



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre

1155 21st Street, NW

Washington, DC 20581

[www.cftc.gov](http://www.cftc.gov)

## Q & A – Anti-Manipulation and Anti-Fraud Final Rules

### What is the goal of the rulemaking?

Final Rule 180.1 implements new CEA section 6(c)(1), which prohibits manipulative and deceptive devices and contrivances in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity. Final Rule 180.2 is promulgated pursuant to CEA section 6(c)(3) and the Commission's general rulemaking authority, section 8a(5).

### When are the final Rules effective?

The final Rules are effective 30 days after publication in the Federal Register.

### What is new about the Commission's anti-manipulation authority under final Rule 180.1?

Final Rule 180.1 enhances the Commission's ability to prosecute manipulation. Prior to Dodd-Frank section 753's amendments to CEA Section 6(c), in order to prevail in a manipulation case, the Commission was required to prove: (1) that the accused had the ability to influence market prices; (2) that the accused specifically intended to create or effect a price or price trend that does not reflect legitimate forces of supply and demand; (3) that artificial prices existed; and (4) that the accused caused the artificial prices. Final Rule 180.1 implements the provisions of CEA section 6(c)(1) by prohibiting, among other things, manipulative and deceptive devices, i.e., fraud and fraud-based manipulative devices and contrivances employed intentionally or recklessly, regardless of whether the conduct in question was intended to create or did create an artificial price. This broad new authority will help the Commission to promote the integrity of the markets and protect market participants.

### What are the similarities and differences between the Commission's existing anti-fraud authority and new final Rule 180.1?

Final Rule 180.1 augments the Commission's existing anti-fraud authority. Unlike section 4b of the CEA, an enforcement action brought under final Rule 180.1 and new CEA section 6(c)(1) need not establish that the alleged wrongdoer's fraud was in connection with a future or swap "made, or to be made, for or on behalf of, or with," the defrauded person. CEA section 6(c)(1) and Rule 180.1 also provide the Commission with an antifraud remedy in connection with a contract of sale of a commodity in interstate commerce.

Final Rule 180.1 also prohibits trading on the basis of material nonpublic information in breach of a pre-existing duty (established by another law or rule, agreement, understanding, or some other source) and trading on the basis of material nonpublic information that was obtained through fraud or deception.

### Does final Rule 180.1 impose a duty to disclose material non-public information or abstain from trading as is the case under the securities laws?

No. Final Rule 180.1 does not impose any new affirmative duties of inquiry, diligence, or disclosure. Absent a pre-existing duty, the failure to disclose material, non-public market information prior to entering into a transaction, either in an anonymous market setting or in bilateral negotiations, will not, by itself, constitute a violation.

### Does final Rule 180.2's prohibition on price manipulation change the four part test for price manipulation under old CEA section 6(c) and CEA section 9(a)(2)?

No. The Commission reaffirms its long standing four-part test. The rulemaking clarifies certain legal principles related to the elements of a price-based manipulation case.