Fact Sheet

The CFTC Needs to Investigate the Role and Impact of Financial Speculators in the Commodities Markets

Speculators' Record-Breaking Profits and Bonuses Are Coming from the Pockets of American Families as the Price of Gas, Cereal, Bread, and Everyday Commodities Skyrocket

March 8, 2023

"***[The CFTC's] main job as a regulator is to make sure that whatever is going on in the [commodity] markets is actually reflective of real supply and demand and not anything else.***"

Former CFTC Chairman Heath Tarbert[1]

Commodities prices have skyrocketed to the point that the world is in the middle of the biggest commodity price spike since the 1970s[2]: the price of "chicken parts and flour are each up close to 20 percent year on year and margarine has jumped 34 percent"[3] and the price of cereals, vegetable oils, and meat have all reached all-time highs according to the UN's Food and Agricultural Organization.[4]

These commodity price spikes and volatility are creating an ongoing and worsening crisis facing all of America's families. However, rural Americans and low- and moderate-income households[5] as well as Black households are disproportionately harmed because they "are more likely to consume goods with volatile prices."[6]

With many Americans living paycheck to paycheck and barely making ends meet, most Americans simply do not have the income or resources to pay for these price increases for everyday necessities.[7] As a result, increasing numbers of "workers are picking up extra jobs just to pay for gas and food."[8] Regardless of the level of pain, the price of commodities impacts the lives, livelihoods, and standard of living of every single American. Worse, many fear that millions of people across the globe will starve to death due to unaffordable commodity prices[9] which, in turn, raises the specter of social and political instability in several countries,[10] which, in turn, raise serious geopolitical concerns.[11]

Most importantly, commodity prices for food and related items will almost certainly continue to be higher and more volatile well into 2023 if not much longer. For example, while "commodity prices have retreated over the last month [of 2022] amid investors' fears of a global recessions, analysts at Goldman Sachs expect them to rise … because inventories are at record lows and producers have little spare capacity."[12] Additionally, "[t]here has been tremendous destruction of arable land in Ukraine …. Globally the cost of fertilizer is up almost 100 percent, and that additional cost is reducing the amount of fertilizer used in farming. That is harming the quality of the crop worldwide."[13] Thus, even if there is demand destruction in the U.S. or the globe due to a recession of whatever severity or length, commodity prices and volatility may decrease, but the relief will likely be temporary and sporadic.[14]

There is no doubt that some of the price spikes and volatility are due to genuine supply and demand issues, dramatically exacerbated by the shocks from the pandemic and Russia's attack on Ukraine as well as soaring inflation across the globe and central bank policies. However, it also appears that some potentially significant amount of these price spikes and volatility are due to ***excess*** speculation in the commodities markets, even though excessive commodity speculation is prohibited and a practice the CFTC is specifically mandated to prevent.[15] For example, according to a report by The International Panel of Experts on Sustainable Food Systems (IPES-Food), wheat futures prices shot up so high soon after the war started that some grain elevators stopped buying futures contracts from farmers because they "feared prices would fall again by the time they sold."[16] In this situation, the cash and futures prices were not converging, and "failure to do so is a telltale sign of factors beyond supply and demand at play."[17]

This view is supported by years of extensive research showing excess speculation[18] and is suggested by the recent historic profits reported by commodity market intermediaries and financial firms, including Cargill, Bunge, Trafigura, and Wall Street's largest banks' trading desks (as detailed below). The data suggests that financial investors are cashing in on rising food prices – although, with so many factors at play and with the opaqueness of the commodities market, it is difficult to say to exactly what extent.[19] That is why a thorough, comprehensive, granular, markets-specific and data-driven investigation by the CFTC is imperative, as is the public release of a report fully disclosing not just the conclusions but the factual basis for them.

Importantly, as discussed below, speculation plays an important legitimate role in the commodities markets. It is essential for the markets to fulfill their public and private market purposes of price discovery and hedging. However, permissible speculation must be limited, or it will overtake, overwhelm, and undermine these markets, defeating the very purpose for the markets. That's why speculation is allowed, but excess speculation is dangerous and prohibited.

While little can be done by the CFTC about the supply/demand factors and shocks driving these price hikes, one thing that can and should be done is an investigation into what role, if any, excess financial speculation has played in those price hikes and volatility. This should not be a witch hunt to scapegoat market participants. It should be **a comprehensive, thorough, data-driven, granular, dynamic, and ultimately transparent investigation of the commodity markets to determine the role and degree of speculation on a commodity-by-commodity basis**.[20] Unlike past CFTC examinations and reports,[21] this examination should be undertaken without preconditions or prejudging the outcome.

The examination should also be done regardless of price increases, declines, or volatility, or additional supply/demand shocks over the next several weeks and months, which are inevitable.[22] Whether oil goes to a "worst case" $380 a barrel or "collapses to $65" or whether there's a recession that destroys demand, drives down inflation and commodity prices,[23] the CFTC's legal duty to eliminate "excess speculation" remains and it has established position limits to accomplish that goal. Given that, as IOSCO Chair Ashley Alder said, "the commodities sector [is] lightly supervised, much of it opaque, and regulation of key actors could be non-existent,"[24] it is imperative that the CFTC quickly undertake such an investigation to ensure that there is no excess speculation and that its rules are working and effective,[25] particularly during these times of historic economic and financial stress and fragility.[26]

Frankly, the lack of such an investigation and public reporting is having global repercussions due to the market power of US futures trading exchanges, the size of US production and exports, and the role of the US dollar as the principal currency of global trade.[27] As stated in IPES-food report, the "lack of transparency on who is driving current futures investments—and lack of publicly available data from the CFTC—is preventing clarity on whether/to what extent the current crisis is speculation-driven and thus holding back effective remedial actions."[28]

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Financial Speculators Appear to be Overwhelming Commodity Markets, Frustrating Their Fundamental Public Purpose, Driving Up Prices, and Harming America's Families

Congress has determined that "[e]xcessive speculation" in commodity derivatives "causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce."[29] Congress, therefore, charged the CFTC with the duty to "proclaim and fix [position] limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders" "from time to time" and "[f]or the purpose of diminishing, eliminating, or preventing such burden."[30] The Commission is further charged by Congress to set position limits, "to the **maximum** extent practicable," to "diminish, eliminate, or prevent excessive speculation" and "ensure that the price discovery function of the underlying market is not disrupted."[31]

It is clear Congress made excessive speculation illegal because of the many harms it causes. It unfairly extracts wealth from consumers, lowers the living standards of all Americans, and threatens the lives of the poor worldwide. The prohibition on excessive speculation is also essential to prevent the disruption of the commodities markets, which exist to enable physical producers and purchasers[32] to engage in price discovery and hedge future risks.[33] Those are essential for the efficient planning, production, and delivery of commodities and end products like oil, cereal, and bread at relatively stable prices based largely on supply and demand.

