June 15, 2009

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Whether to Eliminate the *Bona Fide* Hedge Exemption for Certain Swap dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits (17 CFR Part 150); RIN 3038-AC40

Dear Secretary Stawick:

Thank you for the invitation to provide comments on behalf of the American Feed Industry Association (AFIA) regarding the Commodity Futures Trading Commission (CFTC) referenced Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* on March 24, 2009.

Feed represents approximately 70 percent of the on-farm cost of raising livestock and poultry. With the majority of the industry's input supplies priced on, or in reference to regulated commodities markets, we significantly depend on an efficient and well-functioning futures market for both price discovery and risk management.

While it is clear that feed and food price increases in 2008 were the result of several factors, it has become evident that the index fund speculative effect was significant and can be readily addressed. This opportunity is still active and the effect will reoccur without the removal of the speculative position limit exemption for index funds on agricultural and energy commodities.

Now celebrating its Centennial year, AFIA, based in Arlington, Va., is the world's largest organization devoted exclusively to representing the business, legislative and regulatory interests of the U.S. animal feed industry and its suppliers. AFIA also is the recognized leader on international industry developments. Members include more than 500 domestic and international companies and state, regional and national associations. Member-companies are livestock feed and pet food manufacturers, integrators, pharmaceutical companies, ingredient suppliers, equipment manufacturers and companies which supply other products, services and supplies to feed manufacturers.

The feed industry makes a major contribution to food safety, nutrition and the environment, and it plays a critical role in the production of healthy, wholesome meat, milk, fish and eggs. More than 75 percent of the commercial feed in the United States is manufactured by AFIA members.

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The Commodities Exchange Act (CEA) provides physical commodity customers (agriculture, airlines, transportation, etc.) with a viable price discovery mechanism and hedging as a risk mitigation tool for forward commodity needs and commitments.

This process requires traditional speculator participation in markets to provide a buyer/seller relationship and market liquidity; however, this relationship changed in 2000 when Congress codified earlier CFTC regulatory action granting Wall Street banks an exemption from speculative position limits for hedging over-the-counter swaps and index transactions. These banks represent institutional investors, including pension funds, hedge funds, investment banks and university endowments. It is important to note that while these funds may be hedging their invested capital, the initial investments are speculative, and they are not hedging needs or commitments for the underlying commodities. AFIA strongly believes this exemption should be ended.

There is large financial speculative interest in agricultural commodity futures markets today. In some crops, the trading on a daily basis almost meets the entire U. S. crop volume, significantly adding to price volatility. The size and influence of these large financial players was never contemplated during enactment of the original Commodity Exchange Act (CEA). The net result is speculator demand actually increases the more prices increase, providing unrealistic commodity price levels relative to true commodity demand. Index speculators do not normally sell, but rather buy and hold their index positions, thereby producing an artificial economic increase in demand and, in turn, commodity market pricing.

As a result, the physical commodity customer today is unable to attain convergence between its hedge position and the cash market. The physical purchaser is forced to borrow significant funds to cover margin calls and/or sell commodities, usually at an inopportune time, to cover these distorted hedge costs. Thus, hedging as a risk management tool is no longer effective for its intended users.

The magnitude of inflow of index speculator funds is dramatic, as is clear from the following examples:

- Index speculators increased investments in 25 commodities from $13 billion in 2003 to $260 billion in 2008.
- Index speculator investments in petroleum futures have increased by 848 million barrels over the last five years, almost matching the actual increase in Chinese demand of 920 million barrels of oil in the same five-year period.
- Index speculators have stockpiled enough corn futures to fuel the entire U.S. ethanol industry at full capacity for a year.
- Index speculators have stockpiled sufficient wheat futures to supply every American citizen with all the bread, pasta and baked goods they can eat for the next two years.

Following is a summary of key facts and observations regarding the index funds involvement on commodity markets:

1. The correlation between crude oil prices, corn prices and the S&P Goldman Sachs commodity index fund (GSCI) over the last two years is undeniable (see chart page 7).

2. Index funds owned nearly the entire net long position in corn, soybeans and wheat as of March 17, 2009 (see charts page 8).

