



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of General Counsel

May 20, 2009

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
Room H-135 (Annex G)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Market Manipulation Rulemaking, P082900

Dear Mr. Clark:

On behalf of the Commodity Futures Trading Commission (“CFTC”), this is in response to the Federal Trade Commission’s (“FTC’s”) request for comments in the recently-published Revised Notice of Proposed Rulemaking (“RNPRM”) in the above-referenced matter.¹ We appreciate the opportunity to submit these comments as the FTC implements Subtitle VIII of the Energy Independence and Security Act of 2007 (“EISA”). These comments incorporate and supplement the comments that we submitted in response to the FTC’s Advance Notice of Proposed Rulemaking (“ANPR”)² and Notice of Proposed Rulemaking (“NPRM”).³

We are concerned that the RNPRM does not fully address the issues we raised in our ANPR and NPRM comment letters, and we urge reconsideration of the position taken in the RNPRM that the CFTC and the FTC share jurisdiction over the futures markets. As we discussed in our prior comments, Section 2(a)(1)(A) of the Commodity Exchange Act (“CEA”) grants the CFTC exclusive jurisdiction over futures transactions:

The [CFTC] shall have exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or

¹ See *Prohibitions on Market Manipulation in Subtitle B of Title VIII of the Energy Independence and Security Act of 2007*, 74 Fed. Reg. 18304 (Apr. 22, 2009).

² 73 Fed. Reg. 25614 (May 7, 2008).

³ 73 Fed. Reg. 48317 (Aug. 19, 2008).

executed on a contract market designated or derivatives transaction execution facility . . . or any other board of trade, exchange, or market. . . .

7 U.S.C. § 2(a)(1)(A). There is no language in EISA that supersedes or limits the CFTC's exercise of this statutory exclusive jurisdiction over futures trading.

We appreciate the RNPRM's recognition of the CFTC's jurisdiction over futures market activities, *see* 74 Fed. Reg. at 18311. The revisions made to the standard of liability in the proposed rule reflect a careful consideration of the comments that were received. We applaud the FTC for acknowledging the importance of this issue. However, as noted in our ANPR and NPRM comment letters, the need to avoid differences in the standards of liability that different regulators impose on the same activity is the reason that Congress vested the CFTC with exclusive jurisdiction in this area in the first instance.

The standards under the revised proposed rule and those under the CEA remain different. We therefore renew our request that the FTC make clear that its rule does not extend to futures trading activity that Congress has made subject to the CFTC's exclusive jurisdiction under the CEA. We also renew our commitment to work cooperatively with the FTC to ensure that the cash petroleum markets over which our agencies share anti-manipulation authority are fully protected.

We hope that the FTC will reconsider its assertion of jurisdiction over futures activity subject to the CEA, and consider making the requested changes. We again thank you for this opportunity to comment.

Very truly yours,

Terry S. Arbit
General Counsel