The Energy Bar Association, its Northeast Chapter and the committee on Power Generation and Marketing announces a full-day Conference on all things Commodity Futures Trading Commission (CFTC).

**February 24, 2010**  
9:30 a.m. – 5:00 p.m. (reception to follow)

**Location:** Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W., Washington, DC  
(teleconference capability will be available)

<table>
<thead>
<tr>
<th>Time</th>
<th>Topic</th>
<th>Speaker/Presenters</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:30 – 9:40</td>
<td><strong>Welcoming Remarks</strong></td>
<td>Marji Philips, PSEG Energy Resources &amp; Trade LLC</td>
</tr>
</tbody>
</table>
| 9:40 – 10:40  | **Overview of CFTC: Purpose and Powers**       | Anita Herrera, Nodal Exchange, LLC  
Terry Arbit, Deputy General Counsel, CFTC                                                                                                                                 |
| 10:40 – 10:55 | **Transition Break**                           |                                                                                                                                                     |
| 10:55 – 12:15 | **CFTC NOPR on Aggregate Limits**              | Steve Sherrod, Director of Surveillance, CFTC  
Lael Campbell, Senior Counsel, Constellation Energy Group  
Charley R. Mills, Partner, K&L Gates                                                                                                           |
| 12:30 – 1:45  | **Luncheon Introduction**                      | Philip Johnson, Skadden, Arps, Slate, Meagher & Flom LLP  
Luncheon Keynote Speaker Gary Gensler, Chairman, Commodity Futures Trading Commission                                                                 |
| 1:45 – 2:45   | **Uncertainty Over Regulation of RTO/ISO Market Products and Services** | Vincent P. Duane, General Counsel, PJM Interconnection, L.L.C.  
Michael A. Bardee, Principal Deputy General Counsel, FERC                                                                                           |
| 2:50– 3:45    | **Part A: CFTC and FERC Manipulation and Enforcement Practices** | Todd P. Mullins, Branch Chief, Division of Investigations, FERC  
Greg Mocek, Partner, McDermott Will & Emery LLP  
John N. Estes III, Skadden, Arps, Slate, Meagher & Flom LLP                                                                                          |
| 3:45– 5:00    | **Proposed Legislation: Increased regulation of the Energy Markets?** | Paul Pantano, Partner, McDermott Will & Emery LLP  
Dan Berkovitz, General Counsel, CFTC  
Patrick McCarty, Senior Staff, Senate Agriculture Committee  
Richard McMahon, Executive Director, Edison Electric Institute  
Johnathan Short, Senior Vice President & General Counsel, ICE                                                                                       |
| 5:00– 6:30    | **Reception**                                  |                                                                                                                                                     |
Special thank you to our sponsors:

American Gas Association

Edison Electric Institute

Electric Power Supply Association

McDermott, Will & Emery LLP

Skadden, Arps, Slate, Meagher & Flom LLP
Overview of CFTC: Purpose and Powers

Anita Herrera, Nodal Exchange, LLC
Terry Arbit, Deputy General Counsel, CFTC
All Things CFTC

Historical Perspective of the CFTC into Energy Markets

Energy Bar Association
Northeast Chapter of the Energy Bar Association and the Power Generation and Marketing Committee

Washington, DC
February 24, 2010

Anita M. Herrera
Chief Compliance Officer
Nodal Exchange
CFTC and FERC Missions

**CFTC Mission:** Ensure the economic utility and integrity of the commodity futures and options markets

- Enable markets to provide means for price discovery and offsetting price risk
- Protect market users and the public
- Foster open, competitive, and sound markets

**FERC Mission:** Reliable, efficient and sustainable energy

- Just and reasonable rates and terms
- Development of safe, efficient, and reliable energy infrastructure that serves the public interest
Agricultural Roots Create the CFTC

• Prior to 1974 – Under the US Department of Agriculture, the Commodity Exchange Authority regulated commodities trading

• 1974 – Congress passes the Commodity Futures Trading Commission Act of 1974 that establishes the CFTC as an independent agency with exclusive jurisdiction to regulate futures trading in all commodities and overhauls the Commodity Exchange Act (CEA)

• CEA defines “commodities” in terms of agricultural products “and all other goods and articles” (except onions)
CFTC Growing Financial Role in the 1970s

- **1975** – CFTC approves the first futures contract on a financial instrument, the Ginnie Mae traded on the Chicago Board of Trade

- **1978** – Congress passes the Futures Trading Act of 1978 requiring the CFTC to maintain communication with the SEC, Department of Treasury, and the Federal Reserve Board
In 1981...

- Shad-Johnson Accord announced by the CFTC and SEC describing each agency’s regulatory responsibility over financial derivative instruments
  - CFTC – Commodities: all futures and options
  - SEC – Options on individual securities and certain indexes of securities

- CFTC adopts regulation requiring exchanges to establish speculative limits in all futures contracts
  - In reaction to attempts to corner the silver market by the Hunt Brothers
1980s  Differing Roles for CFTC & FERC

- **CFTC** - Throughout 1980s, the CFTC approves several futures contracts on financial instruments and options on commodities

- **FERC** – In 1985, FERC issues Order No. 436 “Open Access”, the deregulation of natural gas
  - Pipelines offer natural gas transportation to all customers as a primary function instead of bundled merchant services
  - Availability of choices to end users and new pricing patterns resulting in realized cost savings to customers
CFTC’s Evolving Role in Risk Management

• **1991**
  - CFTC works closely with the Department of Energy to ensure properly functioning crude oil futures markets during Persian Gulf War
  - CFTC issues the first “bona fide hedging” exemption, intended for hedgers with the business need for the underlying physical commodity, to J. Aron (Goldman Sachs subsidiary trading coffee, metals, energy)
Exemptions for Risk Management

• 1993
  - CFTC exempts swaps agreements between eligible swap participants from regulation under the CEA
  - CFTC exempts Over-The-Counter contracts in crude oil, natural gas, condensates, and their derivatives, between qualifying commercial participants incurring risks, in addition to price, relating to commercial activities
• **1996** – Open Access for Electric Power
  - Public utilities that own, control, or operate facilities to transmit power in interstate commerce must file non-discriminatory transmission tariffs disclosing minimum terms and conditions of service;
  - Permits recovery of legitimate, prudent and verifiable stranded costs associated with providing open access and Federal Power Act section 211 transmission services.
1990s – Concern over Legal Uncertainty

- Since off-exchange futures contracts violated the CEA, legal uncertainty concerns developed regarding OTC derivatives
  - 1998 Concept Release on OTC derivatives seeking comment on appropriateness of regulation raised concern whether existing exemptions would continue to apply
  - 1999 – President’s Working Group on Financial Markets issued report recommending exclusion from CEA regulation of swaps and OTC derivatives, with are either settled in cash or based on highly liquid market with virtually unlimited deliverable supply – “non-financial commodities with finite supplies” not subject to statutory exclusion
Commodity Futures Modernization Act of 2000

- Broad exclusions providing that no agreement between qualifying parties shall be void, unenforceable or subject to rescission under any law based solely on failure to comply with the CEA or CFTC regulations
- “Enron loophole” Exemption for Energy OTC Transactions
  - “Exempt commodities” that are neither “excluded commodities”, i.e. financial, or agricultural commodities
  - Entered into between Eligible Contract Participants
  - Except for fraud and manipulation
- Electronic Trading of Energy on Exempt Commercial Markets, i.e. Nodal Exchange, ICE
  - Trades by Eligible Commercial Entities on a principal-to-principal basis mostly exempt from CFTC regulation
In response to the California/Western energy crisis, the Energy Policy Act of 2005 expanded FERC’s regulatory authority to prohibit the use of “any manipulation or deceptive device”

- Enforcement authority - Injunctive relief to prohibit any activity subject to FERC jurisdiction against persons engaged in energy market manipulation
CFTC Energy Regulations Since the CFMA

- Congressional report in June 2007 concluded that hedge fund Amaranth dominated natural gas market by transferring large positions from NYMEX to ICE upon notice by NYMEX to reduce size of its positions
  - ICE is an “exempt commercial market” (ECM), established under the CFMA largely unregulated
- Food, Conservation & Energy Act of 2008, aka Farm Bill, closed the Enron loophole by expanding CFTC jurisdiction over electronic trading, i.e. ECMs, of energy contracts deemed by the CFTC to provide significant price discovery function
Thank you!