Position limits enacted under this mandate are critical tools for the CFTC to combat price volatility and ensure the derivatives markets work for commercial producers and the consumers they serve, not for financiers, profiteers and speculators looking to make a quick buck. As we have explained before,[34] the CFTC's most recent position limits rulemaking fails to strike the right balance between the producers and consumers the derivatives markets are supposed to serve, and the speculators who have an important, but limited, role to play in derivatives markets.

When there is excessive speculation in commodity markets, it interferes with these markets' critical price discovery and hedging functions, making pricing determinations difficult at best and hedging costs often prohibitive. As an example of how important these functions can be for companies, and ultimately consumers, it was reported that Southwest Airlines hedged its oil purchases, enabling the airline to keep prices down while still making significant profits even in a time of spiking and volatile fuel prices. What did not get as much attention is that the other airlines do not hedge and one of the reported reasons is that they see hedging as "a Wall St rip off," meaning financial speculators are taking advantage of physical purchasers.[35]

This example illustrates how potentially excessive speculation can defeat the very important social purposes for the commodities markets to exist in the first place. They are not supposed to be gambling dens for financial players to speculate to maximize their profits and bonuses. They are supposed to exist to facilitate the delivery of essential commodities to the American people at a market price determined largely by supply and demand fundamentals through the interaction of actual physical producers and purchasers.

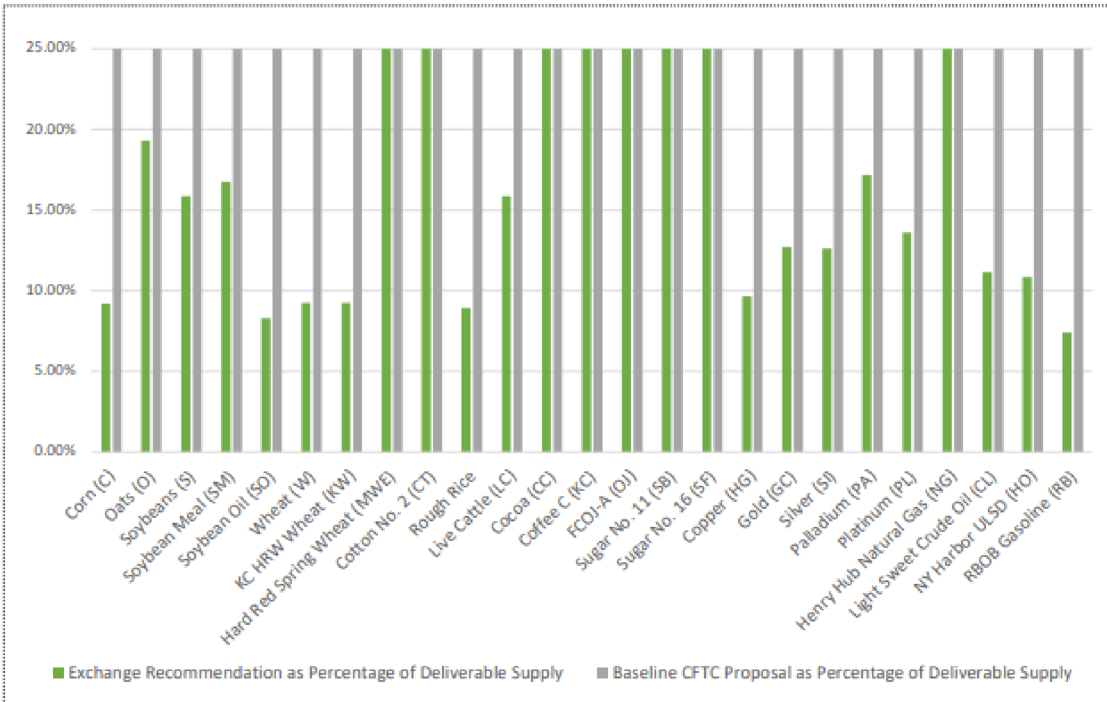
That is why, ***unlike equity markets, speculation is only allowed to the degree it facilitates the public purposes of the commodities markets***: assisting actual physical producers and purchasers of commodities to discover the price for products today and in the future, and in turn to enable them to hedge against price risk. Limiting the impact of speculation in these markets and ensuring that the markets serve actual producers and purchasers are what tethers those commodities markets to actual supply-demand dynamics and, thereby, fundamental pricing. Any amount of speculation beyond the level necessary to achieve those purposes is excessive and prohibited.

The primary regulatory tool for limiting speculation and preventing excess speculation historically has been speculative position limits. However, after working effectively for many decades, these markets have been increasingly dominated by speculation and speculators, who have overwhelmed the actual producers and purchasers. That, in turn, has caused price spikes, volatility, and boom/bust cycles.[36] This was made worse when the CFTC finalized the most recent version of the position limits rule in October 2020. That rule had six key deficiencies, including that it:

1. increased the spot month limits for derivatives on 25 physical commodities which significantly increased permissible speculation in those commodities;
2. failed to apply position limits to non-spot month derivatives contracts on 16 of 25 physical commodities;
3. expanded dramatically—almost tripled—the number of self-effectuating enumerated exemptions and, for the first time, created a loophole for anticipatory merchandising;
4. finalized a new process for recognizing non-enumerated hedging strategies that practically eliminates CFTC oversight;
5. misinterpreted the CEA as requiring a necessity finding before the CFTC can finalize position limits; and
6. did next to nothing to address the disruptive and distortive effects of excess speculation caused by the massive market footprint of ETFs, so-called commodity index funds, and similar speculative vehicles.[37]

Those provisions of the new position "limits" rule applicable now virtually guarantee significant increases in speculation in the commodities markets. For example, as to (1) above, by allowing significantly increased permissible speculation in the spot month limits, it is only reasonable to believe that speculators increased their speculative activities up to the new limits. The following chart[38] shows just how much increased speculation in each commodity would result if that happened (i.e., green lines likely jumping up to gray line levels):

Exchange Recommendations for Core Referenced Futures Contracts v. Proposed CFTC Federal Baseline

