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Committee on Energy and Commerce
Washington, DC 20515–6115

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October 24, 2008

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

Dear Acting Chairman Lukken:

We are writing with follow-up questions and data requests as the Committee on Energy and Commerce continues its oversight of unregulated trading in energy commodity swaps/futures and the impact on energy commodity prices.

Earlier this year, following a doubling of energy prices that appeared divorced from changes in the fundamentals of supply and demand, the Commodity Futures Trading Commission (CFTC) faced questions about the role of commodity index investments on commodity prices. Because many of these speculative investments were executed on unregulated over-the-counter (OTC) swaps markets for which CFTC lacked data, the Commission issued a Special Call in June 2008 asking investment banks and index funds for month-ending data on swaps and index positions beginning December 31, 2007.

On September 11, 2008, the CFTC issued a *Staff Report on Commodity Swap Dealers & Index Traders* that summarized a small portion of the data it received on commodity index investments made by pension funds, endowments, sovereign wealth funds, index funds, and other institutional investors in 33 energy and agricultural commodities. With respect to energy, the report stated that:

- Twenty swap clients held aggregate positions (including both futures and over-the-counter (OTC) positions) in the benchmark West Texas Intermediate (WTI) crude oil contract exceeding the 10,000 contract single month or 20,000 contract all month accountability levels. In addition, there were 10 intermediaries above the accountability level.

- On June 30, 2008, 32 principals held aggregate positions in natural gas above the single month or all months combined accountability level.

- Certain non-commercial entities held aggregate positions that "significantly exceeded" a position limit or exchange accountability level.

The CFTC report concluded that while oil prices rose 46 percent from $96 to $140 during the period December 31, 2007, to June 30, 2008, the activity of commodity index traders during this period reflected a net decline of swap contracts as measured in standardized futures equivalents. There are significant questions, however, as to whether the staff's conclusion is supported by data that is validated, reliable, and complete, as noted below.

- Commissioner Bart Chilton issued an unprecedented dissent from the CFTC staff report that states:

  "...certain conclusions...regarding the causality link between index traders and price movements...do not appear necessarily to be ineluctably linked to the data received. Absent compelling evidence, I believe that the most responsible course of action is to refrain from making conclusions or declarative statements based upon such limited and unreliable data.

- Swaps positions for agricultural commodities reported by the CFTC staff report are widely divergent from the swaps positions reported in the CFTC weekly Commitment of Trader reports, according to testimony by Michael Masters before the Senate Committee on Energy and Natural Resources on September 16, 2008.

- The CFTC report concedes that "due to survey limitations" there "may be a margin of error in the precision of the data" and that the staff will continue to "review and refine" the data.

- CFTC's conclusion that the growth in speculative investments was not responsible for the sharp rise in oil prices is at odds with the widely circulated views of Michael Cembalest, J.P. Morgan's global chief investment officer. On September 16, 2008, he wrote J.P. Morgan's investors:

  "...the Peak Oil crowd promoting crude oil...at $200 should concede what we've been saying: there was an enormous amount of speculation pent up in energy markets (e.g., an 8-fold increase in bank OTC oil derivative exposure in the last 3 years), and it wasn't just the supply-demand equation. Oil will rise again, and we need solutions to energy supplies, but $140 in July 2008 was ridiculous."

Policy decisions regarding the regulation of the OTC markets should be based on a credible analysis backed by validated, transparent, and replicable data. While we recognize that CFTC staff was pressured to analyze massive amounts of data in a matter of weeks to meet the Commission's September 15 deadline, this staff report raises more questions than it answers.

First, CFTC collected seven months of data but only summarized three months of data in its report. It also left out data on the size of investments in each "brand" of index. Second, CFTC requested data on single commodity swaps positions, but CFTC presented no information on these positions. Third, there is no evidence that CFTC validated the data it received.

Given these and other uncertainties, it is necessary for the Committee to carefully review the data and the methods used by the Commission. Accordingly, pursuant to Rules X and XI of the Rules of the House of Representatives, and Section 8 of the Commodity Exchange Act, the Committee on Energy and Commerce requests the following data obtained and developed by the CFTC in its Special Call of June 2008 (and any subsequent CFTC requests related to that Special Call):

Data Requests Related to Staff Report

1. Spreadsheets with the total notional value and futures equivalent positions obtained from the 32 entities and sub entities for each month from December 31, 2007, to June 30, 2008. This should include summary of the gross long and short notional value and futures equivalent positions for the 33 commodities tied to the various index "brands" (S&P-GSCI, DJ-AIG, etc.) and within each "brand" by individual commodity as delineated on Attachments 1 and Attachment 2 to the Special Call. If data is available subsequent to June 30, 2008, please provide such data as well.