Anita Herrera  
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herrera@nodalexchange.com
Commodity Exchange Act (CEA): Overview
(February 24, 2010)

Terry S. Arbit
Deputy General Counsel
Commodity Futures Trading Commission
CEA History

• 1922: First Legislation

• Part of Agriculture Department until 1975

• 1974: CFTC created as an independent agency; scope of covered “commodities” expanded beyond agriculture

• CEA reauthorized every 4-5 years
FINDINGS AND PURPOSES
CEA SECTION 3

Findings:

- Transactions subject to CEA provide a means for:
  - Managing and assuming price risks;
  - Price discovery;

- Through trading in liquid, fair and financially secure trading facilities.
FINDINGS AND PURPOSES
CEA SECTION 3

Purposes:

• Deter and prevent price manipulation or other disruptions to market integrity;
• Ensure financial integrity of all transactions and avoidance of systemic risk;
• Protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and
• Promote responsible innovation and fair competition among markets and participants.
CEA Overview

- CEA has 22 Sections – Most important CEA provisions generally are in Sections 1-9
- Definitions – Section 1a (34 total, but some are key)
- CFTC Jurisdiction – Sections 2 and 4
- Exchanges/Clearing – Section 5
- Intermediaries and Traders – Sections 4 and 8
- Enforcement – Sections 4, 6, 8, and 9
Key Definitions: CEA Sec. 1a (Definitions Are in Alphabetical Order)

Things Traded:

- **Commodity**: Everything except onions (#4)
  - **Excluded** (e.g., financials) and **Exempt** (e.g., energy & metals) – (#13 and #14)
- Forwards: Sale of cash commodity for deferred shipment or delivery is not “Future Delivery” (#19)
  - BUT: There is no definition of “futures contract”
- **Securities**: **Narrow-Based Security Index** (SEC jurisdiction) and **Security Futures Products** (SFPs – joint CFTC-SEC jurisdiction) (#25, #31, and 32)
Key Definitions: CEA Sec. 1a (Cont’d) (Definitions Are in Alphabetical Order)

People Involved:

- Sophisticated traders: Eligible Commercial Entity (ECE) and Eligible Contract Participant (ECP) – (#11 and #12)

- Intermediaries: CPO, CTA, FB, FT, FCM, and IB (#5, #6, #16, #17, #20, and #23)
Key Definitions: CEA Sec. 1a (Cont’d)
(Definitions Are in Alphabetical Order)

Places Traded:
• **Registered Entity** (#29):
  – Designated contract market (DCM): Fully regulated futures exchange
  – Registered derivatives transaction execution facility (DTEF): None exist
  – Registered derivatives clearing organization (DCO): Can clear off-exchange products
CFTC JURISDICTION
CEA SECTIONS 2 AND 4

Exclusive CFTC Jurisdiction:
Section 2(a)(1)(A)
- Futures and Commodity Options

Exchange Trading Requirement
Sections 4(a) and 4c(b):
- Futures and options must be on-exchange (DCM)
- Boiler rooms and bucket shops therefore illegal

If Swap = Future, then contract would be void
COMMODITY FUTURES MODERNIZATION ACT OF 2000 (CFMA)

No CFTC Jurisdiction

- **Section 2(d):** Excluded Derivative Transactions
- **Section 2(e):** Excluded Electronic Trading Facilities
- **Section 2(g):** Excluded Swap Transactions
Limited CFTC Jurisdiction

• Section 2(h): Exempt Commodity Transactions (mostly energy and metals)

• CEA Section 2(h)(1)-(2): For transactions between ECPs that are not entered into on a trading facility – CFTC fraud and manipulation authority apply.

• CEA Section 2(h)(3)-(5): For transactions between ECEs on an exempt commercial market –
  • CFTC fraud and manipulation authority apply; and
  • New requirements imposed on the trading facility in Farm Bill reauthorization of 2008.
EXCHANGES & CLEARING
CEA SECTION 5

CATEGORIES:
• Exchanges – Degree of regulation depends on sophistication of traders and “manipulability” of products traded
  – Contract Market: DCM (CEA Section 5; highest degree of regulation)
  – Derivatives Transaction Execution Facility: DTEF (CEA Section 5a; middle degree of regulation)
  – Exempt Board of Trade: EBOT (CEA Section 5d; anti-fraud and anti-manipulation only)
• Clearing – Derivatives Clearing Organization: DCO (CEA Section 5b)
INTERMEDIARIES AND TRADERS
CEA SECTIONS 4 AND 8 (CONT’D)

**TRADERS:**

- Speculative position limits authority – §4a
- Large trader reporting requirements for surveillance (including cash or spot) – §4i
- Confidentiality of customer names, business transactions, market positions – §8(a)
  - Limited sharing of information with other government entities – §8(e)
ENFORCEMENT
CEA SECTIONS 4, 6, 8, AND 9

ANTI-FRAUD:
• Futures – §4b
• Options – §4c(b); also see CFTC Regulations
• CPOs/CTAs – §4o; broad for fiduciaries

WASH SALES:
• Prohibited by CEA Section 4c(a)
ENFORCEMENT
CEA SECTIONS 4, 6, 8, AND 9 (CONT’D)

MANIPULATION
• Includes attempted manipulation
• CEA Sections 6(c), 6(d), and 9(a)(2)

OTHER SECTION 9 VIOLATIONS
• Conversion – §9(a)(1)
• False reporting – §9(a)(2)
• Limited insider trading – §§9(d) and 9(f)
ENFORCEMENT
CEA SECTIONS 4, 6, 8, AND 9 (CONT’D)

PROCEDURE
- Administrative proceedings – §§6(c) and 6(d)
- Civil injunctive actions in federal court – §6c
- Actions by States – §6d
- CFTC Investigative Authority – §8(a)

REMEDIES
- Administrative proceeding: cease & desist; trading ban; registration suspension or revocation; civil monetary penalties; customer restitution
- Civil injunctive action: asset freeze; injunction; civil monetary penalties; disgorgement
FARM BILL (JUNE 2008) – SUBTITLE A

✓ Section 13101: Foreign Currency (Forex)
✓ Section 13102: 4b Principal-to-Principal Fraud
✓ Section 13103: Increased Penalties ($1M/manip.)
✓ Section 13104: Reauthorization to 2013
✓ Section 13105: Technical Amendments
✓ Section 13106: Portfolio Margining and Foreign Security Index Issues
FARM BILL (JUNE 2008) – SUBTITLE B

• Applies to contracts on exempt commercial markets (ECMs) under Section 2(h) if they perform a significant price discovery function

• Provides standards for making significant price discovery determination, and imposes:
  – Self-regulatory duties on ECMs;
  – Large-trader reporting;
  – Position limits and accountability levels; and
  – Emergency authority for CFTC and ECMs
CFTC Organization Chart

(as of February 23, 2010)

**Office of the Chairman**

- Office of Inspector General
- Equal Employment Opportunity
- Office of International Affairs
- Office of Legislative Affairs
- Office of Public Affairs
- Office of the Secretariat

**4 Commissioners’ Offices**

**Office of General Counsel**

- Regulatory Affairs
- Legislative & Intergovernmental Affairs
- Litigation
- Adjudicatory Opinions

**Office of Chief Economist**

**Office of Executive Director**

**Division of Clearing & Intermediary Oversight (DCIO)**

- Clearing Policy & Risk Surveillance
- Audit & Financial Review
- Compliance & Registration

**Division of Market Oversight (DMO)**

- Market Surveillance
- Market Compliance
- Market & Product Review

**Division of Enforcement (DOE)**

**Regional Offices (DCIO, DMO, DOE)**

- Eastern Region (New York); Central Region (Chicago); Southwestern Region (Kansas City)
CFTC in Practice: Nuts and Bolts

Steve Sherrod, Director of Surveillance, CFTC
Lael Campbell, Senior Counsel, Constellation Energy Group
Charley R. Mills, Partner, K&L Gates
PROPOSED ENERGY POSITION LIMITS AND EXEMPTIONS

Good afternoon Mr. Chairman, Commissioners. Today staff is recommending the Commission approve a notice of proposed rulemaking to set Federal speculative position limits for futures and option contracts in certain referenced energy commodities. In addition, the notice of proposed rulemaking would establish a uniform process for the Commission to grant swap dealers limited risk management exemptions for certain swap transactions, in lieu of a *bona fide* hedging transaction exemption.

Commission regulation 150.2 currently sets Federal position limits in certain agricultural commodity markets. These limits apply to all-months-combined, single-months, and spot months. Commission regulations also authorize exemptions for *bona fide* hedging transactions involving commodity inventory hedges, anticipatory purchases or sales of the commodity, and non-enumerated cases. The Commission has granted exemptions to swap dealers under the non-enumerated cases provision.

In the New York Mercantile Exchange (“NYMEX”) energy markets until 2001, NYMEX set all-months-combined and single-month position limits. In 2001, NYMEX substituted position accountability requirements for the all-months-combined and single-month position limits in their energy markets.

The proposed rulemaking would leverage the Commission’s experience in setting position limits in certain agricultural markets to re-establish all-months-combined and single-
month position limits in the energy markets. The proposed energy position limits build upon the agricultural limits in several ways. The proposed limits would use the same open interest formula as the one used in Commission guidance to exchanges. The limits would be responsive to the size of the market and administratively reset on an annual basis, rather than change only by rulemaking.

The proposal would impact the reporting markets of NYMEX and the Intercontinental Exchange ("ICE"). The proposed limits would apply to referenced energy futures and option contracts based on Henry Hub natural gas, light sweet crude oil (often called West Texas Intermediate or WTI), New York harbor No. 2 heating oil, and New York Harbor gasoline blendstock.

The majority of futures and options trading on energy commodities in the United States occurs on NYMEX, a designated contract market ("DCM") that operates as part of the CME Group.¹ Energy commodity trading also takes place on ICE, an Atlanta-based exchange that operates as an exempt commercial market ("ECM") and is, as of July 2009, a registered entity with respect to its Henry Financial LD1 Fixed Price natural gas contract.² NYMEX currently lists physically-delivered and cash-settled futures contracts (and options on such futures contracts) in crude oil, natural gas, gasoline and heating oil. ICE lists a cash-settled look-alike

¹ The CME Group is the parent company of four DCMs: NYMEX, the Chicago Board of Trade ("CBOT"), the Chicago Mercantile Exchange ("CME"), and the Commodity Exchange ("COMEX").
² Under section 2(h)(7) of the Act, ECM contracts that have been determined by the Commission to be significant price discovery contracts ("SPDCs") are subject to Commission regulation. 7 U.S.C. 2(h)(7). ECMs listing SPDCs ("ECM-SPDCs") are also deemed to be registered entities with self-regulatory responsibilities with respect to such contracts. To date, ICE’s Henry Financial LD1 Fixed Price natural gas contract is the first and only ECM contract to have been determined by the Commission to be a SPDC under section 2(h)(7) of the Act. 74 FR 37988 (July 30, 2009).
contract on natural gas (and options thereon) that settles directly to the settlement price of NYMEX’s physically-delivered natural gas futures contract.³

ICE’s natural gas contract and virtually all NYMEX energy contracts are currently subject to exchange-set spot-month speculative position limits that are in effect for the last three days of trading of the physically-delivered contracts. Under an exchange’s speculative position limit rules, no trader, whether commercial or noncommercial, may exceed a specified limit unless the trader has requested and received an exemption from the exchange. Outside of a contract’s spot month, these energy contracts are subject to exchange all-months-combined and single-month position accountability rules.