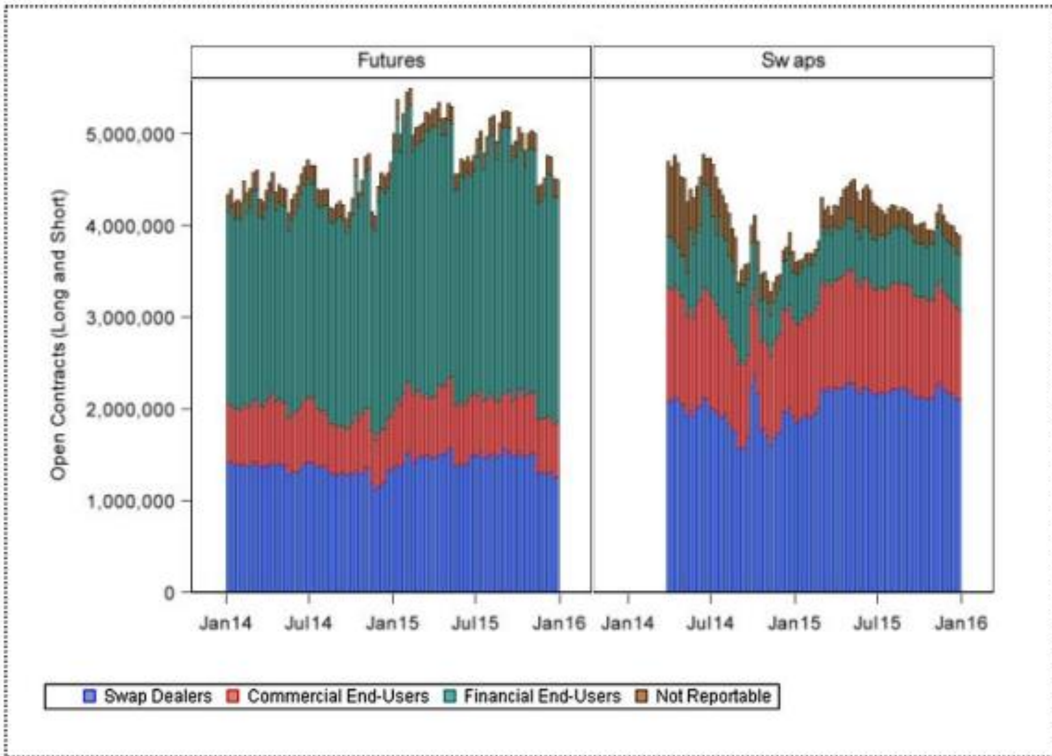


Source: CFTC Proposal[149]

That, plus the other identified deficiencies in the currently applicable position limits rule, have undoubtedly resulted in increased speculation in the commodities markets at the worst possible time. The bottom line is that commodities markets appear now to be more often driven by speculation than by the needs of producers and purchasers. ***Put differently, the dynamics and price signals of supply and demand are often overwhelmed by financial speculators, making price discovery and hedging challenging if not impossible.***

Due to limited publicly available information, it is difficult to determine the actual degree of speculation and whether the amount is excessive, although it appears to be excessive in numerous markets. For example, research by a former CFTC Chief Economist found that financial speculators far exceeded physical end users in the swaps and futures markets as illustrated here:

Total Open Swaps and Futures Open Interest by Market Participant Type
(January 2014 through November 2015)

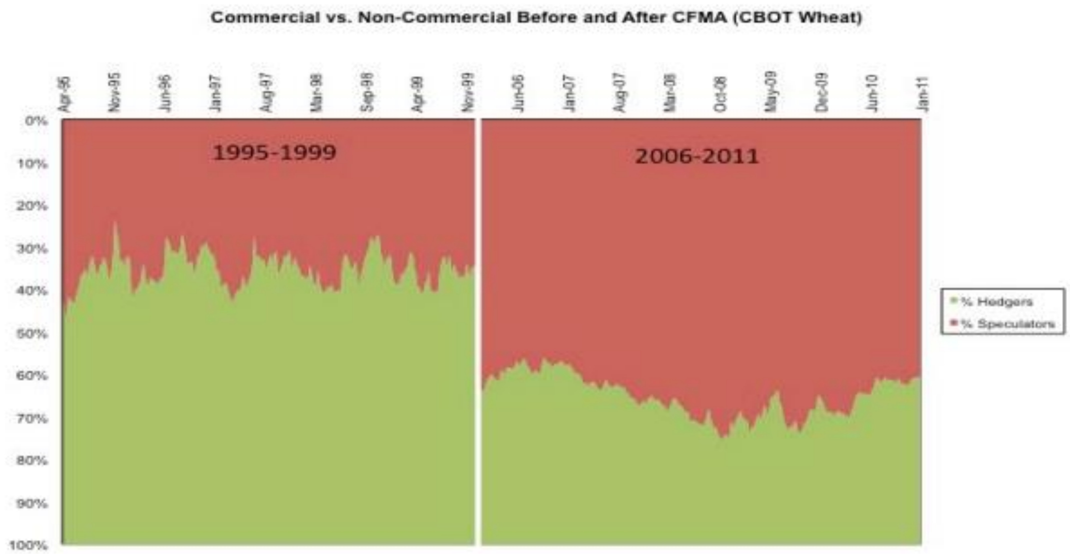


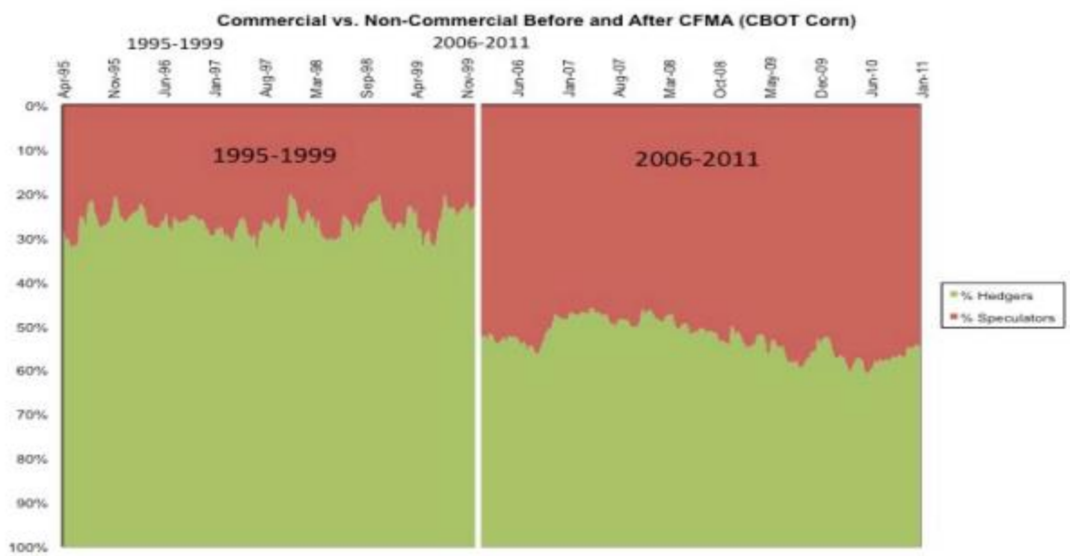
This chart is reproduced in Better Markets' May 15, 2020, comment letter to the CFTC on its proposed position limits rule (that was finalized in October 2020), and the research makes clear that:

> "the commercial end-user component continues to represent a relatively small percentage of both futures (and options) and swaps markets. One recent paper independently published by a CFTC economist, in fact, observes that commercial end-users 'appear to represent about 14% of futures open interest and 29% of open swaps.' In contrast, financial end-users (again, including money managers in the [Commitment of Traders] methodology and 'others' generally seeking speculative exposure to commodities prices) 'represent[] about 53% of futures open interest but just 16% of open swaps.' These figures dramatically underestimate speculation, however, because 'swap dealers' should be viewed as speculators to the extent their commodity index and other commodity swaps dealing is to such financial end-users."[39]

Interestingly, but not surprisingly, this roughly tracks with the data Better Markets presented in a March 28, 2011, comment letter on a prior position limits proposal, comparing then-current speculative activity to historic activity:

Source: CFTC COT Report for pre-CFMA and CFTC CIT report for post-CFMA.