3. As of May 26, 2009, approximately $125.6 billion was invested in index funds; $84 billion was tracking the GSCI (60 percent of the total), $41.7 billion following the Dow Jones AIG fund (29.6 percent of the total) and $15.2 billion tracking all others (10.8 percent) (see graph page 9).

4. At the peak of the corn market in June 2008, GSCI fund investments had a value of $142.73 billion, now down to $84 billion (see table page 9).

5. The allocation of investments in the GSCI index are 66.9% to energy, 13.8 percent to grain, 5.6 percent to livestock, 3.9 percent to softs and 9.8 percent to metals. As a result, the driver of grain prices has been energy prices. If energy prices rise sharply, as occurred in the summer of 2008, a GSCI-tracking fund has to buy more grain (primarily corn) to maintain their balanced portfolio on a monthly basis. Conversely, if energy prices drop sharply, then they are forced to sell the grain positions. As oil goes, so goes corn, and to a lesser extent wheat and soybeans. (see chart page 10).

At the peak of the grain markets, index funds owned over 450,000 contracts, or 2.25 billion bushels of corn. This represented 17 percent of the U.S. crop. With GSCI index investments consisting of approximately 63 percent of index fund capital, this would translate to one investment strategy owning approximately 1.41 billion bushels -- or 10% of the U.S. crop. This compares to what would be a normal speculative position limit of 22,000 contracts or 110 million bushels. This is staggering: 1.41 billion versus 110 million, controlled by one strategy. (see pages 11 and 12).

Following are AFIA's comments to the specific questions included in the Request for Comments:

A. General Advisability of Eliminating the Existing Bona Fide Hedge Exemption for Swap Dealers in Favor of a Limited Risk Management Exemption

1. Should swap dealers no longer be allowed to qualify for exemption under the existing *bona fide* hedge exemption?

   Swap dealers should only be granted an exemption if they can certify to the Commission that their clients are producers or users of the underlying agricultural or energy commodity (Commercial Hedgers).
   - CFTC should adopt a "see through" policy to clearly identify the true commercial (producers or users of the agriculture or energy commodities) vs. speculative investors.
   - CFTC should change its classification of current hedge exempted index funds and swap dealers from Commercial because they do not take delivery of the commodity, nor are they a physical participant.

2. If so, should the Commission create a limited risk-management exemption for swap dealers based upon the nature of their clients (e.g., being allowed an exemption to the extent a client is a traditional commercial hedger)?

   The nature of the client should determine appropriate exemption or position limits:
   - A "see through" policy is required to clearly define the nature of the client.
   - If the client is a commercial client, the exemption should apply to the client.
   - If the client is a speculator, appropriate position limits should apply to the client.

3. If the *bona fide* hedge exemption were eliminated for swap dealers, and replaced with a new limited risk management exemption, how should the new rules be applied to existing futures positions that no longer qualify for the new risk-management exemption?

Swap dealers should be allowed to hold existing futures positions in excess of current Federal speculative position limits until the futures position expires, but must be compliant no later than six months from the effective date of the new rules.

B. Scope of a Potential New Limited Risk Management Exemption for Swap Dealers

4. The existing *bona fide* hedge exemptions granted by the Commission extend only to those agricultural speculative position limits. Should the reinterpretation of *bona fide* hedging and any new limited risk management exemption extend to other physical commodities, such as energy and metals, which are subject to exchange position limits or position accountability rules?

   The changes should apply consistently to all commodities that have position limits or accountability limits.
   - This is particularly relevant to energy futures, given the demonstrated correlation between crude oil prices and agriculture commodity prices.

C. Terms of a Potential New Limited Risk Management Exemption for Swap Dealers

5. If a new limit risk management exemption were to be permitted to the extent a swap dealer is taking on risk on behalf of commercial clients, how should the rules define what constitutes a commercial client?

   Commercial clients should be defined as those that are physical producers, processors, manufactures or merchandisers of the commodity, and who depend on the markets for efficient price discovery function and:
   - Take a position or transaction in a contract for future delivery or in a commodity option in the commodities exchange to manage the price risk of commodities for these physical uses, and
   - Time their contracts or options to terminate with the ultimate sale or use of the physical commodities.

