

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BRUSSELS
LONDON
NEW YORK
SAN FRANCISCO
WASHINGTON

ROBERT A. LONG, JR.
TEL 202.662.5612
FAX 202.778.5612
RLONG@COV.COM

September 5, 2008

VIA ELECTRONIC SUBMISSION, HAND DELIVERY, AND U.S. MAIL

Mr. Donald C. Clark
Secretary
U.S. Federal Trade Commission
Room H-135 (Annex G)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

**Re: Request for Extension of Time to File Comments In
Response To Notice of Proposed Rulemaking
on Market Manipulation, P082900**

Dear Mr. Clark:

The American Petroleum Institute (“API”) hereby formally requests that the Federal Trade Commission (“Commission”) allow an additional twenty-nine (29) days, to and including October 17, 2008, to respond to the Commission’s Notice of Proposed Rulemaking on Market Manipulation (P082900), issued August 13, 2008 (“NPRM”).

API requests this extension for the following reasons:

First, additional time is needed to allow API to compile the views of its members and to consolidate and present that information for the Commission’s consideration.¹ The NPRM raises a series of novel and complex issues with significant implications for the petroleum industry and the American economy as a whole. In order to create a sound administrative record, it is vital

¹ API’s more than 400 members include a wide variety of market participants, from large oil companies to small independents. API is the only national trade association that represents all aspects of America’s petroleum industry.

Mr. Donald C. Clark
Secretary
September 5, 2008
Page 2

that the Commission obtain fully-considered comments from the industry most directly affected by this proceeding. The current comment period is simply inadequate to accomplish this task.

Second, the NPRM raises dozens of issues for comment, including many novel and complex issues that call for careful and thoughtful analysis. These issues include, among others: (1) the effect, including any benefits and costs, of the proposed rule on consumers, individual firms, and industry; (2) changes that should be made to the proposed rule to eliminate unnecessary costs; (3) whether the proposed rule is necessary or appropriate in the public interest or for the protection of United States citizens; (4) whether the rule should provide for safe harbors or exemptions; (5) whether the SEC Rule 10b-5 model will function properly with respect to wholesale petroleum markets, and if not what alternative approach should be used; (6) whether proof of a price effect should be required to impose liability for market manipulation; and (6) whether the proposed rule has a sound basis in economic policy. These issues, as well as many other issues raised by the NPRM, merit a comment period that allows sufficient time for thoughtful deliberation.

Third, defining “market manipulation” is inherently difficult and not within the Commission’s traditional antitrust or consumer protection experience. In these circumstances, it is essential that the Commission receive the most thorough possible commentary from those the rule would affect. An additional 29 days will benefit the Commission by encouraging the participants to file carefully considered comments focused on the issues presented. The questions identified above, and the dozens more identified in the NPRM, cannot be addressed adequately within the limited comment period currently provided.

Finally, API respectfully submits that an extension of time is normal in these circumstances. Earlier in this proceeding the Commission granted, in part, API’s request for an extension of time to file comments on the Commission’s Advance Notice of Proposed

Mr. Donald C. Clark
Secretary
September 5, 2008
Page 3

rulemaking.² In addition, the Commission previously has granted requests for additional time when the commenter is a trade association, like API, that needs the additional time to collect the views of its members and prepare a comprehensive set of comments, or when the rulemaking raises many complicated issues and the proposed rule is novel and time is needed to respond to the many difficult questions presented, as is the case here.³ Because of the complexity of the issues presented, the need to develop a substantial record of factual information concerning industry practices, and the interest in securing thoughtful responses to the numerous legal and policy questions raised in the advance notice, the Commission should allow an additional 29 days to respond to its NPRM.

API appreciates the Commission's consideration of this request.

Respectfully submitted,

Robert A. Long, Esq.

² FTC, *Extension of Period to Submit Comments in Response to the ANPR*, 73 FR 32259 (June 6, 2008).

³ See, e.g., Definitions, Implementation, and Reporting Requirements Under the CAN-SPAM Act, 69 Fed. Reg. 18851-52 (Apr. 9, 2004) (granting extension of time to file comment in an Advance Notice of Proposed Rulemaking so that trade group can consolidate comments); Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 58 Fed. Reg. 10997 (Feb. 23, 1993) (noting same); Trade Regulation Rule; Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 54 Fed. Reg. 14662 (granting extension of two months so that the association may have additional time to contact its members and provide comments on an ANPR with complex issues).