

Good afternoon Mr. Chairman and Commissioners. Thank you Commissioner O'Malia, the Chairman of the Technology and Advisory Committee, for inviting me here today to discuss two rulemakings – the new anti-manipulation authority of section 753 of Dodd- Frank and section 747, which prohibits certain disruptive trading practices and gives the Commission the authority prohibit other practices that are disruptive of fair and equitable trading. Of course, my comments today are my own and do not reflect those of the Commission or other staff members.

Section 753 of Dodd-Frank amends section 6(c) of the Commodity Exchange Act and expands the authority of the Commission to prohibit fraudulent and manipulative behavior. This new section creates a prohibition against any person using or attempting to use any manipulative or deceptive device or contrivance.

- The new statute requires the Commission to promulgate an implementing rule within one year.
- The text of this new section prohibiting fraud based manipulation is patterned after section 10b of the Securities Exchange Act of 1934.
- The courts have interpreted Exchange Act section 10b and section 10b-5 to cover intentional or reckless conduct that deceives or defrauds market participants.
- New section (c) (1) is similar to the anti-manipulation authority granted to the Federal Energy Regulatory Commission (FERC) and the Federal Trade Commission (FTC). FERC and the FTC have promulgated rules based on SEC Rule 10b and 10b-5 to implement their respective authority but have modified Rule 10b-5 as appropriate to their distinct regulatory missions and responsibilities.

- Section 753 of Dodd-Frank further adds a special provision for manipulation by false reporting and a prohibition on false information. This provision is self-activating and does not require rulemaking.
- Congress also created a new CEA section 6(c)(3), entitled “other manipulation” which mirrors existing Commission authority to prohibit manipulation of prices.
- As with many of the provisions of Dodd-Frank, Section 753 requires the Commission, within one year, to promulgate a new rule implementing the authority granted by section (c)(1).

In Section 747, Congress amended section 4(c) of the CEA to prohibit specific trading practices that are disruptive of fair and equitable trading.

- Specifically, section 747 makes is unlawful to:
  - o Violate bids or offers;
  - o Demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or
  - o Spoofing. Spoofing is defined as bidding or offering with the intent to cancel the bid or offer before execution.
- Congress authorized the Commission to promulgate rules to prohibit the three enumerated disruptive trading practices and any other trading practice that is disruptive of fair and equitable trading. Congress did not provide a deadline for this optional rulemaking nor is the authority limited to one rulemaking effort.
- Section 747 also makes it unlawful for any person to enter into a swap knowing or acting in reckless disregard of the fact that its counterparty will use the swap as part of a device, scheme or artifice to defraud any third party.

Our rulemaking team, which consists of representatives from each of the Commission's Divisions, is currently drafting rules to implement the provisions of sections 753 and 747. In addition, the team continues to examine the events of May 6, in particular, to determine whether there are other disruptive trading practices that we should recommend to the Commission to prohibit as disruptive of fair and orderly markets.

- Staff is also examining technological innovations in our markets and whether those innovations, particularly algorithmic trading programs, pose risks to the fair and orderly operation of commodity markets.

Staff is here to listen to the discussions this afternoon to help guide us in our review.

Staff will be making complete recommendations concerning the implementation of the new anti-manipulation authority contained in section 753 and the anti-disruptive trading practices authority in section 747 in the near future.

Thank you and I will be happy to answer any questions you may have.