That letter presented similar data on cotton, soybeans, feeder cattle, crude oil, heating oil, sugar, among other commodities as well.[40]

While the current data and research indicates that speculation in the commodities markets is already too high, it is likely to increase in the near future. For example, misleadingly labeled "commodity index funds" are pure speculative flows[41] and, notwithstanding negative returns due to roll costs, are often marketed with dubious claims of offering "diversification" or even a "hedge" against inflation.[42] As anxiety increases over inflation, Wall Street's marketing machines are working overtime to convince investors that they need to allocate more investments to commodities – that's going to make a bad situation even worse.

While Congress in the Dodd-Frank Act explicitly amended the Commodity Exchange Act to authorize position limits on any "group or class of traders"[43] like commodity index funds, the CFTC has refused to use that authority.[44] As a result, these speculative flows continue and will be increasing. **Historically High Profits Also Suggest Excess Speculation**

In addition to the facts and research showing the increasing dominance of financial speculators in the commodity markets, the recent historic profits being pocketed by the biggest commodities players also suggest speculation is driving these markets (even accounting for expected greater profits due to risk/reward dynamics in higher volatility environments and simultaneous supply and demand drivers). For example, Cargill, one of the four largest global commodities traders "that have dominated grain trading for a century," **reported a net profit of $6.68 billion for the fiscal year ending in May 2022,**[45] **resulting in its "the most it earned annually in its 157-year history."**[46] As the Washington Post reported, "That's a 35% increase from the previous fiscal year, which had also been a record."[47] The previous year's record was a 63% increase in profits.[48] Presumably not coincidentally, "Cargill broke with a more than two-decade tradition of transparency in 2020 and stopped releasing its results publicly."[49]

As a result of this pandemic windfall, which was supplemented by the profits made arising from Russia's attack on Ukraine and other supply shocks, **three more members of the Cargill family joined "the ranks of the 500 richest people."**[50] These three joined two other Cargill family members already on the list.

Cargill's historic profits are similar to those of other commodity traders. For example, Glencore, the "world's biggest commodities trader,"[51] announced a payout of $7.1 billion to its shareholders due to its "[a]djusted earnings before interest, tax, depreciation and amortization rose 60% to $34.1 billion, smashing a previous record of $21.3 billion a year earlier."[52] Similarly, Trafigura Group earned a record $7 billion in 2022, ***more than the previous four years combined***, "as the commodities trader cashed in on wild price swings and arbitrage opportunities driven by Russia's invasion of Ukraine."[53] In just the first six months of Trafigura's fiscal year ending March 31, 2022, its profit was 29% higher than a year earlier. While it is reported that Trafigura does not speculate, it does own its own hedge fund, and, more importantly, these trading houses are intermediaries for the commodity speculators. Also, Vitol, the world's largest independent oil trading company, "smashed its previous records by making more profit in the first half of this year than in the whole of last year."[54] The trading firm made close to $4.5 billion in the first six months of 2022. For the fiscal year of 2021, Vitol made a record $4.2 billion in profit and "traded 7.6 million barrels per day of oil and nearly 13 million tonnes of liquefied natural gas." Also in 2021, Vitol handed $3 billion to its executives and senior staff.[55] Bunge has also had surging revenues and profits and it has increased its full year forecast by 21%.[56] Finally, agricultural trading house Louis Dreyfus Co.'s profits surged 82% last year.[57]

Big Oil also saw record profits in 2022 amid volatility in the energy markets. In a year when Americans faced soaring energy prices, Exxon Mobil and Chevron made over $ 90 billion in combined profits last year, their largest haul ever.[58] In fact, five of the West's largest energy companies have reported nearly $200 billion in 2022 profits combined.[59]

These outsized commodity trading profits are also reflected in the results of Wall Street's biggest banks' trading revenue. For example, Goldman Sachs' commodities desk trading revenue exceeded "$2.2 billion in the final months of 2021 – topping a windfall it generated in 2020 for its strongest performance in a decade."[60] Moreover, just this past year, Goldman's commodities desk trading revenue surpassed $3 billion in 2022.[61]

As important, it was reported that "[w]hat's good for Cargill and its peers … is a headache for consumer goods companies and ultimately households, which face the highest food inflation in a decade."[62] Regarding Trafigura's record profits, it was reported that

> "[m]any traders expect commodity prices to remain high, ***disrupting the global economy's recovery from the pandemic and adding to the pressure on consumers and businesses from rapid inflation***."[63]

While genuine supply and demand issues exacerbated by recent global shocks explains some of this, these historic, outsized profits are also likely due to excess speculation that is not being reined in by position limits as required by law. Because the applicable position limits rule adopted by the CFTC in October of 2020 was deficient and riddled with loopholes (as cogently detailed in the dissents of then-Commissioner, now-Chair Russ Behnam and former Commissioner Dan Berkovitz[64]), greater speculation was the inevitable result.

The Need for a CFTC Investigation of Commodity Markets Is Clear and Compelling

Financial speculators appear to comprise the vast majority of commodity market participants, which is why it is imperative to get the facts at a granular level for each commodity. The CFTC's investigation must have three primary components:

1. A determination of the exact amount of speculative interest in each commodity market.[65]
2. A review of the applicability of the CFTC's position limits, if any, and the impact, if any, where applicable.
3. A determination of whether the amount of speculation in each commodity market is excessive or explain in detail why that is not the case.

Given (1) the current highest commodities price spike in decades, (2) the unprecedented circumstances of multiple, simultaneous supply and demand shocks, and (3) the critical importance of the commodities markets to America's families and economy, the CFTC must conduct a comprehensive, thorough, data-driven, and granular investigation of the commodity markets to make the determinations identified above, especially the role and degree of speculation on a commodity-by-commodity basis. Importantly, we believe that this examination should be undertaken without preconditions or prejudging the outcome.[66]

The CFTC should gather and analyze the facts and data, write a report, and release the maximum amount of information publicly so that the American people can have confidence in the examination, report, and conclusions. Done right, the data will make clear the level of speculation and the facts will provide a basis for determining whether it is excessive or not. However, if the data provide evidence of excessive speculation, then the CFTC is obligated under the statute to revise its position limits rulemaking and end any excess speculation.

The CFTC Should Revise Its Current Position Limits If There Is Evidence That Federal Position Limits Are Too High.