6. How should the Commission (and, if applicable, the responsible industry self-regulatory organization (SRO)) and the swap dealer itself verify that a dealer's clients are commercial? Is certification by the dealer sufficient or would something more be required from either the dealer of the client? If so, what should be reported and how often – weekly, monthly, etc.?

   - Use the present clearing firm system to track and monitor commercial investors daily.

   - Swap dealers have the responsibility to clarify if clients are commercial (by the above definition) or non-commerical and obtain representation in writing from their clients.

7. For a swap dealer's noncommercial clients, should the rules distinguish between different classes of non-commercials – for example (1) clients who are speculators (e.g., a hedge fund); (2) clients who are index funds trading passively on behalf of many participants; and (3) clients who are intermediaries (e.g., another swap dealer trading on behalf of undisclosed clients, some of whom may be commercials)?

   Including this distinction within the rules would enhance transparency. However, as each of these classes is non-commercials, they should each be subject to the appropriate speculative position limits.

8. If a swap dealer were allowed an exemption for risk taken on against index-fund clients, how would the dealer satisfy the Commission that the fund is made up of many participants and is passively managed? Is certification by the dealer or fund sufficient or should the dealer or fund be required to identify the fund's largest clients?

    - An exemption for a swap dealer should only be granted where the dealer can verify that its clients are commercial (per the definition provided in question 5).
    - An exemption should only be allowed for the manager in control of the commodity investment. Thus, a passively managed fund should not be provided with an exemption from the speculative position limits.

9. If a swap dealer were allowed an exemption for risk taken on against another intermediary, how would the dealer satisfy the Commission that its intermediary client does not in turn have noncommercial clients that are in excess of position limits? Is certification by the dealer or second intermediary sufficient or should the dealer or intermediary be required to separately identify the intermediary's largest clients?

    The exemption should only be allowed if the intermediary can verify its clients are "Commercial" (per the definition provided in question 5) and must be subject to the same recordkeeping and reporting rules included in the special calls for information.

10. What futures equivalent position level should trigger the new limited risk management exemption reporting requirement? For example, under the rules of the on-going special call to swap dealers and index funds described earlier, a swap dealer must report any client in any individual month that exceeds 25 percent of the spot month limit, or the net long or short position of a client that in all months combined exceeds 25 percent of the all-months-combined limit.

    The same levels that trigger inclusion in the Special Call Report should also trigger a new limited risk management exemption reporting requirement.

11. If none of a swap dealer's clients exceed required reporting levels in a given commodity, or none of such clients exceed reporting levels in any commodity, what type of report should be filed with the Commission – e.g., a certification by the swap dealer to the Commission to that effect?

    The swap dealer needs to accept the responsibility to act as clearing and provide monthly reports on individual investors and their positions.

12. Should there be an overall limit on a swap dealer's futures and option positions in any one market regardless of the commercial or noncommercial nature of their clients? For example, "A swap dealer may not hold an individual month or all-months-combined position in an agriculture commodity named in 150.2 in excess of 10 percent of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year."

    With the appropriate "see through" transparency of investors' status (commercial vs. non-commercial) and reporting of positions and enforcement of the appropriate speculative position limits, there is not a need to place an overall limit on swap dealers, as long as its clients are in compliance.

13. If a new limited risk-management exemption for swap dealers is created, what additional elements, other than those listed here, should be considered by the Commission in developing an exemption?

    We believe the recommendations proposed in these comments will provide the transparency, reporting, and enforceable position limits required.

D. Other Questions

14. How should the two index traders who have received no-action relief from Federal speculative position limits (see footnote 15) be treated under any new regulatory scheme as discussed herein?

    - Given the significant position that these two index traders have acquired, these recommendations will only be effective if all index traders held to the same speculative position limits and compliance requirements.

    - These index traders should be allowed to hold existing futures positions in excess of current Federal speculative position limits until the futures position expires, but must be compliant no later than six months from the effective date of the new rules.

