



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMMODITY FUTURES TRADING COMMISSION
AND
THE FEDERAL ENERGY REGULATORY COMMISSION
REGARDING INFORMATION SHARING AND
TREATMENT OF PROPRIETARY TRADING AND OTHER INFORMATION**

I. PURPOSE

Pursuant to Section 720(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) and sections 316 and 1281 of the Energy Policy Act of 2005 (“EPAct 2005”), the Federal Energy Regulatory Commission (“FERC”) and the Commodity Futures Trading Commission (“CFTC”) (jointly, the “Participating Agencies”) enter into this Memorandum of Understanding (“MOU”) concerning information that may be requested by a Participating Agency in connection with market surveillance or an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Participating Agency’s regulation or oversight, to ensure that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and to address the treatment of confidential information.¹ By written agreement of the Participating Agencies, and as required by

¹ Section 720(b) of the Dodd-Frank requires the CFTC and FERC to negotiate a MOU addressing information shared in response to a request by one Commission of the other pursuant to an

changes in Dodd-Frank, the MOU agreed to by the Participating Agencies on October 12, 2005 is hereby superseded.

II. COMMITMENTS OF THE PARTICIPATING AGENCIES

The Participating Agencies agree to the following procedures:

A. Information Requests by the FERC

1. The FERC shall direct by e-mail or other writing to the CFTC any and all requests for information from: (1) a designated contract market, a registered swap execution facility, a registered derivatives clearing organization, or any other board of trade, exchange, or derivatives market or swap data repository; and (2) market participant information in the possession of CFTC.
2. CFTC shall take steps necessary to promptly obtain responsive information and furnish it to the FERC, subject to the conditions and exceptions set forth in this MOU.
3. Any information requested and furnished pursuant to this MOU by the CFTC to the FERC shall be kept confidential and non-public, and shall not be disclosed or made available by the FERC to any other person except in accordance with section 8 of the Commodity Exchange Act, 7 U.S.C. § 12.

B. Information Requests by the CFTC

1. The CFTC shall direct by e-mail or other writing to the FERC any and all requests for information from 1) the following entities that are regulated by FERC: a Regional Transmission Organization (“RTO”) or Independent System Operator (“ISO”), the independent market monitor of the RTO or ISO, the North American Electric Reliability Corporation (“NERC”), or interstate pipelines and storage facilities; and 2) market participant information in the possession of the FERC.

investigation into potential manipulation, fraud or market abuse in markets subject to such Commission’s regulations or oversight.

2. FERC shall take steps necessary to promptly obtain responsive information and furnish it to the CFTC, subject to the conditions and exceptions set forth in this MOU.
3. Any information obtained by the FERC pursuant to the confidentiality provisions of 18 C.F.R. Part 1b or any other FERC confidentiality regulation, and furnished pursuant to this MOU by the FERC to the CFTC, shall be kept confidential and non-public, and shall not be disclosed or made available by the CFTC to any other person except in accordance with restrictions applicable to FERC or otherwise applicable to the CFTC.

C. Information Requests, General Provisions

1. To the extent consistent with their respective missions and interests, each Participating Agency will endeavor to accommodate the policies and regulations of the other Participating Agency concerning the disclosure of information to third parties. The Participating Agencies agree that this MOU does not in any way interfere with, proscribe, or affect the rights of either Participating Agency to obtain any information directly from entities subject to their respective authority.
2. The Participating Agencies agree to take steps to avoid duplicative information requests to the extent possible, and to coordinate to the extent practicable oversight (including market surveillance), investigative, and enforcement activities of mutual interest. To facilitate this coordination, the respective oversight and enforcement staffs of the FERC and CFTC are authorized to share information concerning ongoing oversight (including market surveillance), investigative, and enforcement activities, pursuant to this MOU, to determine whether and when they have a mutual interest in matters.

D. Treatment of Proprietary Information

1. The CFTC and FERC agree to take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to non-public information provided pursuant to the MOU, in accordance with applicable law.
2. Unless required by Federal law or otherwise in an action or proceeding under the laws of the United States to which the FERC, the CFTC, or the United States is a party or participant, the FERC may not disclose any information provided by the CFTC to the FERC pursuant to this MOU to any third party (including any governmental party) without the prior written consent of the CFTC.
3. Unless required by Federal law or otherwise in an action or proceeding under the laws of the United States to which the CFTC, the FERC, or the United States is a party or participant, the CFTC may not disclose any information provided by the FERC to the CFTC pursuant to this MOU to any third party (including any governmental party) without the prior written consent of the FERC.
4. Each of the CFTC and FERC will:
 - a. establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of any non-public information provided pursuant to this MOU, as well as any information derived therefrom;
 - b. notify the Providing Party in writing, as soon as practicable, of any legally enforceable demand or a Congressional request for such information (including but not limited to, a subpoena; court order; a request, order, or subpoena from a committee of Congress acting within the scope of its jurisdiction; or a request pursuant to the Freedom of Information Act), provide the Providing Party a reasonable opportunity to respond to the demand or request prior to complying with the demand or request, and assert all such legal exemptions or privileges on behalf of the Providing Party as the Providing Party may reasonably request be asserted;
 - c. not grant any other demand or request for the information, not furnish the information to any third party, make public any portions of the information or

information derived therefrom, or make public use of the information, without the prior written permission of the Providing Party; and