In re-establishing all-months-combined and single-month limits to these energy markets, staff recommends further extending the aggregation concept in the Commission’s Federal agricultural position limits. The proposed energy limits would establish a two-tiered system of limits in all-months-combined and in single-months. These limits would apply across economically similar contracts.

³ US-based traders also enter into various energy contracts listed by the ICE Futures Europe Exchange (“ICE Futures Europe”), a London-based exchange. These energy contracts include futures on West Texas Intermediate (WTI) light sweet crude oil, a New York Harbor heating oil futures contract and a New York Harbor unleaded gasoline blendstock futures contract. All of the listed contracts directly cash-settle to the price of NYMEX futures contracts that are physically-settled. ICE Futures Europe is a foreign board of trade (“FBOT”) and, unlike NYMEX and ICE, is not registered in any capacity with the Commission. Instead, ICE Futures Europe and its predecessor, the International Petroleum Exchange, have operated in the US since 1999 pursuant to Commission staff no-action relief. CFTC Staff Letter No. 99–69 (November 12, 1999). Since 2008, ICE Futures Europe’s no-action relief has been conditioned on, among other things, the requirement that the Exchange implement position limit requirements for its NYMEX-linked contracts that are comparable to the position limits that NYMEX applies to its contracts. CFTC Staff Letter No. 08–09 (June 17, 2008); CFTC Staff Letter No. 08–10 (July 3, 2008). Generally, comparable position limits for FBOT contracts that link to CFTC-regulated contracts serve to ensure the integrity of prices for CFTC-regulated contracts.
The first tier is an aggregate limit that would apply to positions across physically-delivered and cash-settled contracts and across reporting markets in a referenced energy commodity.

The chart above illustrates the general increase in the percent of the referenced energy market comprised of cash settled contracts. A historical approach to establishing position limits would be to set separate limits by individual contract, that is, set separately for each physically-delivered contract and each cash-settled contract. However, since the cash settled contracts are economically similar to the physically-delivered contracts, staff recommends limits be applied to a trader’s aggregate position. The aggregate limit would restrict a trader from establishing extraordinarily large positions on the same side of the market across all contracts in a referenced energy commodity. So, this means all positions of a trader in related contracts would be aggregated, regardless of reporting market or individual contract.
The second tier is a class limit that would apply to positions in economically highly similar contracts, that is, to contracts in a particular referenced energy commodity on a single reporting market that are settled in the same way, either cash settled or physically delivered. The class limits would restrict a trader from establishing extraordinarily large positions on opposite sides of the market in physically delivered and cash settled contracts in the same referenced energy commodity.

In each of the tiers, there would be limits on all-months-combined and single months.

The aggregate all-months combined limit would be set by a formula based on open interest in referenced energy contracts. The formula sets the level of the limit at 10 percent of the first 25,000 contracts of open interest and 2.5 percent of the open interest beyond 25,000 contracts. The single-month limit is set at two thirds of the all-months-combined limit.

Each class limit for positions in all months combined would be set at 30 percent of a contract’s total open interest on that reporting market, but limited to a level no greater than the aggregate limit. The single-month limit in a class is set at two thirds of that class’s all-months-combined limit.

The table below illustrates what the position limits would have been, if they had been in effect over the last ten years, and what limits would be in effect for the current year, if the Commission adopts a final regulation.
All Months Combined Referenced Energy Commodity Speculative Positions Under the Proposal (Historical)

<table>
<thead>
<tr>
<th>Referenced Energy Contract</th>
<th>Reporting Market</th>
<th>Physical or Cash Settled</th>
<th>Effective Period if the proposed regulations were in effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Sweet Crude Oil</td>
<td>NYMEX</td>
<td>P 17,800</td>
<td>17,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C 7,900</td>
<td>8,300</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td>17,800</td>
<td>17,400</td>
</tr>
<tr>
<td>New York Harbor Gasoline Blendstock</td>
<td>NYMEX</td>
<td>P 5,000</td>
<td>5,200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C 5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Aggregate Level*</td>
<td></td>
<td>4,600</td>
<td>5,200</td>
</tr>
<tr>
<td>New York Harbor No. 2 Heating Oil</td>
<td>NYMEX</td>
<td>P 6,400</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C 5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td>6,400</td>
<td>6,000</td>
</tr>
<tr>
<td>Henry Hub Natural Gas</td>
<td>NYMEX</td>
<td>P 14,700</td>
<td>17,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C 8,500</td>
<td>19,900</td>
</tr>
<tr>
<td>Ice**</td>
<td></td>
<td>5,000</td>
<td>19,900</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td>14,700</td>
<td>17,100</td>
</tr>
</tbody>
</table>

* The Aggregate Level is less than the class level for 3/2001-2/2002 and again in 3/2004-2/2005 because the proposed regulation does not provide a de minimus level for the aggregate. Historically there was a low level of aggregate open interest in this referenced energy contract.  
** Ice began reporting open interest to the CFTC on October 2007.

All Months Combined Referenced Energy Commodity Speculative Positions Under the Proposal (Prospective)

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Light Sweet Crude Oil</td>
<td>NYMEX</td>
<td>P 98,200</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>C 98,200</td>
<td></td>
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<tr>
<td>Aggregate Level</td>
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<td>98,200</td>
<td></td>
</tr>
<tr>
<td>New York Harbor Gasoline Blendstock</td>
<td>NYMEX</td>
<td>P 8,900</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>C 8,900</td>
<td></td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td>8,900</td>
<td></td>
</tr>
<tr>
<td>New York Harbor No. 2 Heating Oil</td>
<td>NYMEX</td>
<td>P 13,100</td>
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<td></td>
<td></td>
<td>C 13,100</td>
<td></td>
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<tr>
<td>Aggregate Level</td>
<td></td>
<td>13,100</td>
<td></td>
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<tr>
<td>Henry Hub Natural Gas</td>
<td>NYMEX</td>
<td>P 117,300</td>
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<tr>
<td></td>
<td></td>
<td>C 117,300</td>
<td></td>
</tr>
<tr>
<td>Ice</td>
<td></td>
<td>117,300</td>
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</tr>
<tr>
<td>Aggregate Level</td>
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<td>117,300</td>
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Exemptions

The notice of proposed rulemaking includes provisions relating to exemptions from the position limits for *bona fide* hedging transactions and for certain swap dealer risk management transactions. The notice of proposed rulemaking also sets out an application process that would apply to swap dealers seeking a risk management exemption from the position limits, as well as related definitions and reporting requirements. In addition, the notice of proposed rulemaking includes provisions regarding the aggregation of positions under common ownership for the purpose of applying the limits.

Should the proposed regulations be adopted, staff estimates that the total number of traders with significant positions that could be affected at the time of implementation of the proposed regulations would be approximately ten.

### Proposed AMC Limits
*From Jan. 1, 2008 to Dec. 31, 2009 (Tuesdays only)*

<table>
<thead>
<tr>
<th>Commodity Type</th>
<th>Maximum Number of Owners Affected in One Day</th>
<th>Number of Unique Owners during the Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Gasoline</td>
<td>9</td>
<td>19</td>
</tr>
<tr>
<td>Heating Oil</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

The table above illustrates how many traders would have been potentially restricted by the limits, had the proposed limits been in effect during the calendar years of 2008 and 2009. This data represents a weekly snapshot of traders as of each Tuesday, consistent with the way we disclose Commitment of Trader Reports to the public. For crude oil, the maximum number
of unique owners affected by the all-months-combined limits would have been 2 on any given Tuesday. There were a total of 3 unique owners in crude oil over that two year sample that would have been affected. Across all 4 energy commodities, there would have been 23 unique owners affected. By affected, I don’t necessarily mean restricted. The traders may have been eligible for a *bona fide* hedging transaction or swap dealer exemption. From the data, it appears 7 unique owners would likely not have been eligible for an exemption.
Amaranth’s Single Month Net Position in Natural Gas and Proposed Speculative Limits (Jan 4, 2005 to Sept 19, 2006)

US Oil Fund Positions and Proposed Speculative Limit (November 3, 2008 - December 9, 2009)

- 49,800 contracts in a single month
- 65,000 contracts

Contracts (1,000 bbl)
I note that the proposed Federal speculative position limits on energy contracts would be in addition to, and not a substitute for, a reporting market’s existing speculative position limit and accountability requirements. Reporting markets are self-regulatory organizations with an independent responsibility for adopting and implementing appropriate position limit and accountability rules. Under an exchange’s position accountability rules, once a trader exceeds an accountability level in terms of outstanding contracts held, the exchange has the right to request supporting justification from the trader for the size of its position, and may order a trader to reduce or not increase its positions further.