15. What information should be required in a swap dealer's application for a limited risk management exemption?

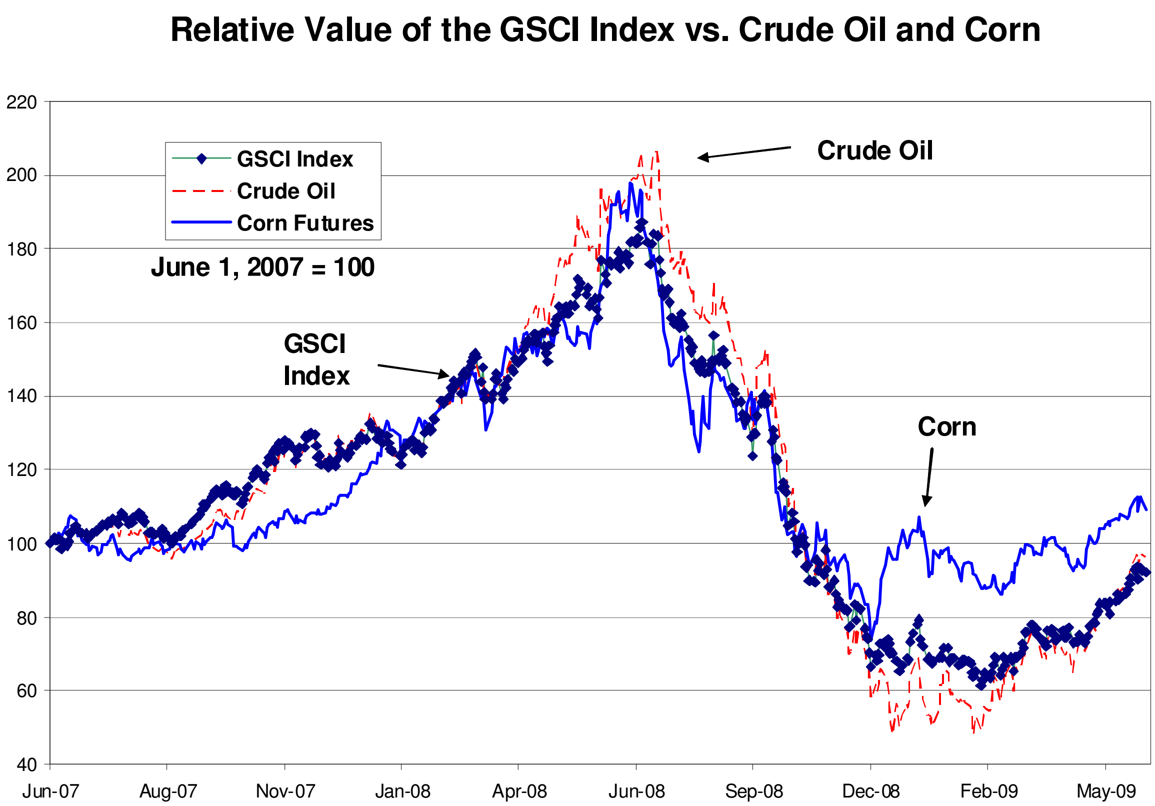
    If a limited risk management exemption is implemented, the swap dealer should be required to:

    - Certify that its clients are commercial (per the definition provided in question 5).
    - Accept responsibility to act as clearing for its clients and provide monthly reports on individual investors and their positions.
    - Submit to special calls for information from the Commission and exchanges.
    - Certify that futures positions will be terminated by first notice day.

