

May 20, 2009

Federal Trade Commission
Office of the Secretary
The Honorable Donald S. Clark
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Market Manipulation Rulemaking, P082900

Dear Secretary Clark:

The Canadian Association of Petroleum Producers (CAPP)¹ once again appreciates the opportunity to participate in this proceeding, and submits these comments on the Revised Notice of Proposed Rulemaking (RNPRM), issued in the referenced matter on April 16, 2009. CAPP commends the Commission on a thorough and balanced approach and supports adoption of the revised proposed rule in accordance with the brief additional comments submitted here.

CAPP has participated in this proceeding via comments submitted in response to each of the two previous notices. CAPP's prior comments supported the inclusion of a scienter requirement in the final rule. The revised rule sets forth such a requirement on terms that CAPP fully supports. The RNPRM summarizes this aspect of the revised rule as follows: "Second, to address the concern that the proposed Rule would chill legitimate conduct, the revised proposed Rule explicitly sets forth a scienter standard for each of the two conduct provisions." (p. 46) This text refers to the two formulations of the scienter requirement contained in proposed Rule 317.3(a) ("knowingly") and 317.3(b) ("intentionally").

CAPP views the revised formulation of the scienter requirement contained in the proposed rule as being consistent with the statutory purposes, and as facilitating an orderly and efficient enhancement of regulatory oversight without unduly constricting commercial conduct or routine activities. The two formulations appear to be aimed at subtle differences in the perceived nature of the conduct being proscribed, in ways that are reasonably geared to the purposes of the rule.

The RNPRM requests specific comment on several aspects of the scienter requirement. (General Questions for Comments, 1.a) First, it inquires as to the merits and flaws of the separate scienter provisions of proposed Rule 317.3(a) and (b). CAPP submits that these provisions have been appropriately crafted, with the rationale underlying this approach adequately developed and articulated. CAPP offers no view as

¹ CAPP is a trade association incorporated pursuant to the laws of Alberta, Canada. It represents approximately 140 companies engaged in the production of oil, natural gas and other petroleum products. Its principal offices are located in Calgary, Alberta.

to the alternative approaches identified in the following sections of Section 1.a. of the Questions.

The RNPRM also includes a modified approach to the subject of disclosure, summarized at p. 46 as follows: “Third, while the revised proposed Rule would also prohibit material omissions, the Commission has modified the prohibition to address specific concerns about the risk of deterring voluntary disclosures of information, by requiring a showing that the omission at issue distorts or tends to distort market conditions.” With these modifications, CAPP concurs that the revised proposed Rule would serve the public interest. Manipulative conduct that makes use of false information in market transactions does not constitute routine or acceptable commercial behavior, and is reasonably within the scope of prohibited conduct.

CAPP remains concerned that mandatory disclosure is a problematic approach in the absence of specific, empirical evidence of damaging practices or incidences of specific harm. As proposed, however, the revised proposed rule could be employed initially, with the proviso that the language remain subject to review if and when experience affords a basis for achieving greater regulatory specificity and affording greater certainty to market participants.

CAPP again appreciates the opportunity to participate in this rulemaking process.

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