This notice of proposed rulemaking does not propose regulations that would classify and treat differently passive long-only positions. The notice would, however, solicit comment on specific issues related to large, passive long-only positions. In particular, the notice would solicit comments on how to identify and define such positions and whether such positions should, including collectively, be limited in any way.
January 14, 2009

Open Meeting on
Proposed Energy Speculative Position Limits Rule
NYMEX All Months Combined Position Limits

- **Natural Gas**
- **Crude Oil**
- **Gasoline and Heating Oil**

**Mar 1983:** NYMEX sets position limits on Crude Oil

**Oct 1984:** NYMEX sets position limits on Gasoline and Heating Oil

**Feb 1990:** NYMEX sets position limits on Natural Gas

**June 2001:** NYMEX replaces single month/all month position limits with position 'accountability levels'
NYMEX Position Limits: Spot Month

NYMEX sets position limits on
Crude Oil

Oct 1984: NYMEX sets position limits on Gasoline and Heating Oil

Feb 1990: NYMEX sets position limits on Natural Gas

Mar 1983
NYMEX sets position limits on
Crude Oil

NYMEX  sets position limits on
Crude Oil
Open Interest in Physical Delivery Contract as % of Total OI Across Referenced Energy Contract

- Crude Oil
- Natural Gas
- Gasoline
- Heating Oil
## All Months Combined Referenced Energy Commodity Speculative Positions Under the Proposal (Historical)

<table>
<thead>
<tr>
<th>Referenced Energy Contract</th>
<th>Reporting Market</th>
<th>Physical or Cash Settled</th>
<th>Effective Period if the proposed regulations were in effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Sweet Crude Oil</td>
<td>NYMEX</td>
<td>P</td>
<td>17,800</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>7,900</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td></td>
<td>17,800</td>
</tr>
<tr>
<td>New York Harbor Gasoline Blendstock</td>
<td>NYMEX</td>
<td>P</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>4,600</td>
</tr>
<tr>
<td>Aggregate Level*</td>
<td></td>
<td></td>
<td>4,600</td>
</tr>
<tr>
<td>New York Harbor No. 2 Heating Oil</td>
<td>NYMEX</td>
<td>P</td>
<td>6,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>6,400</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td></td>
<td>6,400</td>
</tr>
<tr>
<td>Henry Hub Natural Gas</td>
<td>NYMEX</td>
<td>P</td>
<td>14,700</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>8,500</td>
</tr>
<tr>
<td>ICE**</td>
<td></td>
<td></td>
<td>121,000</td>
</tr>
<tr>
<td>Aggregate Level</td>
<td></td>
<td></td>
<td>14,700</td>
</tr>
</tbody>
</table>

* The Aggregate Level is less than the class level for 3/2001-2/2002 and again in 3/2004-2/2005 because the proposed regulation does not provide a *de minimus* level for the aggregate. Historically there was a low level of aggregate open interest in this referenced energy contract.

**ICE began reporting open interest to the CFTC on October 2007.
## All Months Combined Referenced Energy Commodity Speculative Positions Under the Proposal (Prospective)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Light Sweet Crude Oil</td>
<td>NYMEX</td>
<td>P</td>
<td>98,200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>98,200</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aggregate Level</td>
<td>98,200</td>
</tr>
<tr>
<td>New York Harbor Gasoline Blendstock</td>
<td>NYMEX</td>
<td>P</td>
<td>8,900</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>8,900</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aggregate Level</td>
<td>8,900</td>
</tr>
<tr>
<td>New York Harbor No. 2 Heating Oil</td>
<td>NYMEX</td>
<td>P</td>
<td>13,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>13,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aggregate Level</td>
<td>13,100</td>
</tr>
<tr>
<td>Henry Hub Natural Gas</td>
<td>NYMEX</td>
<td>P</td>
<td>117,300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>117,300</td>
</tr>
<tr>
<td></td>
<td>ICE</td>
<td>C</td>
<td>117,300</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Aggregate Level</td>
<td>117,300</td>
</tr>
</tbody>
</table>
Proposed AMC Limits
*From Jan. 1, 2008 to Dec. 31, 2009 (Tuesdays only)*

<table>
<thead>
<tr>
<th>Commodity Type</th>
<th>Maximum Number of Owners Affected in One Day</th>
<th>Number of Unique Owners during the Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Gasoline</td>
<td>9</td>
<td>19</td>
</tr>
<tr>
<td>Heating Oil</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

23 Total Unique Owners
Amranth's All-Months-Combined Net Position in Natural Gas
and Proposed Speculative Limits
(Jan 4, 2005 - Sept 19, 2006)
Amaranth's Single Month Net Position in Natural Gas and Proposed Speculative Limits (Jan 4, 2005 to Sept 19, 2006)
US Oil Fund Positions and Proposed Speculative Limit
(November 3, 2008 - December 9, 2009)

- 65,000 contracts in a single month
- 49,800 contracts in a single month
US Natural Gas Fund Positions and Proposed Speculative Limit
(March 2, 2009 - December 9, 2009)

88,500 contracts in a single month
All Months Combined Limit as a % of Open Interest
(in the Physical Delivery Contract) when changed by the Exchange

(AMC Limits changed to Accountability Levels in June 2001)

- Mar 1983: First limit on Crude Oil (>300% of OI)
- Oct 1984: First limit on Gasoline and Heating Oil
  (no OI on gasoline yet)
- Feb 1990: First limit on Natural Gas
  (No OI yet)
Total AMC Net Position of Top 4 Owners as Percentage of Open Interest (2008 - 2009)
OVERVIEW OF CURRENT POSITION LIMITS IN ENERGY PRODUCTS

Lael E. Campbell
Senior Counsel, Constellation Energy Group
Position Limits in Energy Products

- Currently, the CFTC sets speculative position limits on futures contracts for a limited group of agricultural commodities. For energy commodities, each individual exchange establishes and enforces its own speculative position limits and position accountability levels, subject to the CFTC’s oversight.

- The exchanges administer position limits and accountability requirements pursuant to Section 5(d)(5) of the CEA, which requires the exchanges to adopt position limits or position accountability, where necessary, to reduce the “potential threat of manipulation or congestion”

  - “Core Principle” an exchange must demonstrate to CFTC it is in compliance with

- CFTC authority arises under Section 4a of the CEA which authorizes the CFTC to set limits to prevent the burdens of “excessive speculation” causing “sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity”

- Speculation is a common theme: Appendix B to Part 38 Guidance to Compliance with Core Principles states that exchanges may need to set limits to “diminish potential problems arising from excessively large speculative positions”
Position Limits in Energy Products

Position Limits apply to contracts in energy commodities that are:

- futures contracts or options on futures contracts traded on CFTC designated contract markets (e.g. NYMEX)

- contract traded on an exempt commercial market (e.g. ICE) that has been deemed a Significant Price Discovery Contract (SPDC)
  - exempt commercial market is an electronic trading facility where sophisticated, high-net-worth parties trade contracts in exempt commodities (includes energy) on a principle-to-principle basis

- Currently only the ICE Henry Hub LD1 Natural Gas Swap has been deemed an SPDC
  - ICE began enforcing position limits in January 2010
Position Limits and Accountability Levels

- **Position Limits**: Prohibit a person from acquiring contracts that quantitatively exceed a specific number of outstanding contracts
  - Currently exchanges only have position limits for Spot/Expiration/Delivery Month contracts which apply three days prior to expiration of a contract
  - Exchanges have exercised option in CEA not to provide position limits for all months combined and non-spot months (Appendix B Part 38)

- **Accountability Levels**: require persons holding a certain number of open contracts to report the nature of their positions, trading strategy, and hedging needs to the exchange, upon the exchange’s request
  - Apply to all months combined positions and single non-spot month positions
Hedge Exemptions

- Exchanges typically grant exemptions from position limits for bona fide hedging positions.

- Bona Fide Hedge Position is defined in CFTC Regulation 1.3(z), and generally describes positions taken to hedge inventory holdings of the underlying physical commodity or anticipatory trades in the physical commodity.

- If an exemption is granted, an exemption level is set at a new amount higher than the applicable speculative limit and consistent with the hedging needs.

- ICE also has what it calls a “Conditional Limit” which allow for a spot month position up to 5x the speculative limit for persons who demonstrate that they have no activity or position in the physically-settled NYMEX contract and provide information on OTC positions during the last three (3) trading days leading up to expiration.

- In contrast with the proposed rulemaking, a person granted a hedge exemption is not strictly prohibited from holding any speculative positions.