- d. consent to application by the Providing Party to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to non-public information it provided.
5. All information shared pursuant to this MOU is presumed to be non-public, unless the Providing Party specifies in writing that it is not.
6. The Participating Agencies shall immediately refer any FOIA requests relating to information shared under the authority of this MOU, for disposition by the Agency initially holding the information.
7. Nothing in this MOU should be construed to prohibit a Party from complying with an order of a court of competent jurisdiction or a request, order or subpoena from a committee of Congress acting within the scope of its jurisdiction.

E. Treatment of Privileged Material

1. The Participating Agencies recognize that from time to time they will have specific common interests with respect to particular market surveillance or investigation matters (“Common Interest Matters”) in which the Participating Agencies will desire to share information with each other, as contemplated by this MOU. To the extent a Participating Agency shares with the other Participating Agency any information, whether oral or written, protected under Federal or state law by attorney work-product privilege, attorney-client privilege, deliberative process or governmental privilege, or any other applicable privilege (collectively, “Privileged Material”) with respect to a Common Interest Matter, the Participating Agencies agree that they are sharing such Privileged Material in furtherance of their common interests with respect to the particular Common Interest Matter at the time. The Participating Agencies agree that any such sharing of

Privileged Material is not intended to be and does not constitute a waiver of any privileges or protections referenced in this paragraph.

2. In a market surveillance or investigation matter where the Director of Enforcement or official designated by the Director of Enforcement of either Participating Agency desires to share information with the other that the providing agency identifies as Privileged Material, the two Directors or their designees will confer and determine whether the matter is a Common Interest Matter.

3. When either Participating Agency shares information with the other that the providing agency identifies as Privileged Material, the Participating Agencies agree as follows: (a) the receiving agency shall not disclose Privileged Material to any third party unless (i) the providing agency agrees in writing to such disclosure, (ii) disclosure is ordered by a court established pursuant to Article III of the U.S. Constitution, which order is not stayed; or (iii) disclosure is ordered by an administrative law judge in an adjudicative proceeding, which order is not stayed; (b) the receiving agency shall take all reasonable, necessary and lawful steps to protect the Privileged Material from disclosure to any third party, and the Participating Agencies shall consult and confer with one another regarding such steps; (c) the receiving agency shall promptly notify the providing agency of any request for the disclosure of Privileged Material; (d) prior to any third party disclosure of Privileged Material provided to the receiving agency, the receiving agency shall give the providing agency reasonable opportunity to object to such disclosure; and (e) any such sharing of Privileged Material does not impair the ability and rights of either agency to pursue its own separate and individual interests, nor does such

sharing create an attorney-client relationship between or among the FERC, the CFTC and their respective counsel.

III. MISCELLANEOUS

1. The Participating Agencies agree that no further authorizations are necessary for their respective staffs to conduct activities as described by this MOU.

2. This MOU does not create legally binding obligations on the Parties (other than with respect to confidential treatment of information provided hereunder) and does not create any right for or by any person or entity against the FERC or the CFTC or any of their members, officials, employees, or contractors, and specifically does not confer on any third party the ability directly or indirectly to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of a request under the MOU. This MOU does not impose any discovery obligations in any matter in which the FERC or the CFTC is not a participant. This MOU contains various general policies and procedures and is intended to provide guidance only to the staff of the Participating Agencies. This MOU is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

3. Notwithstanding any other provision of this MOU, each of the Participating Agencies shall retain any authority it has to issue subpoenas.

4. The FERC and CFTC intend periodically to review the functioning and effectiveness of this MOU in light of, among other things, changes in applicable law and the Parties' experience in implementing the MOU with a view to expanding or altering the scope or operation of the MOU as appropriate.

IV. PRINCIPAL CONTACTS

1. The FERC designates its Director of Enforcement and his or her designee(s) as its point(s) of contact for requesting or providing any information or notifications as required by this MOU.

2. The CFTC designates its Director of the Division of Enforcement and his or her designee(s) as its point(s) of contact for providing any information or notifications as required by this MOU.

V. TERM OF THE AGREEMENT

This MOU shall become effective as of the date of its signing, and may be revised or modified only upon the written agreement of the Participating Agencies, or as required by changes in relevant laws.

VI. SIGNATORIES

Commodity Futures Trading Commission by:



Gary Gensler, Chairman

Date: 1/2/14

Federal Energy Regulatory Commission by:



Cheryl LaFleur, Acting Chairman

Date: 1-2-14