2. Spreadsheets with the total notional value and futures equivalent positions obtained from the 32 entities and sub entities for each month from December 31, 2007, to June 30, 2008, which has the gross long and gross short notional value and futures equivalent positions for single commodity transactions broken down by "commercial," "non-commercial," and "intermediaries." If added data is available subsequent to June 30, 2008, please provide such data as well.

3. List of swap clients or principals and their gross long and short futures positions (aggregate futures, options, and OTC positions) for the WTI contract for each month from December 31, 2007, to June 30, 2008. If added data is available subsequent to June 30, 2008, please provide such data in an excel spreadsheet.

4. List of swap clients or principals and their gross long and short positions in the (aggregate futures, options and OTC positions) for natural gas for each month from December 31, 2007, to June 30, 2008. If data is available subsequent to June 30, 2008, please provide such data in an excel spreadsheet.

5. List of swap clients or principals and their gross long and short positions (aggregate futures, options, and OTC positions) for heating oil for each month from December 31, 2007, to June 30, 2008. If data is available subsequent to June 30, 2008, please provide such data in an excel spreadsheet.

6. List of swap clients or principals and their gross long and short positions (aggregate futures, options and OTC positions) for the Reformulated Blendstock for Oxygen Blending (RBOB) gasoline contract for each month from December 31, 2007, to June 30, 2008. If data is available subsequent to June 30, 2008, please provide such data in an excel spreadsheet.

7. A list of entities or counterparties that exceeded a position limit or exchange accountability level for any commodity, and the size of their gross long and gross short positions (aggregate futures, options, and OTC positions) in that commodity. Please indentify which are commercial or non commercial entities.

Questions related to the Staff Report

8. How were swaps classified in this report? Specifically, were swaps that are tied to commodity index investments designated as "commercial" or "non-commercial" in this report? Were swaps in commodities that are tied to sovereign wealth funds designated as "commercial" or "non commercial" in this report?

9. Did the reporting entities, such as swap dealers or investment banks, assign the "commercial" and "non commercial" designations? Or did CFTC assign this to each position?

10. How did CFTC validate the data it received from the Special Call, including the designation of "commercial" vs. "non-commercial"?

11. In August 2008, the *Washington Post* reported that "non-commercial" entities (speculators) may have controlled as much as 81 percent of the regulated oil futures market, up from an estimated 37 percent in 2000. What was the percentage of speculative positions held by non-commercial entities (including swap dealers) at the end of August 2008? Please provide a full and complete explanation for the basis of this calculation, including explanations with particularity of your definitions in this context of the terms "speculative positions" and "non-commercial" entities.

12. As a result of the Special Call, CFTC reclassified a major market participant from commercial to non-commercial in July 2008. Please provide a full and complete history, extending back to the original filing with the CFTC by this trader or this trader's corporate owners, subsidiaries, or any other entity that is affiliated with the trader. Please provide the data or analysis developed and utilized by the CFTC which explains why this trader was improperly classified as a commercial trader and any agency memoranda or documentation prepared in connection with this reclassification.

13. Have any other market participants been reclassified as a result of the Special Call? Please provide a list of those participants and the positions which have been reclassified.

14. Who made the "futures equivalent" calculations used in the CFTC staff report: the CFTC or the swap dealers? If it was the latter, did the CFTC independently and carefully verify those calculations?

15. In calculating "futures equivalents," were options valued at their full notional value or were they adjusted for the delta? Was this method provided in the instructions given to swap dealers? Was this method applied consistently by all entities? Did the CFTC independently and carefully verify those calculations?

Please respond no later than November 10, 2008. If you have any questions, please contact Bruce Harris or Richard Miller with the Committee on Energy and Commerce staff at (202) 225-2927.

Sincerely,

John D. Dingell
Chairman

Rick Boucher
Chairman
Subcommittee on Energy
And Air Quality

Bart Stupak
Chairman
Subcommittee on Oversight
and Investigations