



Commodity Futures Trading Commission

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Antimanipulation Q & A

What is the goal of the proposed rulemaking?

The notice of rulemaking proposes two rules which collectively prohibit all manner of fraud and manipulation in the markets subject to the jurisdiction of the Commission.

Does the proposed regulation under 6(c)(3) change the four part test for manipulation under old 6(c) and 9(a)(2)?

No. The Commission intends to use this rulemaking to reaffirm certain legal principles relevant to the CEA's prohibition against price manipulation, whether it occurs in the futures markets, the commodities markets, or the swaps markets regulated by the Commission. Specifically, the proposed regulation under new section 6(c)(3) reaffirms the four-part test and interpretation of the same announced in *In re Cox*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,786 at 34,061 (CFTC July 15, 1987).

Given the similarity to Exchange Act section 10b, is the Commission adopting securities law precedent as its own under (6)(c)(1), particularly with respect to the recklessness standard?

No. The proposed rule is modeled, in part, on SEC Rule 10b-5, with appropriate modification to account for the unique regulatory mission of the CFTC. As stated in the preamble to the proposed rule, the Commission proposes that judicial precedent interpreting and applying Exchange Act section 10(b) and SEC Rule 10b-5 in the context of the securities markets should guide, but not control, application of the scienter standard under subsection 6(c)(1) and the Commission's implementing rule. The Commission believes that sufficient leeway must be given to permit application of the scienter standard under subsection 6(c)(1) and the Commission's implementing rule in a manner that comports with the purposes of the CEA and the functioning of the markets regulated by the CFTC.

What are the similarities and differences between the Commission's existing anti-fraud authority and new proposed rule under (6)(c)(1)?

Unlike section 4b of the CEA, an enforcement action brought under subsection 6(c)(1) and the Commission's proposed implementing rule need not establish that the alleged wrongdoer executed a contract that was "made, or to be made, for or on behalf of, or with, another person." However, like other enforcement actions brought pursuant to an anti-fraud provision of the CEA, common law elements of fraud are not needed to establish a violation of subsection 6(c)(1) and the Commission's proposed implementing rule in the context of an enforcement action.

What are the penalties for a violation of the new proposed rules?

In any case of manipulation or attempted manipulation in violation of CEA sections 6(c) or 9(a)(2), Dodd-Frank section 753 provides for a civil penalty of up to the greater of \$1,000,000 or triple the monetary gain to the person for each violation. Dodd-Frank also requires restitution to customers of damages proximately caused by the violations.