



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule Regarding Prohibition of Market Manipulation

The Commodity Futures Trading Commission (CFTC) announced the publication in the Federal Register of proposed regulations concerning the prohibition of market manipulation. These proposed rules implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

On July 21, 2010, the Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other things, section 753 of the Dodd-Frank Act amended section 6(c) of the CEA to:

- Expand the authority of the Commission to prohibit fraudulent and manipulative behavior. New CEA section 6(c)(1) 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 6(c)(1) is similar to the anti-manipulation authority granted to the Federal Energy Regulatory Commission (FERC) in 2005 and the Federal Trade Commission (FTC) in 2007. 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.
 - New section 6(c)(1) does not require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.
- Add a “special provision for manipulation by false reporting” but which is not violated for a specifically enumerated good faith mistake. This provision is self-activating and does not require rulemaking.
- Add a “Prohibition regarding False Information” to the Commission. This provision is self-activating and does not require rulemaking.
- Add new CEA section 6(c)(3), entitled “other manipulation.”
- Preserve the applicability of CEA section 9(a)(2).

On October 26, 2010, the Commission issued proposed rules to implement section 753 of the Dodd-Frank Act, providing a comprehensive regulatory scheme for the prohibition of market manipulation.

The comment period closes on [insert 60 days from publication in FR].

The Commission's proposed rules:

- Under section 6(c)(1), the proposed rule makes it unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly
 - use or employ, or attempt to use or employ, any device, scheme, or artifice to defraud,

- make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading,
 - engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, or
 - deliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate. Notwithstanding the foregoing, no violation of this subsection shall exist where the person mistakenly transmit, in good faith, false or misleading information to a price reporting service.
 - Nothing in the proposed rule shall be construed to require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.
 - Nothing in the proposed rule shall affect, or be construed to affect, the applicability of Commodity Exchange Act section 9(a)(2).
- Under section 6(c)(3), the proposed rule makes it unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.