- Exchanges will still monitor activity for consistency with exemptions.
Position Limits in Energy Products

APPLICATIONS, FORMS AND REPORTS

1. **Applications to the exchange for a hedge exemption**
   - Must Provide detailed information on underlying physical positions that necessitate exemption
   - If approved, the exemption becomes the new limit for that trader, and is good for 12 months
   - Additional exemptions can be applied for if hedging needs changes

2. **CFTC Forms**
   - Form 40: Statement of Reporting Trader – Sent by CFTC directly to “reporting traders”
     - Form essentially asks Who are you, What do you trade, Why do you trade it?
   - Most energy companies are “Reporting Traders” as the thresholds are very low:
     - a 200 contract position in Natural Gas will trigger reporting trader threshold
     - threshold for a position in a NYMEX coal contract is 25 contracts
   - No direct reporting requirements to CFTC outside of Form 40
     - Position information is provided to the CFTC by clearing members (brokers)
     - Information is aggregated by CFTC for weekly Commitment of Traders Report
Position Limits in Energy Products

Impact of Rulemaking on Exchange-Administered Position Limits:

- Proposed CFTC position limits requirements would not be a substitute for exchange administered speculative position limit and accountability requirements
- Exchange requirements may not be higher than the CFTC – i.e. the CFTC will be setting the “outer range” of position limits for the exchange products
- Derivatives legislation also would not change the current role the exchange plays in setting limits on its products
- Exchanges will still be responsible for administering exemptions to the proposed CFTC limits for bona-fide hedgers

New Form in Proposed Rulemaking:

- Form 404: Likely to require detailed information regarding underlying cash market positions necessitating exemptions in energy contract similar to exchange hedge exemption application
Final Thoughts:

- Be careful of what you communicate to the exchanges
  - Similar to FERC’s Market Behavior Rules Section 9A of the CEA prohibits any false statement to an exchange acting in furtherance of its duties
  - Beware of inconsistencies

- Get involved with the process
  - find your Form 40
  - find out who does hedge exemptions in your organization

Things we do at Constellation:

- Keep Record of each exemption request and grant from the exchange
- Process in place to monitor position size compared to limits
  - Review each month in advance of expiry
I. Introduction

The Commodity Futures Trading Commission (CFTC), by a 4-1 vote, has proposed regulations that would establish speculative position limits for four energy-related New York Mercantile Exchange (NYMEX) futures and options contracts and one natural gas contract traded on the Intercontinental Exchange (ICE), based in Atlanta. The NYMEX contracts include those for light sweet crude oil, New York Harbor gasoline blendstock, New York Harbor No. 2 heating oil, and Henry Hub natural gas; the affected ICE contract is its cash-settled natural gas contract that settles against the NYMEX physically-delivered natural gas futures contract. The proposed regulations would establish hard position limits for (1) the spot month (the contract next to expire), (2) any other single month and (3) all months combined (other than the spot month). The proposal does not establish any limits for contracts that are not regulated by the CFTC, such as those on non-U.S. boards of trade (typically referred to as foreign boards of trade or FBOTs) or in unregulated over-the-counter (OTC) swap markets that have not been designated by the CFTC as significant price discovery markets.

The limits would apply to a single trader or an affiliated group of traders. Positions would be aggregated at both the trading controller level and at the account owner level. Therefore, positions would be aggregated even where a single owner, such as a collective investment vehicle like a hedge fund or commodity pool, uses multiple independent trading advisors. Swap dealers would no longer be treated as hedgers, but could apply for a new swap dealer exemption.

Only Chairman Gensler and Commissioner Chilton appear firmly committed to adoption of energy-related position limits. Commissioners Dunn and O’Malia indicated at the open Commission meeting addressing the proposal that, although they were willing to publish the proposal for comment, they were not necessarily committed to its adoption. They expressed concerns that the proposal could drive business out of the United States to FBOTs, or to unregulated OTC markets, and thus might impair the liquidity and price discovery functions of U.S. futures markets. Commissioner Sommers voted against the proposal because the CFTC does not yet have authority to set limits in the OTC market.

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1 Light sweet crude oil includes West Texas Intermediate (WTI) crude, the U.S. benchmark.
2 ICE also operates as an “exempt commercial market” under the Commodity Exchange Act for other energy commodities.
3 Commissioner Chilton expressed concern during the meeting over the lack of position limits for metals, and the staff indicated that a proposal for metal limits might be ready in March.
II. Position Limit Formulas And Their Impact On Current Traders

The proposed formulas for the limits are (a) for the spot month for physically-delivered contracts, 25% of the deliverable supply,\(^4\) (b) for any other single month, 20% of the open interest for the first 20,000 contracts, plus 2.5% of open interest above 20,000 contracts, and (c) for all months combined other than the spot month, 150% of the amount permitted in any single month. These formulas are similar to those in current CFTC regulations applicable to certain domestic agricultural commodities.\(^5\) The CFTC proposes that the CFTC staff would reset the energy limits annually based upon these formulas, by posting on the CFTC website by January 31, to be effective March 1, without requiring additional rulemaking by the Commission.

Speculators tend to avoid taking positions in the spot month, so the single month and all-months-combined limits will be most relevant. The CFTC estimates that, if the proposed formula for all-months-combined were adopted and applied to current open interest levels, the speculative position limit for crude oil would be 98,200 contracts.\(^6\) Because one futures contract for light sweet crude oil calls for delivery of 1,000 gallons, the position limit represents 98.2 million gallons of crude oil, which is greater than a single day of world consumption and worth about $8 billion at today’s prices. The CFTC projects that its proposal would require only about ten of the current traders in these markets to reduce their positions.\(^7\)

III. Persons Affected

The CFTC’s proposal establishes different limitations for speculators, hedgers and swap dealers. Although the limits for speculators are principally aimed at active traders, they also apply to the regulated futures positions of exchange-traded funds and index traders (sometimes referred to as “massive passive” investors) because the proposal treats them as speculators. The positions of commercial end-users of physical commodities that qualify for the current hedge exemption provided under CFTC regulations -- such as a home heating oil distributor or an oil exploration company -- should not be affected by the proposed limits. However, these commercial firms should be mindful that the proposal restricts hedgers whose positions exceed twice the speculative limit from holding any speculative positions. Large firms that use multiple, decentralized trading desks would need to establish appropriate controls to account for positions of all of their traders to avoid violating that restriction. Positions in unregulated swaps also would not be subject to the proposed limits. Swap dealers, as discussed more fully below, would be subject to new limitations on their exchange-traded positions.

IV. Aggregation Of Positions

The proposed energy limits differ from the current position limits on certain agricultural commodities because the proposed regulations establish limits based on a trader’s aggregate positions in all physically-settled and cash-settled contracts in the same commodity across all exchanges that trade the contracts. Thus, because the Henry Hub natural gas contract is traded on both the NYMEX and ICE, the position limits would be applied based on the combined positions on both exchanges.

In addition, the energy proposal would aggregate positions at the owner level, and would not permit disaggregation for independently controlled

\(^4\) For cash-settled contracts, the spot month limit would be five times the limit on physically-delivered contracts, but only available to a trader that held no physically-deliverable contracts in the spot month. NYMEX and ICE recently adopted the same methodology for Henry Hub natural gas contracts, beginning with February 2010 contracts.

\(^5\) Currently, the CFTC has position limits on only five types of agricultural commodities (cotton, corn, oats, wheat and the soybean complex, which includes soybeans, soybean oil and soybean meal).

\(^6\) This compares to the current NYMEX position accountability level of 20,000 contracts. Position accountability levels are amounts that, if reached, can prompt exchange officials to seek greater information about a trader’s strategy and intentions. Up until 2001, NYMEX administered hard position limits for trading in all futures and options, but now only does so for the spot month.

\(^7\) The all-months-combined limits for the other commodities would be 8,900 contracts for gasoline, 13,100 contracts for heating oil, and 117,300 contracts for natural gas.
This means that, if the CFTC’s energy proposal were adopted (in addition to the aggregation at the advisor level that applies to agricultural contracts and would apply to the energy contracts), all positions held in the name of entities such as mutual funds, hedge funds or commodity pools would be counted against the position limit, even if the positions had been entered by different trading advisors acting independently. To illustrate this point, under current limits applicable to agricultural commodities and the proposal for energy commodities, if you plan to start a new pool and use outside trading advisors, the positions that a particular advisor takes for other pools or managed accounts are aggregated and may limit the number of positions the advisor may enter for the new pool. In addition, the proposed regulations would limit the total number of positions that a new pool can enter into, and that limit would be the same whether the pool operator made all trading decisions or separate, independently operating trading advisors made the decisions. Thus, if the energy trading limit were x, and the collective investment vehicle employs three advisors who each trade one-half of x, the investment vehicle would be in violation of the energy limits, where it would not be if agricultural contracts were involved. Presumably, the operators of the mutual funds, hedge funds or commodity pools would be forced to monitor all trading done on behalf of their entities on a real-time basis, or perhaps enlist the assistance of the futures commission merchant (FCM) carrying the positions to do the same, to avoid violating the energy position limits. This could prove to be even more burdensome if multiple FCMs are involved.

V. Swap Dealer Exemption

Swap dealers incur market risk by entering into OTC transactions with commercial entities or institutional investors. Under current CFTC regulations defining hedging and interpretations related to risk management, swap dealers have been able to treat as hedges the CFTC-regulated futures and option positions into which they enter to manage the risk that they incur in OTC transactions. The CFTC proposal would eliminate the hedge exemption for swap dealers but establish a new and more restrictive swap dealer exemption that would permit a swap dealer to hold twice the number of positions that a speculative may hold in a single month or in all months combined. A swap dealer would have no exemption for positions in the spot month. Qualifying for a swap dealer exemption would require an annual application and monthly reporting of positions and related recordkeeping.

The impact of the swap dealer exemption would be to limit the amount of exchange-traded contracts a swap dealer could use to hedge its risk before exceeding the position limits. Once a swap dealer reaches that limit, it could be expected either to decline to enter into further OTC transactions or to pass along its increased risks and costs for additional swaps in the price at which it would be willing to transact. Accordingly, although the position limits proposed by the CFTC would not directly affect trading in swaps, the proposed restrictions on swap dealers’ use of exchange-traded markets to manage their risks may cause swap dealers either to pass along their increased risks to their swaps counterparties (e.g., airlines, pooled investment vehicles, pension plans) in the form of higher pricing and more restrictive terms or to cease entering into further swap transactions entirely once their futures limits are reached. Either action could negatively impact market liquidity. A swap dealer’s qualification for this exemption would be publicly disclosed on the CFTC’s website on an annual basis, following at least a six-month lag.