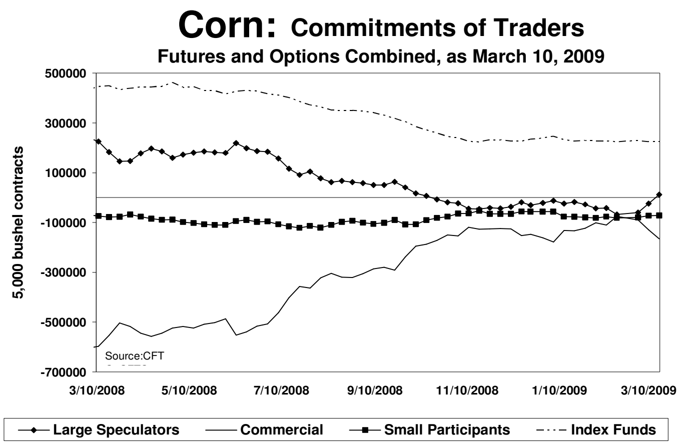
AFIA appreciates the opportunity to provide comments. Please do not hesitate to contact me if I can provide further information or you have questions regarding the feed industry's position on this recommendation. AFIA looks forward to working with the Commission to ensure the markets remain an effective tool for the end-users.

Respectfully submitted,

Joel G. Newman
President & CEO



Source: Brock Associates, 2009



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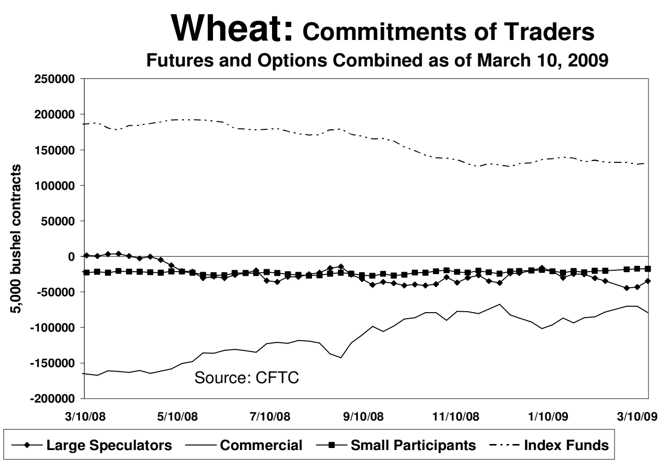

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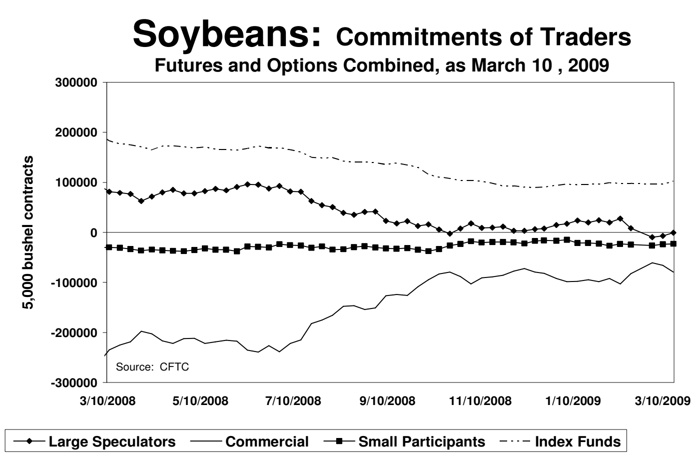
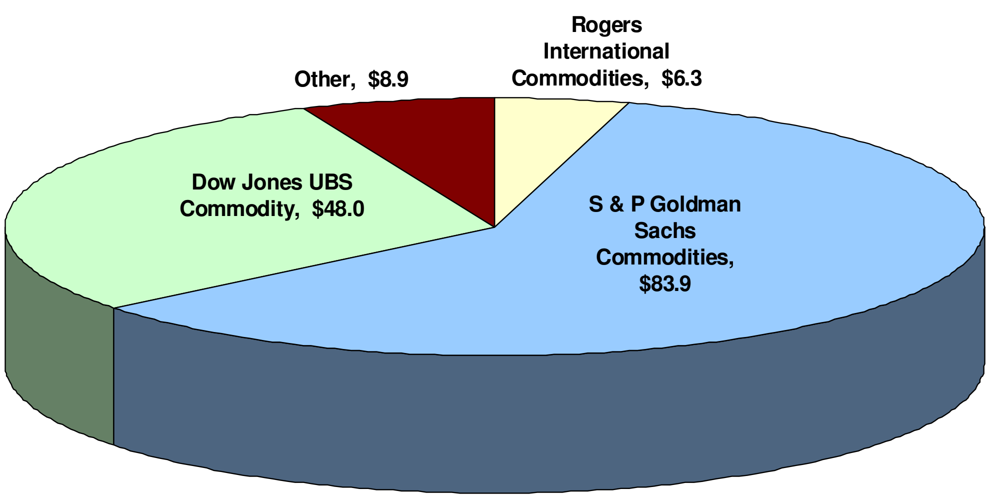


