

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038-AD26

Antidisruptive Practices Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance Notice of Proposed Rulemaking; Notice of Termination.

SUMMARY: On November 2, 2010, the Commodity Futures Trading Commission (“Commission”) issued in the Federal Register an advance notice of proposed rulemaking (“ANPR”). In this ANPR, the Commission requested public comment to assist it with promulgating rules and regulations to implement the disruptive practices set forth in section 4c(a) of the Commodity Exchange Act (“CEA”), as amended by section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). After considering the comments that were submitted in response to the ANPR, the Commission decided not to issue any regulations at this time relating to new section 4c(a). Instead, the Commission is publishing today elsewhere in the Federal Register a proposed order interpreting new section 4c(a)(5). The Commission is also terminating the ANPR issued on November 2, 2010.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Pease, Counsel to the Director of Enforcement, 202-418-5863, rpease@cftc.gov; Steven E. Seitz, Attorney, Office of the General Counsel, 202-418-5615, sseitz@cftc.gov; or Mark D. Higgins, Counsel to the Director of Enforcement, 202-418-5864, mhiggins@cftc.gov, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, N.W., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

On July 21, 2010, President Obama signed the Dodd-Frank Act.¹ Title VII of the Dodd-Frank Act² amended the Commodity Exchange Act (“CEA”)³ to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: 1) providing for the registration and comprehensive regulation of swap dealers and major swap participants; 2) imposing clearing and trade execution requirements on standardized derivative products; 3) creating robust recordkeeping and real-time reporting regimes; and 4) enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission’s oversight. Section 747 of the Dodd-Frank Act amends section 4c(a) of the CEA to add a new section entitled “Disruptive Practices.”

New section 4c(a) expressly prohibits certain trading practices that are disruptive of fair and equitable trading. New section 4c(a) of the CEA makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

- (A) violates bids or offers;
- (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
- (C) is, is of the character of, or is commonly known to the trade as, “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution).

¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

² Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

³ 7 U.S.C. 1 *et seq.* (2006).

Section 747 of the Dodd-Frank Act also amended section 4c(a) by granting the Commission authority to promulgate such “rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices” enumerated in section 747 “and any other trading practice that is disruptive of fair and equitable trading.” The prohibition on the disruptive practices specified in new section 4c(a) will become effective 360 days after the enactment of the Dodd-Frank Act.

On November 2, 2010, the Commission issued an ANPR inviting public comment on all aspects of section 747 of the Dodd-Frank Act.⁴ After reviewing the ANPR comments that were submitted, the Commission determined that it should address the disruptive practices by issuing a proposed order interpreting new CEA section 4c(a). Accordingly, this document terminates the ANPR issued on November 2, 2010. The proposed interpretive order referenced above, which incorporates the ANPR comments, is being published today elsewhere in the notice section of the Federal Register.

This proposed interpretive order will provide market participants and the public with guidance on the scope of the three statutory disruptive practices set forth in new CEA section 4c(a).

Issued in Washington, DC on March 14, 2011, by the Commission.



David A. Stawick,
Secretary of the Commission.

⁴ Anti-Disruptive Trading Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 FR 211, Nov. 2, 2010.