The CFTC proposal seeks comment on specific issues related to swap dealers. The CFTC requests particular comment on the feasibility of a “look-through” exemption for swap dealers, which would provide dealers with exemptions for positions that offset risks arising from swaps with a counterparty that itself would be entitled to a hedge exemption if the counterparty hedged its exposure directly in the

9 The proposal requires persons who have received a swap dealer exemption to file a monthly report with CFTC and the relevant futures exchanges showing swap positions for proprietary and customer accounts on a daily basis, as well as a daily summary of dealing and trading in swaps based upon the referenced energy contracts.
futures markets. Under a “look-through” exemption, if the swap dealer's counterparty were a commercial firm that could itself trade on NYMEX to hedge, but instead decides to deal with a swap dealer OTC, then when the swap dealer lays off the risk of that position by taking a NYMEX position, the swap dealer's position would not be counted against the position limit. Adding such a “look through” exemption would appear to foster swap market liquidity without encouraging excessive speculation, because it would merely recognize that the swap dealer would be establishing a hedging position itself on NYMEX instead of the swap counterparty doing so. The CFTC’s proposal also specifically asks for comment on whether additional information should be required in the swap dealer exemption application or, alternatively, whether filing requirements should be limited and the CFTC should rely upon special call authority to assess the merit of swap dealer exemption requests.

VI. CFTC Statutory Authority For Imposing Position Limits

The CFTC relies on Section 4a of the Commodity Exchange Act as authority to adopt energy contract position limits. That provision states that “excessive” speculation “is an undue and unnecessary burden on interstate commerce,” and it authorizes the CFTC to establish position limits that are “necessary to diminish, eliminate, or prevent such burden.” The CFTC’s explanation of its proposals makes no finding that there has been excessive speculation in any of the four commodities for which position limits are proposed. It is noteworthy that footnote 42 of the CFTC’s Federal Register release announcing the proposals states that an Interagency Task Force chaired by CFTC staff found no causal relationship between speculative activity and the run-up in gasoline prices during 2007-2008, an event that provided some of the impetus for Congressional pressure on the CFTC to impose position limits in energy-related commodities.11

VII. Conclusion

The CFTC’s proposal on position limits for currently traded energy futures and option contracts on U.S. markets could have material impacts on the liquidity of those markets and the costs of transacting in those markets and the related OTC swap markets. Affected market participants must act within the 90-day comment period if they wish to have their views inform the public decision-making on this proposal. The proposal does not occur in a vacuum, and there are likely to be Congressional hearings on it. Some members of Congress believe the proposal may not go far enough, while others have expressed concern about the export of business from U.S. markets. That concern also is reflected in proposed legislation that would change the regulation of OTC swap transactions, which is working its way through Congress. The bill that passed the House in December would grant the CFTC new authority to impose position limits on swaps that are found to be significant price discovery contracts and FBOT contracts that settle against the price of futures traded on U.S. exchanges, but also would require the CFTC to study the impact of any position limits on causing business to migrate from the United States. The threat of migration is real: only a few days after the House passed its bill, the U.K. Treasury and Financial Services Authority issued a paper stating that “we do not believe a case has been

10 A “look-through” exemption for a swap dealer might be particularly warranted where, for example, a swap counterparty uses swaps for hedging because there is no exchange-traded futures contract for the specific commodity involved. Because there is no futures contract in jet fuel, an airline might prefer to use a tailored swap on jet fuel, with the swap dealer in turn mitigating its risk in the swap transaction by entering into a standardized crude oil or gasoline futures contract.

11 Indeed, the Task Force, which included representatives of the Departments of Agriculture, Energy and the Treasury, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Securities and Exchange Commission, examined the crude oil market between January 2003 and June 2008, and found no direct causal evidence for the general increase in oil prices during that time period.
made which demonstrates that prices of commodities . . . can be effectively controlled through the mandatory operation of regulatory tools such as position limits, whether on exchange or OTC.”
Uncertainty Over Regulation of RTO/ISO Products and Services

Michael A. Bardee, Principal Deputy General Counsel, FERC
Vincent P. Duane, General Counsel, PJM Interconnection, L.L.C.
EBA Seminar
RT0s/ISOs and the CFTC

Vincent P. Duane
VP and General Counsel
PJM Interconnection
February 24, 2010
1) **Products**
   - FTR/Forward Capacity products
     - attributes of a futures contract
     - attributes of a swap

2) **PJM Structure**
   - Legal/commercial relationship with participants
     - Mutualized default allocation/central counterparty
Energy (LMP)

FTRs

Transmission

Capacity

Ancillaries
<table>
<thead>
<tr>
<th></th>
<th>Pool</th>
<th>Non-Pool</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privity</td>
<td>w/pool (PJM as principal)</td>
<td>w/others bilateral or self supply</td>
</tr>
<tr>
<td>Risk of default</td>
<td>Mutualized</td>
<td>Bilateral counterparty</td>
</tr>
<tr>
<td>Credit/billing/settlement/collection</td>
<td>Performed by PJM</td>
<td>Arranged bilaterally</td>
</tr>
</tbody>
</table>
FTR

- No offset, auctions involve acquisition of physical capability with release of physical capability

- Infrequent transactions and no daily settlement
- No variation margining
- Real credit clearing challenges

- FTR not decorative architecture but integral to RTO markets, operations and planning programs
Clearing

• DCO principles a poor fit
  – No novation
  – No intermediate default structure (FCMs)
  – No “multi-lateral clearing” or portfolio margining

• RTO: a central counterparty with mutualized allocation of default, but not a clearinghouse
A – Non-cleared cash forward (pool) transactions are set off by PJM as they are today so that credit is managed on a net basis. Requires mutuality.
B – Cash/forward (pool) transactions that are designated for clearing.
B¹ – Novation of cash/forward (pool) transactions to Clearinghouse.
C – Novation of OTC/Exchange/Other ISO transactions to Clearinghouse.
Going Forward: One Possibility

ISO/RTO East

25 Million

ISO/RTO West

25 Million LC Posted

Market Participant ‘A’ selling to ISO/RTO

Market Participant ‘A’ buying from ISO/RTO
Going Forward: One Possibility

ISO/RTO East \[\xrightarrow{\text{Novation}}\] Clearinghouse \[\xleftarrow{\text{Novation}}\] ISO/RTO West

Market Participant ‘A’ selling to ISO/RTO

Market Participant ‘A’ buying from ISO/RTO

Multi-lateral clearing through Clearinghouse eliminates Market Participant’s financial security requirement

25 Million

25 Million
CFTC and FERC Manipulation and Enforcement

Todd P. Mullins, Branch Chief, Division of Investigations, FERC
Gregory Mocek, Partner, McDermott Will & Emery LLP
John N. Estes III, Partner, Skadden, Arps, Slate, Meagher & Flom LLP
Proposed Legislation: Increased Regulation of the Energy Markets?

Paul Pantano, Partner, McDermott Will & Emery LLP
Dan Berkovitz, General Counsel, CFTC
Patrick McCarty, Senior Professional Staff, Senate Agriculture Committee
Richard McMahon, Executive Director, Edison Electric Institute
Johnathan Short, Senior Vice President & General Counsel, ICE
Terry S. Arbit  
**Deputy General Counsel for Legislation and Intergovernmental Affairs**  
Commodity Futures Trading Commission

Terry Arbit has served as Deputy General Counsel for Legislation and Intergovernmental Affairs at the Commodity Futures Trading Commission since June 2009. During that time, he has focused much of his attention on the over-the-counter derivatives reform legislation proposed by the Administration and moving through Congress. Prior to assuming these duties, Mr. Arbit served for two years as Interim General Counsel, providing legal counsel to then-CFTC Acting Chairman Walter Lukken and the Commission concerning all aspects of the implementation, interpretation, and enforcement of the Commodity Exchange Act.

In addition, Mr. Arbit has served the CFTC for two years as Counsel to former Chairman Reuben Jeffery III, and three years as Associate General Counsel for Legislative Affairs. He was involved in the CFTC reauthorization process from the initial hearings in mid-2005 through the eventual enactment of reauthorization legislation as part of the Farm Bill of 2008.

Mr. Arbit also spent six years in the CFTC’s Division of Enforcement, both as a trial attorney and as Acting Chief Counsel. Previously, Mr. Arbit pursued professional liability claims relating to failed financial institutions on behalf of the Resolution Trust Corporation and the FDIC. Before entering government service in 1991, he was in private law practice in Chicago, Illinois.