Source: Brock Associates, 2009

Relevant Statistics for Investor Activity					
Total Investment *	4/29/2008	6/17/2008	10/28/2008	2/17/2009	5/26/2009
S&P GSCI	$126,838	$142,729	$52,949	$56,980	$83,930
DJ-UBS	$90,985	$98,916	$39,316	$28,312	$41,682
Total	$217,824	$241,645	$92,265	$85,291	$125,611
Total Cash Injections **					
S&P GSCI	-$65	$2,141	-$2,031	-$389	$943
DJ-AIG	$1,902	$1,805	-$4,056	-$656	-$5

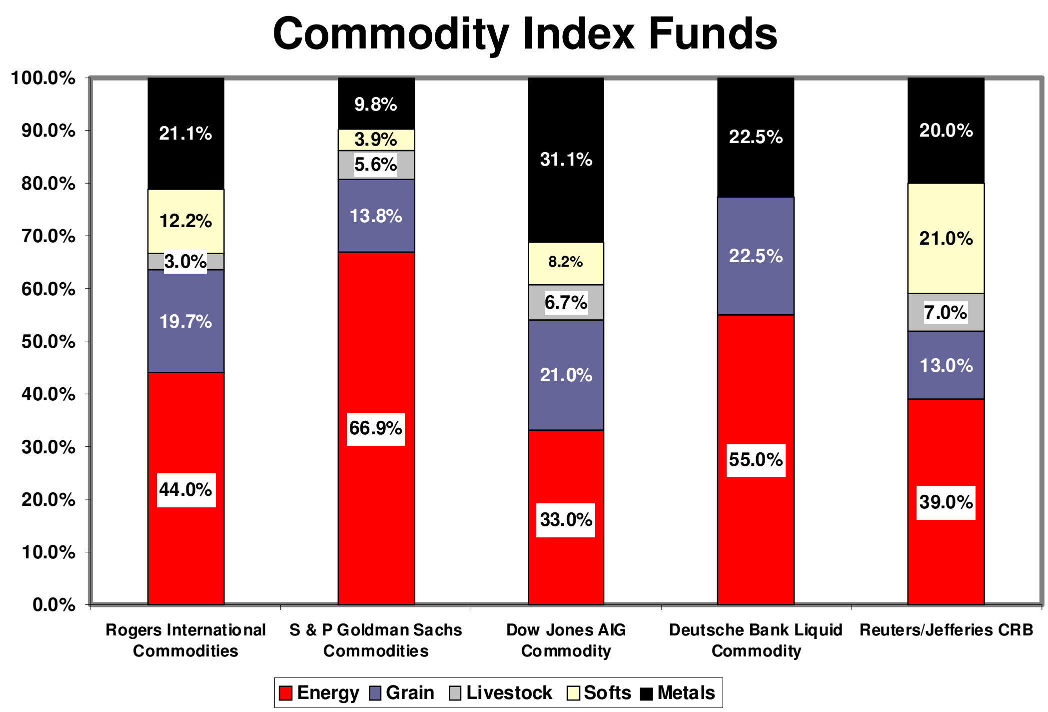
Source: PKVerleger LLC
* Millions as of Date ** Millions, Four-Week Moving Average

