

**PREPARED STATEMENT OF FUTURES INDUSTRY ASSOCIATION
BEFORE THE COMMODITY FUTURES TRADING COMMISSION
ON OVERSIGHT OF ENERGY MARKETS**

SEPTEMBER 18, 2007

The Futures Industry Association is pleased to submit this statement of its views on the oversight of trading markets in energy futures and other related derivative contracts. FIA's member firms play many different roles in the trading and clearing of energy transactions, both as intermediaries and principals. We have a substantial interest in energy markets and commend Acting Chairman Lukken and the Commission for holding this public forum to allow a full spectrum of views to be heard.

Everyone agrees that the price of energy is a critical element of our national economy. For decades, energy futures have served our national interest by providing a means for efficiently managing and reliably discovering energy prices. The Commission should take pride in its effective oversight and stewardship of these markets.

In recent years, energy markets have experienced considerable innovation and increasing competition. Congress addressed, and even stimulated, these forces when it enacted the Commodity Futures Modernization Act of 2000. The CFMA updated the Commodity Exchange Act by recalibrating Commission regulation of different forms of derivative transactions to different levels. This scaled-regulatory approach was designed to serve equally well the public interest and various commercial interests. In FIA's view, the CFMA has worked admirably for markets generally and energy markets in particular.

In energy, the CFMA has made it possible for new markets to compete with established exchanges. That competition has caused those exchanges to modernize through

electronic trading or at least increase their pace of modernization. The CFMA has also encouraged innovative thinking by established exchanges and new trading platforms. The result is that those trying to manage energy price risks and those willing to assume those risks now have more choices than ever before. Indeed, one of the most popular recent innovations in energy -- the ability to submit certain private bi-lateral energy transactions to regulated clearing entities -- flowed directly from the CFMA's provisions. The importance of this innovation can not be overstated. Those bi-lateral but cleared transactions on the New York Mercantile Exchange's ClearPort facility now comprise approximately [%] of that exchange's monthly volume.

In our view, the CFMA has sparked these positive developments without compromising the public interest, including the vital interest in preventing price manipulation. The Commission continues to deploy a wealth of market surveillance techniques and an arsenal of enforcement weapons in its pursuit of what Chairman Lukken has labeled the agency's zero tolerance of price manipulation. These Commission tools include large trader reports, special calls, position limits, price manipulation enforcement actions and even sweeping, perhaps unprecedented market emergency powers. Clearly, the Commodity Exchange Act and the Commission's regulatory apparatus continue to target price manipulation as public enemy #1.

FIA agrees with this emphasis. Price manipulation should be prevented whenever possible and never tolerated. The best defense against price manipulation is effective CFTC market surveillance based on all relevant large trader information. The Commission's recent proposal to confirm under its special call authority that large traders must maintain books and records for related non-reportable transactions is fully consistent with this philosophy. The Commission's proposal would even include trades on foreign boards of trade within this special

call authority so that the Commission could obtain access to transaction detail from a large futures trader on both a U.S. exchange and a foreign exchange in the same commodity. The Commission's proposal illustrates that the agency's existing authority is substantial and adaptable to current market needs and conditions.

Some have questioned how well the existing anti-manipulation defenses work when more than one energy derivative market exists. In FIA's view, multiple trading facilities, like NYMEX and the Intercontinental Exchange today in energy, only enhance the need for vigorous CFTC oversight. When more than one market is trading and neither has self-regulatory authority over the other, it is even more important that CFTC market surveillance have ready access to all relevant large trader information. This principle applies whether the two (or more) related markets are DCMS, DTEFs, EXBOTs or ECMS. None of those markets would be able to survey, or should be expected to survey, all relevant positions on its competitor trading platform. Nor would we want one trading platform operator to take action against traders on its competitor's platform for claimed trading improprieties. That kind of dueling private police actions could lead to market pricing instability.

If we are to have same commodity competition among trading facilities, as the CFMA contemplated and FIA has espoused, then the Commission must conduct this kind of multiple market surveillance. This is perfectly consistent with the statute. In the CFMA itself, Congress signaled that promoting multiple trading platforms in energy derivatives did not mean that price manipulation prevention should be short-changed. Instead, Congress made clear in the statute that for any energy or other "exempt commodity" transactions conducted on a "many to many" trading facility -- whether that facility was a DCM, DTEF, or ECM -- the Commission was empowered to enforce the statute's prohibition against price manipulation.

