

October 30, 2007

CFTC Amends Commission Recordkeeping Rule with Goal of Improving Market Oversight

The Commodity Futures Trading Commission (the "Commission") has adopted a final rule amending Regulation 18.05 to enhance the Commission's ability to detect and prevent market manipulation or other disruptions to the integrity of regulated futures markets, and to ensure the avoidance of systemic risk. As stated by Acting Chairman Walt Lukken, "[t]his clarification will bring added transparency."

As the Commission explained in its October 24, 2007 release, it amended Regulation 18.05 to clarify:

1. that traders holding reportable positions are required to keep information relating to those positions – including information regarding positions and transactions held or executed outside the regulated market – and to provide that information to the Commission upon request;
2. and what constitutes hedging activity with respect to a reportable position.

Regulation 18.05 requires that a person holding or controlling a futures or option position in a commodity above a certain level (reportable position) on a designated contract market (DCMs) or registered derivatives transaction execution facility (DTEFs) must retain books and records and make available to the Commission upon request any pertinent information with respect to other positions, transactions or activities in the commodity in which the trader has a reportable position.

In announcing the proposed amendments, the Commission explained that in addition to information with respect to positions and transactions on DCMs and DTEFs, "information with respect to positions and transactions in the virtually identical Natural Gas contracts on the IntercontinentalExchange (ICE), an ECM, also is important to the Commission's ability to conduct effective market surveillance of the NYMEX Natural Gas contracts and to determine the degree of a trader's exposure in both the NYMEX and ICE natural gas markets."

As a result, although Commission staff previously has interpreted Regulation 18.05 to include position and transaction data for non-reporting transactions, the Commission has now made it explicit that a trader with a reportable position must keep books and records showing all details concerning all non-reporting transactions in the same commodity and provide pertinent information to the Commission upon request.

In the wake of the well-publicized collapse of Amaranth Advisors, a Connecticut-based hedge fund that reportedly lost over \$6 billion on financial transactions in the natural gas markets, the Commission's clarification is another of a number of developments aimed at deterring and preventing market manipulation. For example, Acting Chairman Lukken described the amendments "as an important complement" to the CFTC's report released to Congress on October 24, 2007, which recommended an increase in the oversight of certain trading activity on Exempt Commercial Markets.

The amendments will be effective thirty (30) days after publication in the *Federal Register*. As amended, Regulation 18.05 will provide as follows:

§ 18.05 Maintenance of books and records.

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity on all

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reporting markets, over the counter and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)-(2) of the Act or Part 35 of this chapter, on exempt commercial markets operating pursuant to Sections 2(h)(3)-(5) of the Act, on exempt boards of trade operating pursuant to Section 5(d) of the Act, and on foreign boards of trade. Every such trader shall also keep books and records showing all details concerning all positions and transactions in the cash commodity, its products and byproducts, and all commercial activities that the trader hedges in the futures or option contract in which the trader is reportable. The trader shall upon request furnish to the Commission any pertinent information concerning such positions, transactions or activities in a form acceptable to the Commission.



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