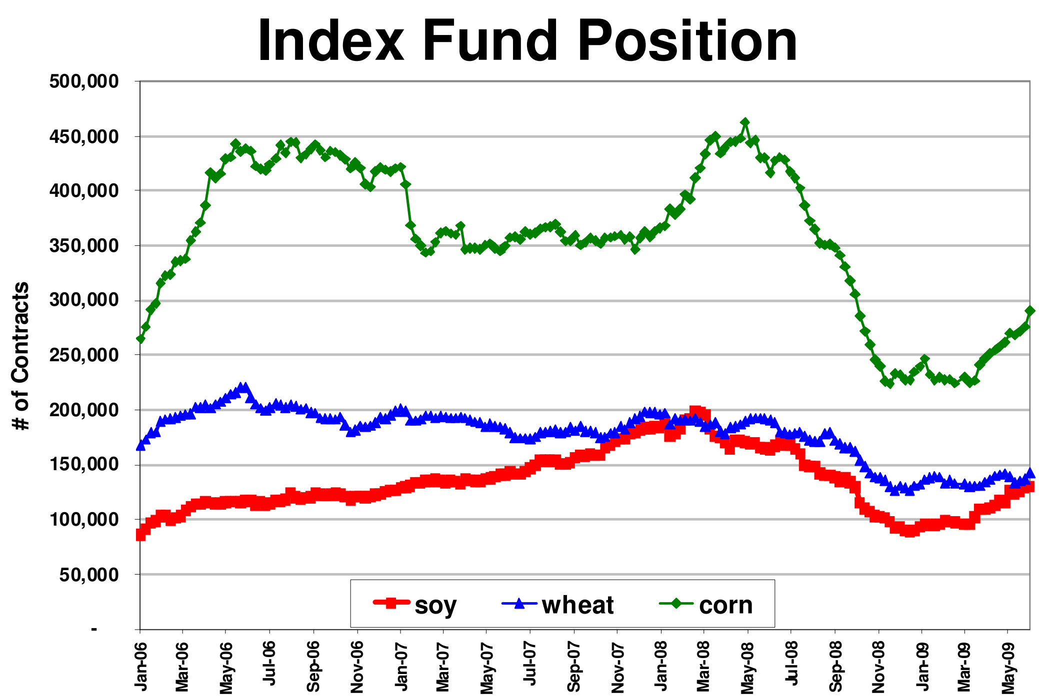
Money in Commodity Index Funds*



*Figures are the industry's best estimate, as of May 26, 2009

Source: Brock Associates, 2009





Source: Brock Associates, 2009

INDEX FUND POSITIONS
in Corn, Wheat and Soybeans

May 6, 2008

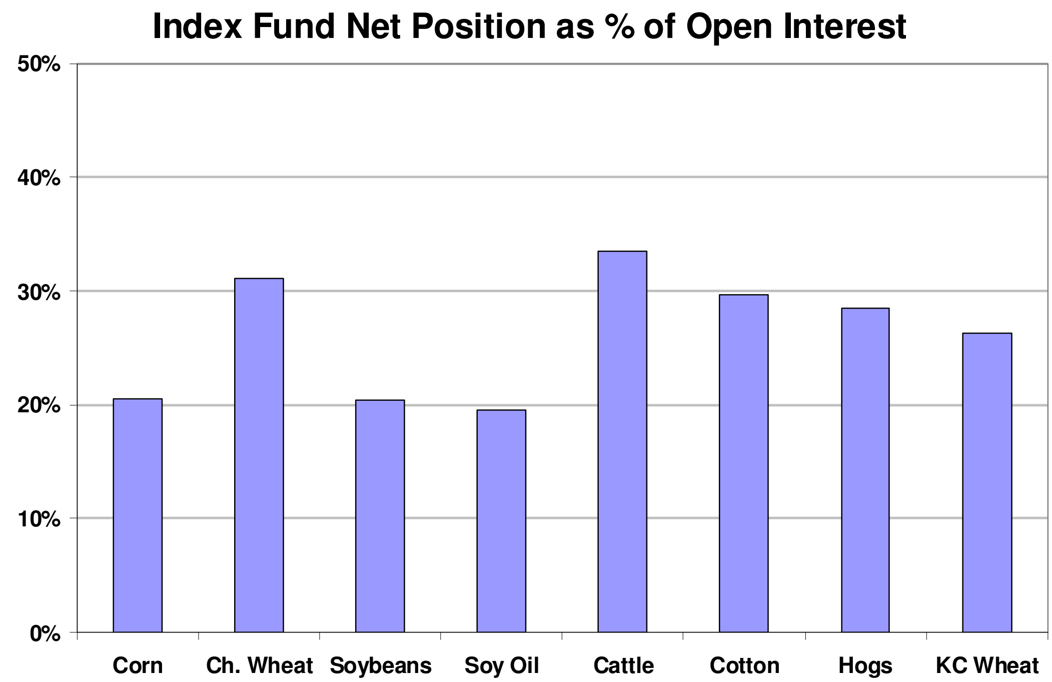
Commodity	Net Long Contracts	# of Bushels	% of total	Market Value*	% of total	% of US Production
Corn	443,560	2.2 Billion	55.1%	$13.1 Billion	43.0%	17%
Wheat	192,310	961 Million	23.9%	$5.06 Billion	16.6%	43% (all wheat)
Soybeans	169,119	845 Million	21.0%	$12.3 Billion	40.3%	31%
Total	804,989	4 Billion		$30.5 Billion		

