

From: Berg, Dave <dberg@airlines.org>
Sent: Friday, September 17, 2010 4:18 PM
To: OCR <OCR@CFTC.gov>
Cc: Pinkerton, Sharon <SPinkerton@airlines.org>; Stroschein, Ryan <RStroschein@airlines.org>; Heimlich, John <JHeimlich@airlines.org>
Subject: Account Ownership and Control Report
Attach: OCR-ATA_comments-NPRM_Sept2010.pdf

Dear Mr. Stawick,

Attached please find the comments of the Air Transport Association in response to the notice of proposed rulemaking to establish the new Account Ownership and Control Report.

Please contact me if you have any questions.

Very truly yours,
David A. Berg
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As described in our comments in response to the earlier Advance Notice of Proposed Rulemaking, U.S. airlines are adversely affected by volatile futures markets and oil prices that do not reflect market fundamentals, but instead are sustained at artificially high levels by high volumes of trading driven by investment interests. Through a variety of investment mechanisms, the futures markets have become an investment class, and this development has altered how the futures markets function. The consequence of this development is that it has impaired the ability of end-users like airlines to engage in traditional hedging, impaired the ability of the Commission to fulfill its oversight and enforcement responsibilities, and raised the cost of end products and services for consumers. It is imperative that the Commission have better visibility into the futures markets to ensure that they function properly – that is, that the markets reflect underlying supply and demand fundamentals – and that they are free from manipulation and excessive speculation. The proposed OCR will assist the Commission in achieving these goals.

The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (the “Reform Act”), is an additional reason for the Commission to require the proposed OCR. Title VII of the Act clarifies and enhances the Commission’s responsibility to prevent excessive speculation. The OCR will help enable the Commission to fulfill its responsibilities by providing information needed to better understand the level and impact of speculative

trading in the energy futures markets. This information ultimately will assist the Commission in setting speculative position limits.³

In the NPRM, the Commission notes that some commenters expressed concern about potential costs of implementing the OCR. As heavily regulated entities that are required to report significant amounts of data to government agencies, ATA member airlines understand these cost concerns. However, like the Commission, we also believe that given the sophistication and existing high level of automation of reporting entities, the development and implementation costs for the OCR will not be unduly burdensome. The OCR information is modest and the technical challenges are not unique or unusual. We agree a coordinated industry effort and the proposed implementation schedule will help avoid undue burdens on the reporting entities.⁴

In its discussion of the definition of “account controller,” the Commission notes that it is the presence of authority to exercise discretion over trading decisions (or to determine the trading strategy of an automated system), regardless of whether that authority is exercised, that is the determining factor. ATA agrees with the Commission on this point. We also agree with the Commission’s determination in proposed § 16.03 regarding entities required to submit OCR reports. We urge the Commission to apply proposed Part 16

³ The Reform Act also gives the Commission new authority to regulate swap transactions. See, for example, Sections 727-737, generally requiring the reporting of swap transaction data. As the Commission implements these provisions, we encourage it to require swap dealers to provide similar account ownership information so that it has as complete a picture as possible of speculative positions across markets. Account ownership and control information from OTC and swap transactions will enhance the Commission’s ability to identify abusive trading practices across markets and provide a more complete and transparent picture of aggregate positions.

⁴ ATA agrees with the Commission’s decision to require account and control information with respect to omnibus accounts. 75 Fed.Reg. at 41781.

broadly and commend the Commission for taking an inclusive approach to entities subject to the OCR.

In conclusion, the Commission has established a compelling justification for the OCR. Its adoption will bring much needed transparency to the futures markets and enable the Commission to fulfill its surveillance and enforcement responsibilities. It will also provide market participants better market information which, in turn, should result in better functioning markets. American consumers will be the ultimate beneficiaries.

Respectfully submitted,

AIR TRANSPORT ASSOCIATION OF AMERICA

A handwritten signature in black ink, appearing to read "D.A. Berg", written over a horizontal line.

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Dated: September 17, 2010