If the investigation of the commodity markets called for here produces evidence of excessive speculations, then the CFTC must reconsider the level of its aggregate limits and change them to eliminate excess speculation. When the CFTC last set spot-month limits for 25 core referenced futures contracts, it primarily focused on 25% of deliverable supply, which produced numerical limits that the agency recognized as "relatively high" compared to many then-existing limits imposed by exchanges.[67] These limits were far too generous to speculators, in large part because the chosen baseline of 25% of deliverable supply for a particular commodity did not sufficiently account for the magnitude of trading in derivatives for that commodity; instead, as Better Markets explained, a rebuttable presumption of 10% of deliverable supply would have been more appropriate to curb speculation.[68]

Furthermore, the Commission should reconsider its overly accommodative approach to hedging exemptions. This would be necessary in large part to ensure that any revised position limits remained effective. There are numerous problems with the current mechanisms for self-effectuated hedging; Better Markets has documented those extensively in the past.[69]

The current position limit rules eliminated requirements to report monthly cash-market positions directly to the Commission, with only indirect, annual reporting as an inadequate substitute.[70] The loss of this monthly reporting significantly weakened the CFTC's ability to deter violations of position limits.[71] In short, the Commission would be blind to the fact that *bona fide* hedging parameters had been exceeded.

Revisions to position limit regulations along the lines described above are necessary to protect Americans from the costs and burdens of excessive speculation. As stated above, excessive speculation harms not only the pocketbooks of every American who must purchase food but also the rural farmers and other producers who depend on stable, well-functioning markets.[72] Thus, if there is evidence of excessive speculation, then the CFTC must use the position limits policy solution to address that and ensure that Americans and the commodities markets do not suffer from excessive speculation.[73]

Conclusion

The CFTC must conduct a comprehensive, thorough, data-driven, and granular investigation of the commodity markets to determine the role and degree of speculation on a commodity-by-commodity basis. The CFTC's goals should be to gather and analyze the data, which should all be publicly disclosed, so that the public can see and ideally independently verify the conclusions. If speculation is determined to be limited (either due to position limits or otherwise) and the data proves that there is no excessive speculation, then the American people can have confidence that supply and demand fundaments, admittedly as impacted by shocks, are driving the prices and volatility of commodities. However, if speculation is found to be excessive and not reined in by the current position limits, then the CFTC will have the data to take rulemaking and enforcement actions as appropriate and as required by law.

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[11] *See* CNBC (April 21, 2020), "CFTC Chair Heath Tarbert on oil futures' plummet," *available at* https://www.cnbc.com/video/2020/04/21/commodity-futures-trading-commission-chair-heath-tarbert-on-oil-futures-plummet.html.

[2] Rana Foroohar, The Financial Times (June 27, 2022), "The high cost of producing cheap food" (also discussing disconnect between incomes of actual commodity producers and commodity purchasers' costs), *available at* https://www.ft.com/content/f04e9e61-4a12-409a-a457-fbda710e9418.

[3] Brooke Masters and Andrew Edgecliffe-Johnson, The Financial Times (June 16, 2022), "We should worry about price of food more than petrol, warns BlackRock's Fink," *available at* https://www.ft.com/content/7dd4c4cc-bb2d-4725-a1de-f95c394bad93; *see also*, J.J. McCorvey, Ayse Kelce and Brian Whitton, The Wall St. J. (July 16, 2022), "What Is The True Cost of Inflation? It's Complicated. Inflation just hit a four-decade high," *available at* https://www.wsj.com/articles/what-is-the-true-cost-of-inflation-impact-real-terms-11657928491?mod=hp_lead_pos2.

[4] *See* Rupert Neate, The Guardian (April 17, 2022), "Soaring food prices push more Cargill family members on to world's richest 500 list," *available at* https://www.theguardian.com/news/2022/apr/17/soaring-food-prices-push-more-cargill-family-members-on-to-world-richest-500-list.

[5] *See*, e.g., Scott Horsley, NPR, "Inflation May Be Easing – But Low-Income People Are Still Paying the Steepest Prices," *available at* https://www.npr.org/2022/05/11/1097966775/inflation-poor-income-inequality-biden-federal-reserve; Rachel Siegel and Andrew van Dam, The Washington Post (Feb. 13, 2022), "'Survival mode': Inflation falls hardest on low-income Americans," *available at* https://www.washingtonpost.com/business/2022/02/13/low-income-high-inflation-inequality/; Kendall Crawford, Iowa Public Radio (July 15, 2022), "Report: Rural Americans Hit Harder by Inflation Than Urban Ones," *available at* https://nebraskapublicmedia.org/en/news/news-articles/report-rural-americans-hit-harder-by-inflation-than-urban-ones/; and, David Soll, New Jersey Monitor (July 15, 2022), "Swelling grocery bills are pummeling the poorest," *available at* https://newjerseymonitor.com/2022/07/15/swelling-grocery-bills-are-pummeling-the-poorest/.

[6] Alexandre Tanzi, Bloomberg News (July 15, 2022), "Black US Households Face Higher Inflation, Richmond Fed Says," *available at* https://www.bloomberg.com/news/articles/2022-07-15/black-us-households-face-higher-inflation-richmond-fed-says?sref=mQvUqJZj; Munseo Lee, Federal Reserve Bank of Richmond, "Do Black Households Face Higher and More Volatile Inflation?," *available at* https://www.richmondfed.org/publications/research/economic_brief/2022/eb_22-25.

[7] *See* Beverly Harzog, U.S. News and World Report (June 8, 2022), "How Many Americans Are Living Paycheck to Paycheck?," *available at* https://money.usnews.com/credit-cards/articles/how-many-americans-are-living-paycheck-to-paycheck; Peter Coy, The New York Times (July 29, 2022), "What Does It Really Mean to Live 'Paycheck to Paycheck'?," *available at* https://www.nytimes.com/2022/07/29/opinion/paycheck-finances.html; Sara Ruberg and Alistair MacDonald, The Wall St. J. (July 8, 2022), "Food Prices Squeeze Poorest in Rich Countries," *available at* https://www.wsj.com/articles/food-insecurity-hits-rich-countries-as-inflation-makes-basics-unaffordable-for-many-11657272602; Daniela Sirtori-Cortina, Bloomberg News (July 20, 2022), "Americans Are Buying Fewer Staples as Inflation Crimps Budgets," *available at* https://www.bloomberg.com/news/articles/2022-07-20/shoppers-buy-fewer-staples-as-inflation-erodes-resilience?srnd=premium&sref=mQvUqJZj.

[8] *See*, Lauren Kaori Gurley, The Washington Post (July 17, 2022), "Workers are picking up extra jobs just to pay for gas and food," *available at* https://www.washingtonpost.com/business/2022/07/17/inflation-wages-extra-jobs/; Gary Silverman, *et al.*, The Financial Times (July 20, 2022), "US consumers are bending but not breaking as prices soar. Can it last?," *available at* https://www.ft.com/content/ea4d6ee2-7cca-4081-a491-870d4045646b ("'Over the last five to six months, with the inflation spike, we are seeing [here in Florida] more and more folks accessing our services. We regularly see people who have two or three jobs.'").