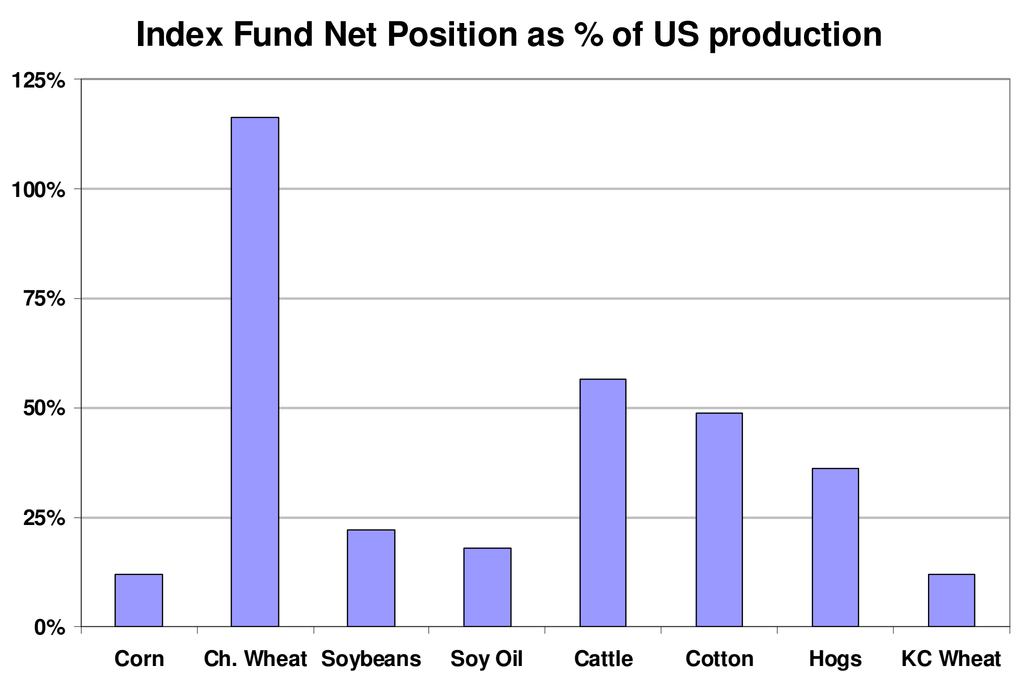
March 17, 2009

Commodity	Net Long Contracts	# of Bushels	% of total	Market Value*	% of total	% of US Production
Corn	226,611	1.13 Billion	49.3%	$4.41 Billion	34.7%	10%
Wheat	130,845	654 Million	28.4%	$3.61 Billion	28.4%	26% (all wheat)
Soybeans	102,617	513 Million	22.3%	$4.68 Billion	36.8%	16%
Total	460,073	2.3 Billion		$12.7 Billion		

Source: CFTC Commitment of Traders

* Market value estimated as closing price of nearby futures on reporting date





Source: Brock Associates, 2009