In contrast, Congress did not extend manipulation protections to other off-trading facility transactions in excluded or exempt commodities. FIA agrees with that congressional judgment, embodied in sections 2(d) and 2(g) of the CEA. Price manipulation is of little concern in one-off, non-standardized transactions between two eligible contract participants where price applies to the individual transaction, not to a wider market. But where the pricing of trades would affect the interests of other market participants, or even others that base commercial transactions on market prices, the CFTC has an interest in preventing manipulation. In those circumstances, the CFTC must be the cop on the beat.

The Commission's traditional role as the exclusive regulator of futures transactions and markets actually compels this kind of comprehensive and vigilant multi-market surveillance approach. Multiple markets combined with multiple regulators would be a recipe for disaster. For that reason, in 1974, Congress granted the CFTC the extraordinary power of exclusive jurisdiction to make sure that only an agency expert in futures pricing would cast its surveillance eyes on futures trading activities. At the same time, Congress wanted futures market participants to be answerable only to that expert agency's judgment. Other federal agencies may have legitimate concerns and interests in protecting other markets or transactions that fall within their statutory spheres, and perform important work in their respective areas. But Congress was clear who was responsible for policing futures markets: the CFTC and only the CFTC. The Commission has in the past correctly made clear to its sister agencies, the states, the courts and Congress that monitoring futures pricing is its exclusive statutory duty. You should continue to do so, not as a matter of turf but as a means of continuing to vindicate the public policy goals exclusive jurisdiction serves, including the avoidance of duplicative or conflicting regulation.

The Commission has in the past also made its preeminence in U.S. futures market surveillance known to its sister regulatory agencies overseas. If a DCM and a foreign board of trade list for trading essentially the same contract, the Commission understandably coordinates its surveillance activities with foreign regulators. The Commission's experience with the Financial Services Authority and ICE Futures Europe illustrates how well this kind of cooperative information sharing approach can work in practice. The Commission is to be commended for establishing the necessary arrangements without overburdening market participants or sacrificing its legitimate surveillance needs.

While some may talk of loopholes and regulatory gaps, FIA believes the record shows that the Commodity Exchange Act's anti-manipulation foundation in the energy area is very strong. FIA does not believe any changes to the CEA are vital to the Commission's ability on a day to day basis to achieve its anti-manipulation mission. The CEA works well and the CFTC works well with it.

At the same time, we recognize that Congress is not clairvoyant and that market conditions change, especially in a world driven by changes in technology that come at us faster every day. We know the Commission will take whatever steps it determines to be appropriate to update its regulatory approaches consistent with its statutory authority. FIA understands it is possible that the Commission may determine that it lacks some needed authority in some areas and may therefore want to consider recommending that Congress make some modest, targeted changes in those areas. Perhaps, as one major ECM has observed in a congressional hearing, limited changes might be called for in the ECM area for some commodities in some circumstances where multiple markets exist. But the tests for any of these changes should be:

are they essential for the performance of the CFTC's market surveillance function and are they the least intrusive means for achieving the required outcome?

FIA does not believe that any statutory change should be a basis for leveling the so-called competitive playing field. Congress has appropriately allocated regulatory oversight in the CEA based on differences in market participants, commodities traded, means of trading, intermediation and even impact on cash markets. FIA would not support any fundamental change to that regulatory alignment.

In particular, FIA would oppose any efforts to interfere with start up ECMs or to undermine the entrepreneurial spirit and emphasis of the ECM category. The ECM category under the CEA has been the most successful incubator for innovative markets and product offerings. It should be maintained as a basis for encouraging innovation and competition.

Our final point is a familiar one and a critical one. Price manipulation is public enemy #1 because it affects both market participants and the public at large. Price manipulation can have a serious ripple effect in our economy and can hurt many innocent bystanders. That is why Commission vigilance is so important.

It is also why Commission regulation benefits not just market participants, but just as profoundly non-market participants. For that reason, FIA continues to be vehemently opposed to funding the CFTC through a transaction tax. In our view, all taxpayers benefit from CFTC market oversight. Therefore all taxpayers should pay for it. If the CFTC needs additional resources, the Administration should request and Congress should appropriate the necessary funds. But imposing an arbitrary and egregious tax that would be borne most by those that provide the liquidity that allows futures markets to serve so many public interests is a bad idea whose time should never come.

Thank you for holding this hearing and for considering our views. I would be happy to answer any questions you might have.