[9] Michelle Nichols, Reuters (June 24, 2022), "World faces unprecedented global hunger crisis, UN chief says," *available at* https://www.reuters.com/world/world-faces-unprecedented-global-hunger-crisis-un-chief-says-2022-06-24/ (UN urging "ministers meeting on food security to take practical steps to stabilize food markets and reduce commodity price volatility"); Kabir Agarwal et al., The Wire (May 6, 2022), "'Betting on Hunger': Market Speculation Is Contributing to Global Food Insecurity," *available at* https://thewire.in/economy/speculation-is-contributing-to-global-food-insecurity-significantly; *see also* Missy Ryan, The Washington Post (June 24, 2022), "Diplomats urge action as global food crisis deepens," *available at* https://www.washingtonpost.com/national-security/2022/06/24/food-security-ukraine/; Antony J. Blinken, U.S. Secretary of State (May 19, 2022), Statement at

the UNSC Meeting on Food Insecurity and Conflict, *available at* https://www.state.gov/secretary-antony-j-blinken-at-the-unsc-meeting-on-food-insecurity-and-conflict/.

[10] *See, e.g.,* Patricia Cohen, The New York Times (July 2, 2022), "Skyrocketing Global Fuel Prices Threaten Livelihoods and Social Stability," *available at* https://www.nytimes.com/2022/07/02/business/economy/gas-prices-global.html?action=click&module=Well&pgtype=Homepage&section=Business.

[11] *Supra* n. 3.

[12] Nick Timiraos, The Wall St. J. (July 24, 2022), "U.S. Risks Deeper Downturn If Fed Has to Fight Inflation Alone," *available at* https://www.wsj.com/articles/u-s-risks-deeper-downturn-if-fed-has-to-fight-inflation-alone-11658671201 (making matters worse, "this could lead to a cycle in which prices rise, causing the Fed to raise rates more to curtail demand, creating a downturn with less capital investment by commodity producers. 'Recessions never lead to higher capex investment, which means you're creating a persistent supply shortage.")

[13] *Supra* n. 3.

[14] *See*, Chelsea Bruce-Lockhart and Emiko Terazono, The Financial Times (July 27, 2022), "How bad will the global food crisis get?," *available at* https://www.ft.com/content/e44db6b3-7266-4188-8d08-79d678a61146?desktop=true&segmentId=0e5502c2-a654-17b7-29eb-3bb1c22ff1ba#myft:notification:daily-empty-email:content.

[15] The Commodity Exchange Act is codified at 7 U.S.C. § 1 *et seq*. The position limits mandate was amended by section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). *See* Section 737, Pub. L. 111–203, 124 Stat. 1376, 1722-25 (2010).

[16] N. Jacobs and J. Clapp, The International Panel of Experts on Sustainable Food Systems (May 2022), "Another Perfect Storm?", *available at* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ipes-food.org/_img/upload/files/AnotherPerfectStorm.pdf.

[17] *Id*.

[18] *See, e.g.,* Better Markets' comment letter dated May 15, 2020 on CFTC's proposed position limits, available at https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf; Better Markets' comment letter dated March 28, 2011 on CFTC's proposed position limits, *available at* https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf; Better Markets' 2011 Report "Commodity Index Traders and the Boom/Bust Cycle in Commodities Prices," *available at* https://www.bettermarkets.org/sites/default/files/BM%20Report%20CIT%20FINAL.pdf; Kabir Agarwal et al., The Wire (May 6, 2022), "'Betting on Hunger': Market Speculation Is Contributing to Global Food Insecurity," *available at* https://thewire.in/economy/speculation-is-contributing-to-global-food-insecurity-significantly (detailing current and historic speculative interest in US and European commodities markets); Michael W. Masters and Adam K. White, Special Report (July 31, 2008), "The Accidental Hunt Brothers. How Institutional Investors Are Driving Up Food and Energy Prices," *available at* https://www.loe.org/images/content/080919/Act1.pdf; Michael W. Masters and Adam K. White, Special Update (September 10, 2008), "The Accidental Hunt Brothers – Act 2. Index Speculators Have Been a Major Cause of the Recent Drop in Oil Prices," *available at* https://www.bettermarkets.org/sites/default/files/The%20Accidental%20Hunt%20Brothers%20-%20Part%202.pdf; and Michael W. Masters, Testimony, Commodities Futures Trading Commission Hearing on Position Limits (March 25, 2010), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/metalmarkets032510_masters.pdf (attaching Mr. Masters' August 5, 2009 testimony before the CFTC and June 4, 2009 testimony before the Senate Agriculture Committee).

[19] N. Jacobs and J. Clapp, The International Panel of Experts on Sustainable Food Systems (May 2022), "Another Perfect Storm?", *available at* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ipes-food.org/_img/upload/files/AnotherPerfectStorm.pdf.

[20] Although now dated, Better Markets prepared a commodity-by-commodity analysis for wheat, corn, soybeans, cotton, oil, feeder cattle, and other commodities in 2011. *See*, Better Markets' comment letter dated March 28, 2011, *available at* https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf.

[21] *See infra* n. 53 (discussing CFTC staff report on WTI negative prices following former Chairman's CNBC comments).

[22] *See, e.g.,* Harry Dempsey, et al., The Financial Times (July 5, 2022), "Norway strikes threaten to cut off gas supplies to UK within days," *available at* https://www.ft.com/content/bd5a3c33-03bc-4434-8465-9d306b8885da?emailId=62c41815bdcb1a0023a6f9b2&segmentId=3d08be62-315f-7330-5bbd-af33dc531acb.

[23] Ryan Dezember, Wall St. J. (July 4, 2022), "Falling Commodity Prices Raise Hopes that Inflation Has Peaked: Oil, wheat, natural gas, lumber, corn and other raw materials ended tumultuous quarter near or lower than March prices," *available at* https://www.wsj.com/articles/falling-commodity-prices-raise-hopes-that-inflation-has-peaked-11656811949.

[24] Huw Jones, Reuters (April 26, 2022), "LME nickel debacle shows need to scrutinize commodities, says IOSCO watchdog," *available at* https://www.reuters.com/article/commodities-regulator/update-1-lme-nickel-debacle-shows-need-to-scrutinise-commodities-says-iosco-watchdog-idUKL2N2WO0S8.

[25] Although we strongly believe that the current position limits rule is materially deficient and fails to fulfill the CFTC's mandate to police and end excessive speculation (as detailed in the text above), we do not believe that anyone has to take a position pro or con on the rule to undertake the examination requested here. We understand, after so many years, that there would be position limits rulemaking fatigue and that many CFTC staff feel ownership of the current position limits regime. However, those are not legitimate reasons for not gathering, reviewing, and disclosing the facts and data on speculative activities in the commodities markets, particularly given the unprecedented events impacting those markets and the American people.

[26] Such an examination would also be consistent with the commitment made by former CFTC Chair Tarbert and the CFTC senior staff at the adoption of the position limits rule on October 15, 2020. *See*, Transcript, Open Meeting of CFTC (Oct. 15, 2020), *available at* https://www.cftc.gov/sites/default/files/2021/03/1616788096/openmeeting_101520_transcript.pdf. Specifically, a number of concerns and issues were raised with regard to the position rule that was finalized that day. The Chair and senior staff, in response to Commissioner's questions, stated specifically that those issues would be addressed in the implementation phase by the CFTC when it was evaluating the implementation of the position limits rule. Those issues were reiterated again on March 15, 2021, in a statement released by Commissioner Berkovitz, the day the final rules on position limits became effective. See, Statement of Commissioner Dan M. Berkovitz on Exchange Rules and Product Terms and Conditions that Fail to Impose Limits on Crude Oil "Trading at Settlement" Transactions (March 15, 2021), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement031521.