Mr. Arbit received joint M.A. and B.A. degrees in political science from the University of Pennsylvania in 1980. He earned his J.D. from the University of Chicago Law School in 1983.
Mr. Bardee began working at the Commission in 1990, as an attorney-advisor in the Office of General Counsel. The Office represents the Commission before the courts and Congress, and provides legal advice to the Commission on all aspects of its responsibilities. In addition to serving as an attorney-advisor, Mr. Bardee has held a range of other positions in the Office of General Counsel and elsewhere in the Commission. He also worked briefly in private practice. Before joining the Commission, he worked on utility issues at the Pennsylvania Office of Consumer Advocate and also litigated environmental enforcement cases at the U.S. Department of Justice. He holds a B.A. in Journalism from Oklahoma University and a J.D. from New York University Law School.
Dan Michael Berkovitz

Dan M. Berkovitz is General Counsel of the Commodity Futures Trading Commission. Prior to joining the CFTC in June 2009, Mr. Berkovitz was Counsel to the United States Senate Permanent Subcommittee on Investigations. Serving under Senator Carl Levin, he led several major investigations into energy markets and prices, including the role of financial speculation in natural gas and crude oil prices; the effect of the Department of Energy’s program to fill the Strategic Petroleum Reserve on oil prices and energy security; and the effect of increasing concentration in the gasoline refining industry on retail gasoline prices. He was one of the lead staffers during Congress’s consideration and passage of legislation in the 2008 Farm Bill to regulate the electronic trading of energy commodities. From 1995-2001, Mr. Berkovitz served as Deputy Assistant Secretary for Planning, Policy, and Budget in the Department of Energy’s Environmental Management program. In this position he was responsible for formulating and presenting to Congress the Department’s $6 billion annual budget for the clean-up of nuclear and hazardous wastes generated by the production of nuclear weapons. He has authored a number of law review and trade journal articles on the regulation of nuclear energy and wastes. He graduated cum laude with an A.B. in Physics from Princeton University in 1978, and received a J.D. from University of California, Hastings College of Law in 1982. He resides in Bethesda, Maryland, with his wife, Michelle, and two children, Zoe and Eli.
Vincent P. Duane, vice president and general counsel, heads the legal function at PJM and is responsible for advocating and defending the organization’s interests before the Federal Energy Regulatory Commission and providing counseling and transactional support to the core business units at PJM. Mr. Duane additionally serves as counsel and secretary to PJM’s independent Board of Managers.

Prior to joining PJM, Mr. Duane was vice president at Mirant Corp. in Atlanta and general counsel for the company’s power and natural gas businesses in North America and the Caribbean. Previously he served as vice president, secretary & general counsel at Southern Company’s energy trading and marketing business. Mr. Duane began his career in the private practice of energy law at a firm in Washington, D.C., where he represented public power and industrial consumer interests.

Mr. Duane is a member of the American Corporate Counsel Association, Energy Bar Association and the Maryland State Bar Association.

Mr. Duane earned a bachelor of arts in Political Science from McGill University, a juris doctor with honors from University of Maryland School of Law and a master of science with honors from Georgetown University, School of Foreign Service.

PJM Interconnection ensures the reliability of the high-voltage electric power system serving 51 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. PJM coordinates and directs the operation of the region’s transmission grid, which includes 6,038 substations and 56,250 miles of transmission lines; administers the world’s largest competitive wholesale electricity market; and plans regional transmission expansion improvements to maintain grid reliability and relieve congestion.
John N. Estes III
Partner
Skadden, Arps, Slate, Meagher & Flom LLP
Energy Regulation and Litigation

John Estes, a partner with Skadden’s Energy Regulation and Litigation Group, focuses on complex FERC litigation at the agency and on appeal, often involving market design, market power and market manipulation issues in organized electric markets. He is representing FirstEnergy in its proposal to move from the Midwest ISO to PJM, and NRG in the “third-party Mobile-Sierra” case currently pending before the United States Supreme Court.

Mr. Estes has played a lead role in many of the significant “organized market” cases that have gone to trial. Representative matters include:

- a coalition of generators, including subsidiaries of Boston Generating, Entergy, FPL Energy and Mirant, in the bitterly fought New England “LICAP” case involving locational capacity markets, and in the subsequent appeal;
- Exelon in groundbreaking litigation involving whether FERC should exempt AEP from certain state laws that were preventing AEP from joining PJM;
- Dynegy in the California protracted and highly complex “California Refund Case”; and
- Dynegy and NRG in the “California Long-Term Contract Case” at FERC and on appeal.

Recently, Mr. Estes has been particularly active in defending against market manipulation charges. He successfully defended H.Q. (United States) in the first complaint case claiming market manipulation, and he represented Energy Transfer Partners in ground-breaking trial proceedings, brought by FERC enforcement, involving alleged manipulation of the natural gas markets. He authored EEI’s computer-based anti-market manipulation training, and currently represents several companies in nonpublic FERC investigations.

Mr. Estes also has an active appellate practice. He has argued 22 cases in the United States Courts of Appeals and briefed many more.

Mr. Estes has been ranked Band 1 each year since 2005 in Chambers USA: America’s Leading Lawyers for Business and Chambers Global: The World’s Leading Lawyers for Business.

(continued on reverse side)
Oral Arguments, Briefs and Pleadings


Richard McMahon is Executive Director, Energy Supply and Finance for the Edison Electric Institute. In this capacity, he leads the Energy Supply Group and the Finance, Tax and Accounting Group within EEI.

Mr. McMahon directs the industry’s finance and Wall Street activities including financial analysis, investor relations, accounting and tax issues including advocacy before the Securities and Exchange Commission, as well as credit and wholesale market issues before the Federal Energy Regulatory Commission. He leads EEI’s *Campaign to Invest America’s Electric Future*. Also, he leads the industry’s advocacy on OTC Derivatives and Financial Reform before the Congress and the Commodities Futures Trading Commission. Prior to this, Mr. McMahon served as EEI’s Director, Competitive Strategies & Policy in EEI's Energy Services Group. In this capacity, he directed EEI's state legislative and regulatory advocacy program in 22 states.

Mr. McMahon was the founder of the EnviroTech Venture Capital Fund, capitalized at $52 million, and currently sits on its Advisory Board and Technical Liaison Committee.

Prior to joining EEI, Mr. McMahon worked in management positions at the National Association of Securities Dealers in the NASDAQ Stock Market.

Mr. McMahon completed the Stanford University Graduate School of Business Executive Program in Leadership in 2007. He holds a M.B.A. degree in Finance from the George Washington University in 1987 and a B.A. degree from Duquesne University in 1983.

He lives with his wife and 3 children in Northern Virginia.

December 2009
Charles R. Mills

AREAS OF PRACTICE
Mr. Mills’ practice concentrates on derivatives and securities enforcement, litigation, and regulatory counseling. His clients include public and private companies and corporate officers, broker-dealers, investment advisers, hedge funds, traders, energy marketers, commodity trading advisors and pool operators, and other professionals and executives. He defends clients in investigations and enforcement actions of the SEC, CFTC, FERC, DOJ, state regulators and self-regulatory organizations and in private litigation and arbitration. He also regularly represents clients in regulatory matters before these agencies, counsels clients on regulatory compliance, including such issues as disclosure, internal compliance procedures, regulatory audits, trading rules, registration, fiduciary obligations and derivatives trading. He has represented, as well, many companies in listing and de-listing proceedings before the principal securities exchanges.

In 2005, the Compliance Reporter, a publication of Institutional Investor, honored Mr. Mills as one of its “Lawyers of the Year” as part of its Achievement in Regulatory Compliance Awards for his precedent-setting victory in WHX Corp. v. SEC, 362 F.3d 854 (D.C. Cir. 2004).

Representative experience includes:

- Victory in U.S. v. Radley, 2009 U.S. Dist. LEXIS 85027 (S.D. Tex. 2009), appeal pending (5th Cir.) (dismissal of criminal indictment alleging commodity price manipulation in propane market)
- Victories against the SEC and FINRA—e.g., Howard v. SEC, 376 F. 3d 1136 (D.C. Cir. 2004); WHX Corp. v. SEC, 362 F.3d 854 (D.C. Cir. 2004); and In re Richardson, 2005 SEC Lexis 414 (SEC 2005)
- Defense of SEC, CFTC, FINRA, NYSE, FERC and DOJ investigations
- Defense of many private securities actions in federal and state court
- Internal investigations, securities compliance reviews and regulatory compliance training
- Directing the defense of over 750 securities and commodities arbitrations before the FINRA, NYSE, AAA, NFA and other forums.

PROFESSIONAL BACKGROUND


PROFESSIONAL ACTIVITIES

- Adjunct Professor, Georgetown University Law Center, 1994 – present
  - Fraud and Fiduciary Duties Under the Federal Securities Laws
  - Regulation of Commodity Futures Transactions
Charles R. Mills

- American Bar Association (Litigation and Business Law Sections)
  - Chair of the Committee on Derivatives and Futures Law
  - Committee on Federal Regulation of Securities
- The Association of the Bar of the City of New York (Committee on Futures & Derivatives Regulation; Chair, Subcommittee on Litigation; former Chair, Subcommittee on Energy Regulation)
- District of Columbia Bar
  - Former Executive Member of Steering Committee of the Corporation, Finance and Securities Law Section
- National Futures Association (Hearing Committee)
- Futures Industry Association, Executive Committee for Law & Compliance Division
- Board of Editors, *Futures & Derivatives Law Report* (Thomson/West publisher)

**PUBLICATIONS**

- *Broker-Dealer Regulation* (PLI 2009)
- *Money Manager’s Compliance Guide* (Thompson Publishing Group)
  - Co-author, “Regulation of Commodities” and “Enforcement”

**REPRESENTATIVE ARTICLES AND SPEECHES**

- *The Customer Relationship: Suitability, Unauthorized Trading and Churning*, PLI’s The ABCs of Broker-Dealer Regulation 2009
- *Comparing the “Wells Processes” of the SEC, CFTC and FERC: Is There Room for Improvement?* ABA Committee on Regulation of Futures and Derivative Instruments, Winter Meeting, 2008

**COURT ADMISSIONS**

- U.S. Supreme Court
- U.S. Courts of Appeals for the District of Columbia, Second, Fourth, Fifth, Sixth, Seventh and Ninth Circuits
- Many U.S. District Courts

**BAR MEMBERSHIP**

California, District of Columbia, Maryland, New York, Virginia

**EDUCATION**

J.D., Georgetown University Law Center, 1977 (Dean’s List)
B.A., Occidental College, 1974 (*cum laude*)
Gregory Mocek* is a partner in the law firm of McDermott Will & Emery LLP and is based in the Firm’s Washington, D.C. office. He is a member of the Firm’s Energy & Commodities Advisory Practice Group. The Group represents domestic and international banks, exchanges, investment banks, commercial companies, brokerage firms, hedge funds, and others involved in the production and trading of commodities by providing legal and strategic advice on a broad range of issues including regulatory, government investigations, internal investigations, transactional, project finance, litigation, compliance and operational risk. Gregory is head of the Firm’s Energy & Commodities Advisory Practice Group Enforcement Defense Team.

