

**Opening Statement of Senator Tom Coburn, Ranking Member
Hearing of the Senate Permanent Subcommittee on Investigations
“Excessive Speculation and Compliance with the Dodd-Frank Act”
November 3, 2011**

I would like to thank Senator Levin for holding this important hearing today. He has been a leader for years in Congress’ efforts to better understand and monitor Commodity markets, which in turn make us more able to hold market regulators accountable in their efforts to ensure American exchanges remain the most dynamic, transparent, and desirable places to do business.

Commodity markets and pricing have profound effects on the people in my home state of Oklahoma, who are invested in virtually all of the commodities covered by the rules we will discuss today. Whether it is oil, natural gas, wheat, or any of the other twenty-eight commodities, market participants all the way from producer to end-user will be affected by recent and upcoming regulatory changes.

It is our obligation in Congress to make sure regulators act in the public interest, based on facts and data, rather than reflexively placing restrictions on unpopular market participants. While today’s hearing will focus on the concept of “excessive” speculation, it is imperative that we remember the fundamental truth, that futures markets **can not function without speculators who make markets, provide liquidity for hedgers, aid in price discovery, and take on risk.**

Two weeks ago, the Commodity Futures Trading Commission issued its long-awaited “position limits” rule, imposing limits on the number of futures contracts individuals or institutions can hold. Passed by a strictly party-line vote, the most recent version of the rule was rushed through the Commission and applied across the board to twenty-eight separate commodities. Much of this seems to have been done in response to intense political pressure, and the unfortunate result is likely to be a challenge in court.

In addressing commodities, the Dodd-Frank Act said the CFTC “shall by rule, regulation, or order establish limits on the amount of positions, **as appropriate.**” In at least two Commissioners’ views, those tests have not been met. Yet, now every participant in the commodities market must comply with a final rule that is over three-hundred pages long.

Commissioner O’Malia indicated in his dissenting opinion that the commission voted “**without the benefit of performing an objective factual analysis based on the necessary data** to determine whether these particular limits and limit formulas will effectively prevent or deter excessive speculation.”¹

Commissioner Sommers also worried that the CFTC “is setting itself up for an enormous failure” by issuing a position limits rule that “ironically, can result in increased costs to consumers.”²

¹ Dissenting opinion of Commissioner Scott O’Malia. October 18, 2011.

² Dissenting opinion of Commissioner Jill E. Sommers. October 18, 2011.

Position limits can be an effective regulatory tool, but must be used in the right way. For example, we have limits on cotton, yet the cotton number 2 futures contract has hit sixteen record-setting prices since December 1, 2010.

Position limits, if they are determined to be appropriate, must be set at the proper level for each individual commodity. Unfortunately, the CFTC chose the blunt weapon of across-the-board limits for nearly every commodity.

While today's hearing will be a good opportunity to discuss the effects of 'excessive' speculation, we need to be careful not to accuse investors of wrongdoing when none has occurred. Commodity index funds, exchange traded funds, and mutual funds are not diabolical schemes – they are simply financial instruments that some investors use as tools to hedge or gain exposure to commodity markets, thus protecting against inflation and other risks in their portfolios.

Lastly, I would like to address my strong concerns with the Dodd-Frank Act in general, which itself was rushed through Congress last year. The law that was supposed to help fix our financial system has instead wreaked regulatory havoc, increasing uncertainty and compliance costs, doing nothing to address unemployment. The act required over three-hundred new regulations and studies, and has overwhelmed our regulatory agencies, while causing widespread confusion in the marketplace.

As we move forward, we in Congress must improve our understanding of the markets being regulated, as well as the internal and external challenges facing our regulators. Continuous oversight and transparency through hearings like this are essential to ensure our regulators do not overreach their mandates, and that U.S. markets remain the envy of the world. The last thing we want to do is suffocate those markets and chase interested participants to other exchanges and trading venues abroad, many of whom would love nothing more than to take America's business.

Despite my concerns about Dodd-Frank, it must be implemented in a thoughtful, responsible manner by our regulators. I look forward to a healthy discussion at this hearing, Mr. Chairman. I thank our witnesses for attending, and I look forward to hearing your views and recommendations today.