[27] N. Jacobs and J. Clapp, The International Panel of Experts on Sustainable Food Systems (May 2022), "Another Perfect Storm?", *available at* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ipes-food.org/_img/upload/files/AnotherPerfectStorm.pdf.

[28] *Id.*

[29] 7 U.S.C. § 6a(a)(1).

[30] *Id.*

[31] *Id.* § 6a(a)(3)(B)(i), (iv) (emphasis added).

[32] These market participants used to be called "end users" (and sometimes "bone fide hedgers") as distinguished from "financial speculators." However, more recently they have been referred to as "commercial end users" as distinguished from "financial end users," but, of course, the financial speculators are not "users" in any sense of the word.

[33] *See, e.g.,* Better Markets' Nov. 10, 2021 letter to CFTC Chair Russ Behnam, *available at* https://bettermarkets.org/wp-content/uploads/2022/07/Ltr-CFTC-Re-Position-Limits-11-10-2021.pdf (discussing managing price risk and facilitating price discovery, among other things).

See generally Better Markets, Comment Letter: Position Limits for Derivatives (RIN 3038- AD99) (May 15, 2020), https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limit for_Derivatives_Upload.pdf.

[35] Steff Chavez, The Financial Times (June 27, 2022), "'We will humble them': four fuel traders took on Wall Street and saved $1.2bn," *available at* https://www.ft.com/content/0d5c60fd-ccba-4c69-bbfd-0b7591651771.

[36] *See, e.g.,* Better Markets' comment letter dated March 28, 2011, *available at* https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf; Better Markets' May 15, 2020 comment letter, *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf;

[37] *See*, Better Markets' Nov. 10, 2021 letter to CFTC Chair Russ Behnam, *available at* https://bettermarkets.org/wp-

content/uploads/2022/07/Ltr-CFTC-Re-Position-Limits-11-10-2021.pdf; Better Markets' May 15, 2020 comment letter, *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf; Oct. 15, 2020 dissents of CFTC Commissioners Dan Berkovitz and (now Chair) Russ Behnam, available here and here; Better Markets' study, David Frenk and Wallace Turbeville (2011), "Commodity Index Traders and the Boom/Bust Cycle in Commodities Prices, *available at* https://www.bettermarkets.org/sites/default/files/BM%20Report%20CIT%20FINAL.pdf.

[38] Better Markets' comment letter dated May 15, 2020 on CFTC's proposed position limits, *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf.

[39] Better Markets' May 15, 2020 comment letter (at pages 20-21), *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf (footnotes and emphasis omitted).

[40] Better Markets' comment letter dated March 28, 2011 on CFTC's proposed position limits, *available at* https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf.

[41] Better Markets' study, David Frenk and Wallace Turbeville (2011), "Commodity Index Traders and the Boom/Bust Cycle in Commodities Prices, *available at* https://www.bettermarkets.org/sites/default/files/BM%20Report%20CIT%20FINAL.pdf.

[42] *See* Adrienne Klasa, The Financial Times (May 24, 2022), "Commodity funds stage revival as investors seek inflation hedges," *available at* https://www.ft.com/content/b9c069d1-a964-44a1-90e2-ece19079f4a5?shareType=nongift; *see also*, John Authers, Bloomberg Opinion (May 27, 2022), "Diversifying with Commodities? Watch How They Roll," https://www.bloomberg.com/opinion/articles/2022-05-27/commodities-help-diversify-against-inflation-but-need-more-than-passive-care?sref=mQvUqJZj (one-sidedly citing Gordon and Rouwenhorst but not the compelling factual rebuttal) and Joanna Ossinger, Bloomberg (April 7, 2022), "JPMorgan Says Be Ready for 40% Commodities Rally in Market Shift," *available at* https://www.bloomberg.com/news/articles/2022-04-07/commodities-could-soar-40-as-investors-pivot-jpmorgan-predicts?sref=mQvUqJZj.

[43] *See* 7 U.S.C. Sec. 6a "Excessive Speculation," *available at* https://www.law.cornell.edu/uscode/text/7/6a.

[44] *See* Better Markets' Nov. 10, 2021 letter to CFTC Chair Russ Behnam, *available at* https://bettermarkets.org/wp-content/uploads/2022/07/Ltr-CFTC-Re-Position-Limits-11-10-2021.pdf; Better Markets' May 15, 2020 comment letter, *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf.

[45] *See* Rupert Neate, The Guardian (April 17, 2022), "Soaring food prices push more Cargill family members on to world's richest 500 list," *available at* https://www.theguardian.com/news/2022/apr/17/soaring-food-prices-push-more-cargill-family-members-on-to-world-richest-500-list.

[46] Javier Blas, The Washington Post (October 7, 2022), "Look at All the Money Cargill Made," available at https://www.washingtonpost.com/business/look-at-all-themoney-cargill-made/2022/10/07/9d6bdca4-4627-11ed-be17-89cbe6b8c0a5_story.html (emphasis added).

[47] *Id.*

[48] Javier Blas, Bloomberg News (Aug. 6, 2021), "Crop Giant Cargill Reports Biggest Profit in 156-Year History," *available at* https://www.bloomberg.com/news/articles/2021-08-06/crop-giant-cargill-reports-biggest-profit-in-156-year-history?sref=mQvUqJZj (emphasis added).

[49] *Id.*

[50] Rupert Neate, The Guardian (April 17, 2022), "Soaring food prices push more Cargill family members on to world's richest 500 list," *available at* https://www.theguardian.com/news/2022/apr/17/soaring-food-prices-push-more-cargill-family-members-on-to-world-richest-500-list (emphasis added); *see also*, Scott Carpenter, Bloomberg (April 8, 2022), "Richest Agriculture Family's Fortunes Jump as Food Prices Surge," *available at* https://www.bloomberg.com/news/articles/2022-04-08/richest-agriculture-family-s-fortunes-jump-as-food-prices-surge?sref=mQvUqJZj.

[51] Archie Hunter and Tarso Veloso Ribeiro, Bloomberg (April 28, 2022), "War Brings an Uncomfortable Windfall for Commodity Traders," *available at* https://www.bloomberg.com/news/articles/2022-04-28/war-in-ukraine-brings-commodity-traders-uncomfortable-windfall?sref=mQvUqJZj.

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[53] Archie Hunter and Jack Farchy, Bloomberg (December 8, 2022), "Trafigura Posts Record $7 Billion Profit in Blowout Year," *available at* https://www.bloomberg.com/news/articles/2022-12-08/trader-trafigura- posts-record-7-billion-profit-in-blowout-year?sref=mQvUqJZj.

