



Commodity Futures Trading Commission

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Statement

**Opening Statement of
Acting CFTC Chairman Walter Lukken
Before the Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives
December 12, 2007**

Thank you, Mr. Chairman and Members of the Subcommittee. On behalf of the Commodity Futures Trading Commission, I appreciate the opportunity to appear before you today.

The CFTC's mission is broadly two-fold: to protect the public and market users from manipulation, fraud, and abusive trading practices; and to promote open, competitive and financially sound markets for commodity futures and options.

Congress created the CFTC in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States. With the passage of the Commodity Futures Modernization Act (CFMA) in 2000, the CFTC became the only U.S. federal financial regulator that operates under a principles-based regulatory approach.

A principles-based system requires markets to meet certain public outcomes in conducting their business operations. For example, registered futures exchanges, also known as designated contract markets or DCMs, must comply with a set of core principles in order to uphold their good standing as a regulated exchange —ranging from maintaining adequate financial safeguards to conducting market surveillance. As technology and market conditions change, exchanges may discover more effective ways to meet a mandated principle in their self-regulatory responsibilities.

The CFTC's regulatory approach is complemented with a strong enforcement program. Real-time enforcement is essential to effective market regulation in order to punish and deter abusive activity in our markets. I call this prudential regulation with a bite, and our enforcement record reflects this bookends approach. During the past five years, the Commission has filed a total of 295 enforcement actions and obtained more than \$1.8 billion in total monetary sanctions including restitution, disgorgement, and civil monetary penalties.

Protecting the energy markets is vital to our national interest because of the direct impact of energy prices on consumers and the economy in general. In the energy sector, over the last five years, the Commission filed 39 enforcement actions, charging 64 companies and individuals with manipulation, attempted manipulation and/or false reporting. To date, these actions have resulted in civil monetary penalties of more than \$434 million. Most recently, the CFTC and Department of Justice obtained a record settlement of \$303 million with British Petroleum for manipulating the propane gas market. Indeed, we maintain a zero tolerance policy toward anyone who attempts to manipulate or disrupt prices in the energy markets.

On this front, I would also note our continued positive working relationship with FERC on many enforcement matters. The CFTC and FERC share the common goal of ensuring that the energy markets remain free from manipulation.

Since the CFTC and FERC entered into the 2005 Memorandum of Understanding on information sharing, our agencies have had a collaborative relationship. I am committed to continuing to develop this cooperation given the inter-relationship between the futures and physical energy markets. As the MOU recognizes, Congress provided the CFTC exclusive jurisdiction over the futures markets. The policies that support this jurisdictional grant by Congress are as important today as when they were enacted nearly 35 years ago. Exclusive jurisdiction of futures trading ensures that the futures markets, where many commodities also have a separate cash market regulator, will not face inconsistent and redundant regulation and the uncertainty of differing legal standards.

But this does not mean that FERC and CFTC's respective enforcement authorities cannot exist in complement of each other, as evidenced by the solid working relationship we share with other federal and state enforcement authorities. I am committed to striking this balance with FERC. Already, our staffs have met to discuss possible ideas that would further coordinate our missions. I am hopeful that these efforts will help to align the implementation of our mandates going forward.

I would also like to touch on a recent CFTC proposal specifically aimed to address a regulatory concern regarding exempt commercial markets or ECMs. Congress created the ECM category in 2000 to allow commercial participants to trade energy and certain other products in a lighter-touch regulatory environment. This spurred innovation and competition as the ECM platform provided a valuable, low-cost "on-ramp" to launch new ideas for contract design and trading methodologies.

However, the success of this type of trading facility has also led policymakers to re-examine whether the regulatory requirements for these exchanges remain adequate. In September, the CFTC conducted an extensive hearing on ECMs and found that certain ECM energy contracts were performing as virtual substitutes for regulated futures contracts and may be serving significant price discovery roles. The Commission concluded that changes to our statute were necessary in order to detect and prevent manipulation involving ECM futures contracts that serve a significant price discovery function.

To that end, the Commission recommended legislative changes in a report delivered to Congress that would require 1) large trader position reporting on significant price discovery contracts on ECMs; 2) position limits or accountability levels for these contracts; 3) self-regulatory responsibilities for the ECM; and 4) CFTC emergency authority over these contracts. This

proposal, crafted in full consultation with the other members of the President's Working Group, has the support of the entire Commission. I am pleased to report that both the House and Senate Agriculture Committees are actively considering these recommendations as those Committees move forward on the CFTC's reauthorization.

With these important changes, I believe the CFTC's principles-based regulatory approach, in combination with its real-time enforcement arm, will continue to be effective in policing our markets and allowing this industry to continue on its upward path of growth. Since our laws were modernized in 2000, volume on the U.S. futures exchanges has increased 448 percent, capturing a larger segment of the world's futures trading market share. This year, the volume on U.S. futures markets is expected to reach a record of nearly 3.3 billion contracts traded. I am confident that the CFTC's approach of strong yet tailored regulation is critical to sustaining the growth of this vital sector of the U.S. economy.