

Before the
FEDERAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
Market Manipulation Rulemaking)
)

No. PO82900

COMMENTS OF THE
DEEP RIVER GROUP, INC.

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The Deep River Group, Inc. (“DRG”) respectfully submits the following comments in response to the Federal Trade Commission’s (the “Commission” or “FTC”) Advance Notice of Proposed Rulemaking; Request for Public Comments, with respect to Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007 (“EISA”).

I. Interest Of DRG in the Manipulation ANPR

DRG is a small management and economic consulting firm which works with clients to improve efficiency and effectiveness in trading and risk management. DRG’s clients include banks, utilities, exchanges, clearinghouses and commodities firms operating in the capital markets and the energy markets. DRG advises clients on issues of profit improvement, risk management, new product development and cost reduction. This mix of business gives DRG a useful perspective on differences in the structure and regulation of these two markets (capital and energy), as well as knowledge of the intersection of capital market and energy market activities.

DRG’s interest in the proposed rulemaking relates to work it does with clients to rationalize market operations, improve liquidity, automate trading operations and reduce transaction costs. Our clients’ ability to improve the efficiency and effectiveness of markets is reduced when multiple, overlapping regulations are applied a given market. Similarly, our clients’ willingness to add liquidity to a given market is reduced when there are differences in the cost of compliance across participants in a given market.

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We want our clients to realize the maximum benefits from the work they do with DRG. For this reason we wish to comment on features of the proposed rulemaking which may reduce these benefits.

We offer these comments in a compact and concise format. Should the FTC wish us to expand on any comment or discuss this document, please do not hesitate to contact DRG.

II. Scope of Jurisdiction

A. Banks

Banks play a critical role in facilitating energy commodity markets. This facilitation extends from the provision of credit to support trading and commodity acquisition; to brokerage and market making; and to the creation of products with which energy market participants can hedge price and volumetric risk. Banks will also act in the role of principal to a energy commodity trade where the purchase or sale of wholesale energy commodity is required for prudent risk management and hedging. While banks have historically focused on financially settled transactions (where only cash changes hands) they can and do facilitate and engage in transactions relating wholesale quantities of physical products.

The participation of banks in the physical wholesale crude oil and petroleum distillate markets raises the question of what the FTC's intent is with respect to expansion of the jurisdictional scope of the Federal Trade Commission Act. Banks are wholly or partly exempt from Commission authority under the Act.

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We encourage the Commission, in any anti-market manipulation rulemaking to make clear whether the rules apply to banks, bank subsidiaries engaged in physical crude and petroleum distillate markets or both.

B. Non-Profit Entities

There are ongoing initiatives relating to the collation, scrubbing, normalization and reporting of data, supplied by energy market participants, relating to bi-lateral, over-the-counter energy commodity transactions. These initiatives are organized as non-profit utilities for the benefits of their participants and external subscribers. The potential of these initiatives to increase liquidity and reduce transaction costs (and therefore costs to consumers) is very large.

Jurisdiction of the FTC Act does not extend to non-profit entities. We encourage the Commission, in any anti-market manipulation rulemaking to make clear whether the new rules apply to non-profit entities engaged collation, scrubbing, normalization and reporting of data, supplied by participants in the crude and petroleum distillate markets, relating to bi-lateral, over-the-counter energy transactions will fall under the jurisdiction of the FTC and the FTC Act.

C. Clearing and Post-Transaction Service Providers

Great efficiencies have been achieved in the capital markets through centralization of clearing, settlement and other post-transaction services. Similar progress has begun to be made in the energy markets. The crude and petroleum distillate market is one in

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which there is great potential to reduce transaction costs and improve liquidity through centralized clearing, settlement and post-transaction services.

Providers of these services are usually organized as non-profit, cooperative clearinghouses or business leagues. Existing providers are regulated by the FSA, SEC, CFTC and other, national, oversight bodies. Some providers of post-transaction services are not regulated at all. We encourage the Commission, in any anti-market manipulation rulemaking to make clear whether the new rules apply to non-profit entities engaged in the provision of clearing, settlement and post-transaction services in the crude and petroleum distillate markets will fall under the jurisdiction of the FTC and the FTC Act.