of Inspector General for the Federal Election Commission (FEC) issued a required peer review of the CFTC OIG audit function which recommended, among other things, the hiring of experienced audit staff.<sup>41</sup> Prior to publication of the peer review report, CFTC OIG retained the services of a former Inspector General with over 20 years of directly applicable federal audit experience to supervise remediation efforts, including all audits and audit-related activities. Following publication of the peer review report, we received job inquiries from Steve Sherrod and other CFTC employees interested in working as an auditor, with some stopping by to discuss the peer review recommendation and others submitting resumes. Although we have been impressed by the resumes we have received from CFTC employees, during the relevant period OIG did not post a job listing for an auditor and no CFTC employee was formally considered for employment with CFTC OIG. We do not believe that the receipt of job inquiries when we are not currently engaged in the hiring process causes an insurmountable conflict in connection with a preliminary investigation (otherwise all CFTC employees would seek employment with OIG). During our field work, two CFTC employees suggested that the anonymous allegations were an attempt by other CFTC employees to derail any attempt by Steve Sherrod to work in the OIG. We have no opinion.

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<sup>41</sup> The peer review report is available here:  
[http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig\\_peerreview.pdf](http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oig_peerreview.pdf).

# EXHIBITS

Exhibit 1: Anonymous Allegation Received by  
Physical Delivery on August 31, 2011

Please investigate the position limits rulemaking (PLR) process that has taken place here at CFTC. This rule is about to go final, but it's broken, it cannot be implemented. When the industry (or the Hill) sees this, they will investigate the process and the many internal mis-steps, waste, and improprieties will surface.

As written, the PLR can't be connected to the Swaps reporting rule upon which it depends for implementation. If reporting does not allow for the calculations of positions (as required by the rule) then, position limits cannot be enforced. The Swaps rule has been well received and viewed as reasonable, thoughtful, and implemtable.

Steve Sherrod the leader of the PLR team is responsible for this wasted, misguided, agency effort for the following reasons.

He culled experts from the original team because they disagreed with his point of view for the direction of this rule. The final rule is not a committee/staff product, it is his alone. He has met with several industry lobby groups, so I suspect some fraud and dishonest effort here.

There was about 15 people from across the agency, now there are only about 6. All the current team members have less than 18 months of CFTC tenure. 3 have less than 2 years of futures industry experience. 1 attorney and 1 statistician were hired within the last year. Steve selected these people because he knew they would not get in his way. Please interview the members of the original full team, they will verify this.

The rule is broken and I fear that if investigated externally, the CFTC will greatly suffer. So many staff are talking about this that I also think it will probably leak out. That is unacceptable.

The CFTC will have to live with the results of this broken rule for years. Some others are hesitant to come forth because this rule gets so much attention. It is a major agenda item of the Chairman. He is a powerful person. But, this is a very serious matter.

The rule effort has been a waste of agency resources and an abuse of power, and perhaps some fraud. Mr Sherrod is unethical and dishonest in his pursuits in this and other matters. If this gets out, (to the Hill), the damage would be immense.

Exhibit 2: Anonymous Allegations Received by  
Email



[REDACTED]

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**From:** [REDACTED]  
**Sent:** Wednesday, August 31, 2011 2:33 PM  
**To:** OIGEmail  
**Subject:** Insider reports dishonest effort in rulemaking, sabotage of rule, potential market harm

Dear Sir or Madam,

I am a CFTC employee writing through pseudonym since I am afraid of renewed retaliation. I believe a team lead of a crucial rulemaking team has acted dishonestly and led his team to a point where their rule is not implementable.

I am referring to the rulemaking on position limits. The team was gradually trimmed until it was left with only the most inexperienced staffers so that the team lead would have absolute control. The position limit rule depends for its implementation on the work of another rule, the swap large trader reporting. Since you cannot limit positions unless you can measure them, the poslim rule is limited by what the SLTR requires traders submit. The SLTR was thoughtfully written and was out for comment, receiving just a handful of minor comments. It is to be implemented in three weeks. Yet, the poslim team lead chose to forge ahead with a plan that required a completely different information set and is thus planning to propose something that cannot possibly be implemented. I find it hard to believe this was by accident (Is utter incompetence something you look at too?) and suspect the motives of this person.

Cutting out the intent of Position Limits as required by Dodd-Frank, wasting taxpayer monies, steamrolling over other staff, proposing a rule that cannot possibly be implemented, is wasteful. More than that, it is dishonest. I hope you investigate before it is too late. Perhaps there is a chance to rectify before the CFTC damages markets and public confidence.

Thank you,  
Anonymous.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Friday, September 09, 2011 9:33 AM  
**To:** [REDACTED]  
**Subject:** Re: Reply to your email-Urgent

Thank you, [REDACTED] for responding.

I am simultaneously terrified of complaining and appalled by what is going on with the rulemaking on position limits. By now it may be too late to do anything: a proposal has been circulated, meetings with Comms are taking place and a new draft with their comments and compromises is due end of next week.

Perhaps it is best to just let it come out and when you see all Comms distancing themselves from it and all parties outraged, you will have more time and sources to review how we ended in this mess.

In a nutshell, the rule on position limits depends on gathering information in a very peculiar way, alien to industry practice, even academic practice, and most importantly, alien to how the Swaps Large Trader Reporting Rule was designed. So, it is not implementable unless the SLTR is modified. However, that rule was finalized with few comments and was supposed to be put in practice starting in two weeks. Now Sherrod is asking that SLTR rule to change to fit his PosLim rule. This would require such major changes that it would have to be delayed, reopen for comments, etc. Crucially, the new data would perhaps help his rule, but would make it nearly useless for any other purpose, like Risk Surveillance or even Market Surveillance.

Simultaneously, Sherrod is drafting the new rule to be a complete cave out. This way perhaps people out in industry will not notice the mess as much. When the limits are so high and positions so easy to offset, they would NEVER get hit, How can anyone know that they are not really implemented?

This was a completely avoidable problem, the incompatibility of two rules that should work together, since both rulemaking teams used to work together under Bruce Fekrat. Sherrod sneakily got Bruce kicked out and kept the PosLim staffed with inexperienced people whom he could bully. There was no check on him, he worked nearly secretly (as he always does) and upended the whole thing. Was this incompetence, mismanagement from above, or outright sabotage. That is the question.

For those of us that devoted over a year of our professional lives to rulemaking, it is devastating that we will have to hide in shame in our resume what should have been a signal effort for an attorney at the CFTC.

If you want to know more now though, I would suggest chatting confidentially with the team on SLTR and some of the people in the PosLim rule (e.g. Salman, Kim, etc)

I am way to scared to come out to OIG, specially if what I hear is true and Sherrod ends up there. He would be all over me and I would have to leave the agency.

I hope you do look into this for the credibility of the Agency. Working at the OIG, I hope you have the courage I cannot find.

Best of luck.

AP

On Wed, Sep 7, 2011 at 9:06 PM, [REDACTED]@cftc.gov> wrote:

Thank you for expressing your concerns about the proposed position limit rules and related matters.

Can you please provide me with more specific details so that we can efficiently evaluate your concerns?

Members of the Office of the Inspector General are available to confidentially meet with you at any location to acquire any information you have on the matters you stated in the email dated August 31, 2011.

I can be reached at 202-418-5115.

Time is of the essence.

Waiting to hear from you,

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