[54] Julia Payne, Reuters (September 13, 2022), "Vitol smashes profit records, making more in H1 2022 than FY 2021," *available at* https://www.reuters.com/markets/commodities/exclusive-vitol-smashes-profit- records-making-more-h1-2022-than-fy-2021-2022-09-13/.

[55] Jack Farchy and Archie Hunter, Bloomberg (Aug. 2, 2022), "Oil Trading Giant Vitol Posts Record Profit of $4.2 Billion," *available at* https://www.bloomberg.com/news/articles/2022-08-02/oil-trading-giant-vitol-posts-record-profit-of-4-2-billion?sref=mQvUqJZj.

[56] Reuters (April 27, 2022), "Bunge Lifts 2022 Earnings Outlook as Ukraine War Crimps Crop Supplies," *available at* https://money.usnews.com/investing/news/articles/2022-04-27/bunge-forecasts-higher-2022-earnings-as-ukraine-crisis-pressures-crop-supplies#:~:text=Adjusted%20profit%2C%20excluding%20one%2Doff,%242.94%2C%20according%20to%20Refinitiv%20IBES.&text=Copyright%202022%20Thomson%20Reuters..

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[58] Clifford Krauss, The New York Times (February 1, 2023), "What Exxon and Chevron Are Doing With Those Big Profits," *available at* https://www.nytimes.com/2023/02/01/business/energy-environment/exxon- chevron-oil-gas-profit.html.

[59]Wyatte Grantham-Philips, USA Today (February 10, 2023), "'Outrageous': Big oil made almost $200 billion in 2022 as world faced energy crisis. Here's the breakdown," available at https://www.usatoday.com/story/money/at-home/2023/02/10/oil-companies-2022-profits-exxon-bp- shell/11170023002/.

[60] Sridhar Natarajan and Jack Farchy, Bloomberg News (Jan. 13, 2022), "Goldman's Commodities Trading Desk Dodged the Ax and Is Minting Billions Again," *available at* https://www.bloomberg.com/news/articles/2022-01-13/a-goldman-trading-desk-dodged-the-ax-to-mint-billions-again?sref=mQvUqJZj.

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[63] Joe Wallace, the Wall St. Journal (June 10, 2022), "Commodity Chaos From Ukraine War Sends Trafigura to Record $2.7 Billion Profit," *available at* https://www.wsj.com/articles/commodity-chaos-from-ukraine-war-sends-trafigura-to-record-2-7-billion-profit-11654850514?st=m8i7mm3vnn6zkjn&reflink=article_email_share (emphasis added).

[64] *See* Oct. 15, 2020 dissents of CFTC Commissioners Dan Berkovitz here and (now Chair) Russ Behnam here.

[65] Better Markets did a commodity-by-commodity analysis for wheat, corn, soybeans, cotton, oil, feeder cattle, and other commodities in 2011. *See*, Better Markets' comment letter dated March 28, 2011, *available at* https://bettermarkets.org/wp-content/uploads/2021/07/CFTC-Position-Limits-CL-As-Submitted-Hi-Res.pdf.

[66] This would be in stark contrast to the CFTC staff's November 23, 2020 "Interim Report on NYMEX WTI Crude Contract Trading on and around April 20, 2020," which supported the former Chairman Tarbert's precipitous and apparently baseless statement on CNBC that the historic and unprecedented WTI price swing was due to supply and demand. *See* CNBC (April 21, 2020), "CFTC Chair Heath Tarbert on oil futures' plummet," *available at* https://www.cnbc.com/video/2020/04/21/commodity-futures-trading-commission-chair-heath-tarbert-on-oil-futures-plummet.html ("The CFTC is obviously watching these markets closely and in real time. Our main job as a regulator is to make sure that whatever is going on in the markets is actually reflective of real supply and demand and not anything else. As we look at this situation it does appear to be a fundamental supply and demand issue."). The facts

then, and as revealed later (including huge windfalls for speculative traders), clearly suggest that was a result-driven, not a data-driven examination. *See* Statement of Commissioner Dan M. Berkovitz Regarding the CFTC Staff Report on the Trading of Nymex WTI Crude Oil Futures Contracts On and Around April 20, 2020 (Nov. 24, 2020), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement112320a; Liam Vaughan, Kit Chellel, and Benjamin Bain, Bloomberg News (Dec. 10, 2020), "The Essex Boys: Nine Traders Hit a Gusher With Negative Oil," *available at* https://www.bloomberg.com/news/features/2020-12-10/stock-market-when-oil-when-negative-these-essex-traders-pounced?sref=mQvUqJZj (showing how 9 London based speculative traders made almost $700 million when WTI went negative); Kit Chellel, Bloomberg News (May 4, 2022), "'Essex Boys' Legal Woes Enter UK After Negative Oil Trades Net $700 Million Windfall," *available at* https://www.bloomberg.com/news/articles/2022-05-04/-essex-boys-legal-woes-spill-into-u-k-after-negative-oil-trades?sref=mQvUqJZj; Better Markets Fact Sheet (Nov. 23, 2020), "CFTC Staff Report on April 2020 Volatility & Negative Price Crash in US's Benchmark Oil Contract Lacks Clear Objectives and Objectivity," *available at* https://bettermarkets.org/wp-content/uploads/2021/07/Fact-Sheet-CFTC-Staff-Report-on-April-2020-Volatility-Negative-Price-Crash-in-U.S.s-Benchmark-Oil-Contract-Lacks-Clear-Objectives-and-Objectivity_0.pdf; Better Markets Press Release (April 28, 2020), "The CFTC Must Investigate 27% Drop in WTI Oil Prices Caused by Speculators and Review NYMEX's Actions to Limit Excess Speculation," *available at* https://bettermarkets.org/newsroom/cftc-must-investigate-27-drop-wti-oil-prices-caused-speculators-and-review-nymexs-actions/ (discussing CME's actions regarding United States Oil Fund's speculative activities); WTI discussion in Better Markets' May 15, 2020 comment letter, *available at* https://bettermarkets.org/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf; Paul Kiernan, The Wall St. Journal (Nov. 23, 2020), "CFTC Report on Negative Oil Prices Leaves Key Questions Unanswered," *available at* https://www.wsj.com/articles/cftc-report-on-negative-oil-prices-leaves-key-questions-unanswered-11606186888;

[67] Position Limits for Derivatives, 86 Fed. Reg. at 3403–04.

[68] *See* Better Markets, Comments: Position Limits for Derivatives, *supra* note 43, at 38–43.

[69] *See* Better Markets, Comments: Position Limits for Derivatives, *supra* note 43, at 46–63.

[70] *See* Position Limits for Derivatives, 86 Fed. Reg. at 3246.

[71] *See* Better Markets, Comments: Position Limits for Derivatives, *supra* note 43, at 59.

[72] *See Opening Statement of Commissioner Christy Goldsmith Romero Before the Energy and Environmental Markets Advisory Committee*, CFTC (Sept. 20, 2022), https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092022.

[73] Release, 87 Fed. Reg. at 34,860.

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