Prior to joining the Firm, Gregory was the Director of Enforcement for the United States Commodity Futures Trading Commission (CFTC). Gregory joined the CFTC in 1998, and rose through the Commission to provide leadership as one of the longest serving enforcement directors in Commission history. He was responsible for managing the Commission’s enforcement investigations, policies and related litigation in the United States and abroad. Gregory led enforcement investigations and prosecutions, concerning allegations of fraud, manipulation and other violations of the Commodity Exchange Act. He managed a wide variety of domestic and international cases involving complex OTC, physical and on-exchange transactions. During his tenure, the CFTC obtained over $2.3 billion in penalties, restitution and disgorgement.

As the Director of Enforcement, Gregory worked closely with the President’s Corporate Fraud Task Force, the Federal Energy Regulatory Commission (FERC), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the U.S. Senate Permanent Subcommittee on Investigations, the Financial Services Authority (UK) and multiple other government regulatory bodies. Gregory played a key role in high-profile CFTC actions against Enron, Amaranth, and in hundreds of other complex investigations and cases that involved agriculture, metals, energy and currency markets.

Before his appointment as the Director of Enforcement, Gregory held several titles at the CFTC, including Special Counsel to Chairman James Newsome and Senior Trial Attorney. Prior to joining the CFTC, Gregory was in private practice and focused on securities, commodities and commercial litigation. Gregory has a B.S. in finance from the University of Louisiana, a J.D. from Tulane University and an LL.M. in international banking from the Morin Center for Banking Law Studies at Boston University.

Greg is active in FERC and CFTC investigations and has been recognized by
Chambers and Partners USA as standing out in this area. Gregory frequently speaks at public forums, conferences and seminars on compliance and risk, legislation, regulatory and enforcement issues. He is a member of the Futures Industry Association, Commodities & Derivatives Section of the American Bar Association, Commodities Markets Counsel, Louisiana Bar and various federal courts, including the Supreme Court of the United States.

*Not admitted to practice in the District of Columbia. Supervised by principals of the Firm who are admitted to the District of Columbia Bar.
Short Professional Biography for Patrick Todd Mullins

Todd Mullins is an attorney and a Branch Chief in the Division of Investigations within FERC’s Office of Enforcement. He has been lead counsel on a number of complex investigations of potential violations of energy statutes, Commission regulations, orders and policies under the enhanced civil penalty authority of the Energy Policy Act of 2005. Most recently, Mr. Mullins was lead trial counsel in the matter of Amaranth Advisors, Brian Hunter et al, the Commission’s first exercise of its anti-manipulation authority and the first enforcement matter tried at the Commission since the passage of EPAct 2005. He was also lead counsel in the recent Florida Blackout case that resulted in the first settlement of a FERC “electric reliability” matter and the assessment of a record civil penalty. Prior to joining the Commission, Mr. Mullins practiced at a major national law firm, Howrey LLP, for over fifteen years, most recently as a partner where he litigated business tort and antitrust cases in federal and state trial and appellate courts. His practice included over ten years of representing companies in the utilities and energy sectors. Mr. Mullins graduated from West Virginia University in 1986 with a BS in Finance and received his JD in 1989 magna cum laude from the National Law Center at George Washington University. He is admitted in Maryland and the District of Columbia, as well as several federal trial and appellate courts. He also served as an Armored Cavalry officer in the United States Army Reserve. He and his wife Lynn have four children and live in Arlington, Virginia.
Paul J. Pantano, Jr. is a partner in the law firm of McDermott Will & Emery LLP and is based in the Washington, D.C. office. He is a member of the Firm’s Management Committee and co-head of its Client Service Team Program. He also has served on McDermott’s Compensation and Executive Committees.

Paul heads the Firm’s Energy & Commodities Advisory Practice Group, where he focuses his practice primarily in the areas of energy, commodities and derivatives law. Paul represents energy companies, commodity and swap dealers, brokerage firms, trade associations and financial industry professionals in a wide variety of transactional, regulatory, legislative and litigation matters. Paul regularly represents clients in investigations and regulatory matters before the Commodity Futures Trading Commission (CFTC), the Federal Energy Regulatory Commission (FERC) and other federal government agencies. *Chambers USA* has ranked Paul as one of the top energy lawyers in Washington, D.C., and he is recognized in *The Best Lawyers in America*.

Paul is a member of the CFTC’s Energy and Environmental Markets Advisory Committee and the editorial boards of the *Futures & Derivatives Law Report* and *Energy Law360*. In addition, he is a frequent speaker at energy and commodity industry conferences.

Paul is the immediate past chair of the American Bar Association Committee on Derivatives and Futures Law. He is a member of the Energy Bar Association and the Law & Compliance Division of the Futures Industry Association. From 1994 through 1997, Paul was an adjunct professor at Georgetown University Law School, where he co-taught a graduate law course on the regulation of commodity and derivatives transactions. Paul is a member of the Duke Law Alumni Board of Directors.

Prior to entering private practice, Paul was a trial attorney in the Division of Enforcement of the CFTC, where he represented the Commission in numerous civil and administrative enforcement actions.

Paul is a member of the District of Columbia Bar Association.

**Representative Experience**

**Government Investigations**

- Represented scores of wholesale energy and commodity dealers, marketers and end users in CFTC, FERC and joint CFTC-FERC investigations, several of which were closed without the initiation of enforcement actions
- Negotiated many settlements with the CFTC on behalf of energy and commodity trading companies
Acquisitions

- Represented an affiliate of a financial holding company in numerous joint ventures for the development and implementation of municipal and residential solar energy programs throughout the United States
- Represented the power marketing affiliate of an international financial institution in connection with the sale of its U.S. power and natural gas trading business to an affiliate of a major international oil company
- Represented Barclays Bank PLC in acquiring the power and gas, metals and crude oil trading portfolio of UBS AG
- Represented J. Aron & Company/Goldman Sachs in acquiring the international commodity trading business of Constellation Energy Commodities Group, Inc.
- Represented Merrill Lynch in negotiating a complex financing and tax-equity investment commitment for the construction of a series of geothermal power plants
- Represented Merrill Lynch & Co. Inc. and its wholly owned subsidiary, Merrill Lynch Commodities, Inc. in their acquisition of Entergy-Koch Trading, LP
- Represented Morgan Stanley in acquisitions of several portfolios of physical and financially-settled energy commodity transactions
- Represented Barclays Capital in its acquisition of Duke Energy North America's multi-billion dollar portfolio of physical commodity and derivatives contracts

Structured Commodity Transactions

- Represented Morgan Stanley Capital Group Inc. in negotiating a large, structured natural gas swap transaction with TXU Generation Development Company LLC, an affiliate of TXU Corp.
- Represented Morgan Stanley in connection with a series of hedge transactions with LSP Gen Finance Co, LLC, a special purpose vehicle and affiliate of LS Power
- Represented several companies in negotiating and documenting highly structured energy management agreements
- Represented Morgan Stanley in negotiating a series of complex agreements with La Paloma, a 1000 MW gas-fired combined cycle generation power plant
Stephen A. Sherrod  
Acting Director of Surveillance

Steve was selected for his current assignment in August 2009, after returning to CFTC in March 2009. Steve previously worked at CFTC from 1989 to 1997, as a supervisory financial economist managing the program of economic review of financial futures and option contracts and coordinating equity market issues with the President’s Working Group.

Steve worked at the National Credit Union Administration (NCUA) from 1997 until March 2009. He worked in a dual capacity as Director of Capital Markets for NCUA and Vice President of the Central Liquidity Facility until his departure. Steve previously served as acting Associate Regional Director of Operations, acting Director of Supervision, and acting Director of Risk Management. He also was Chair of NCUA’s Supervisory Review Committee in 2008 and 2009.

Prior to entering public service in 1989, Steve worked in the financial industry. His experience includes work in interest rate risk assessment and as vice president of portfolio strategies at a national bank.

Steve is a graduate of the University of Tennessee and received a Master of Science from the College of Management of the Georgia Institute of Technology.
Johnathan H. Short
Senior Vice President, General Counsel & Corporate Secretary
IntercontinentalExchange, Inc.

Mr. Short has been ICE’s Senior Vice President, General Counsel and Corporate Secretary since June 2004. In his role as General Counsel, he is responsible for managing ICE’s legal and regulatory affairs. As Corporate Secretary, he is also responsible for a variety of corporate governance matters. Prior to joining ICE, Mr. Short was a partner at McKenna Long & Aldridge LLP, a national law firm with approximately 350 attorneys. Mr. Short practiced in the corporate law group of McKenna, Long & Aldridge and its predecessor firm Long Aldridge & Norman LLP from November 1994 until June 2004. From April 1991 until October 1994, he practiced in the commercial litigation group of Long Aldridge & Norman LLP.

Mr. Short holds a J.D. with Honors from the University of Florida, College of Law, and a B.S. in Accounting with High Honors from the University of Florida, Fisher School of Accounting.