Congress of the United States
House of Representatives
Washington, DC 20515
October 11, 2012

Chairman Gary Gensler
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Chairman Gensler,

We write regarding last week's disappointing and disconcerting court decision vacating the CFTC's final rule on position limits as a result of a lawsuit filed by two Wall Street organizations, the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association. As you know, they argued that the Dodd-Frank Wall Street Reform and Consumer Protection Act required the Commission to determine that the position limits rule was necessary before promulgating a rule. In his decision, District Judge Robert L. Wilkins sided with Wall Street and the position limits rule just two weeks before they were going to take effect in our commodities markets.

Positions limits are one of the cornerstones of the new regulatory regime established by Dodd-Frank. Under the rule, traders would have been prohibited from acquiring a dominant position in any given commodity. No longer would a few Wall Street speculators be able to control and dictate prices to Main Street. Position limits are key to restoring stability and sanity to our commodities markets. Producers and consumers need be confident that our commodities markets are not rigged against them. However, because of the District Court's decision, Wall Street will remain a casino to speculators in our commodities markets.

Not only is the court's decision going to damage the stability of our commodities markets, it is also incorrect as a matter of law. As Members of Congress who drafted and voted for Dodd-Frank, we know that Congress explicitly mandated that the CFTC promulgate position limits. In Section 737 of Dodd-Frank, Congress stated that "the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market." This order was crystal clear: the Commission was required to promulgate the position limits rule. The only choice left to the Commission about position limits was the precise number of positions that a party may own of various commodities.

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Unfortunately, Judge Wilkins has found ambiguity where none exists. In his opinion, the CFTC had to first find that position limits were necessary, even though the text is plain as day that Congress already made that determination. Even though briefs were filed by numerous Members of the House and Senate who participated in the drafting and passage of Dodd-Frank, Judge Wilkins refused to accept these testimonials, arguing that these eyewitness accounts cannot overcome the nonexistent ambiguities in the statute.

Judge Wilkins' opinion is wrong on the law, wrong on the facts, and wrong for our economy. We firmly believe that a fair analysis of this case by the United States Court of Appeals for the District of Columbia Circuit will result in the reversal of district court decision and the restoration of the position limits rule. We therefore urge the Commission to immediately announce that it is appealing this decision.

It is paramount that the CFTC appeal this decision to the D.C. Circuit at the earliest opportunity so that the necessary market controls are put in place to curb the influence of Wall Street speculators in our commodities market.

Sincerely,

Edward J. Markey
Member of Congress

Rosa L. DeLauro
Member of Congress

Peter Welch
Member of Congress