



January 3, 2011

VIA ELECTRONIC SUBMISSION

Mr. David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Antidisruptive Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act: RIN Number 3038-AD26

Dear Mr. Stawick:

On November 2, 2010, the U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) issued an Advance Notice of Proposed Rulemaking regarding the Commission’s Antidisruptive Practices Authority (“Antidisruptive Practices Rulemaking”) in the Federal Register,¹ as permitted under Section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The Commission invited interested persons to comment on all aspects of Section 747 by January 3, 2011. Argus Media Inc. (“Argus”) hereby submits comments on the Antidisruptive Practices Rulemaking.

Argus supports the important goal of preventing disruptive trade practices in CFTC jurisdictional markets. Nonetheless, Argus is concerned by the potentially broad definition of “closing period” proposed by the CFTC in amended Section 4c(a) of the CEA. Argus does not believe that the definition should encompass periods of the trading day used to establish indices or pricing references. *First*, defining closing period in this way would appear beyond what Congress intended. Section 747 directs the Commission to focus on potentially disruptive practices “on or subject to the rules of a registered entity,” not conduct in the bilateral markets for physical commodities in which companies like Argus gather the majority of the information used to create index prices. *Second*, expanding the definition to encompass periods of the day when price indices are compiled could prove unworkable because it would result in the imposition of a heightened standard of orderly execution to a majority of physical markets throughout the trading day. However, what defines orderly execution from one physical market to another may not necessarily be uniform.

¹ *Antidisruptive Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 75 Fed. Reg. 67,301 (Nov. 2, 2010) (to be codified at 17 C.F.R. Chapter 1).

² Pub. L. No. 111-203 (2010) (to be codified as an amendment to the Commodity Exchange Act (“CEA”) in 7 U.S.C. ch. 1).

Argus is a leading independent provider of price information, market data and business intelligence for the global, physical petroleum, natural gas, electricity, emissions, biofuels and coal industries. Argus is incorporated in the United States as Argus Media Inc., a Delaware corporation, which is a wholly owned subsidiary of Argus Media Ltd., established in 1970.

Headquartered in London, Argus has offices in Washington, D.C., Houston, New Jersey, Moscow, Singapore, Tokyo and Beijing. Argus is owned by its employees and by the family of its founder. Argus staff adhere to a strict ethics policy that forbids them from dealing in energy and commodities or in the stock of energy or commodities companies.

I. Antidisruptive Practices Rulemaking

Section 747 of the Dodd-Frank Act amends Section 4c(a) of the CEA to prohibit certain disruptive trade practices.³ Amended Section 4c(a) makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that: (a) violates bids or offers; (b) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (c) is, is of the character of, or is commonly known to the trade as, “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution).⁴ Amended Section 4c(a) grants the Commission authority to promulgate any rules and regulations that the Commission deems “reasonably necessary” to prohibit these trading practices and “any other trading practice that is disruptive of fair and equitable trading.”⁵

In the Antidisruptive Practices Rulemaking, the Commission invited comment on a number of issues, including:

- How should “orderly execution” be defined? How should the closing period be defined? Should the definition of closing period include: (a) Daily settlement periods?; (b) Some period prior to contract expiration?; (c) Trading periods used to establish indices or pricing references?
- Should the Commission recognize that a trading practice or conduct outside of the closing period is actionable so long as it “demonstrates intentional or reckless disregard for the execution of transactions during the closing period”?

For reasons articulated below, Argus believes that the definition of closing period for purposes of the CFTC’s antidisruptive trade practices authority should be limited to the closing period currently used to determine settlement prices for exchange-listed contracts consistent with the intent of Congress.

³ Dodd-Frank Act, Section 747 (CEA Section 4c(a)).

⁴ *Id.* (CEA Section 4c(a)(5)).

⁵ *Id.* (CEA Section 4c(a)(6)).

II. Comments to Antidisruptive Practices Rulemaking

A. Congress did not intend for the definition of “closing period” to be interpreted so broadly.

The Commission’s implementation of regulations, if any, should be guided by the intent of Congress. Here, Congressional intent is clear as evidenced by the plain language of the various iterations of Section 747, including the version enacted into law on July 21, 2010. For example, the version of the Dodd-Frank Act passed by the U.S. House of Representatives on December 11, 2009 prohibited “marking the close (bidding or offering during or near the market’s closing period with the intent to influence the settlement price).”⁶ “Marking” or “banging” the close, however it is defined, typically refers to conduct in the closing period for an exchange-traded contract, as demonstrated by CFTC enforcement actions pursuing the same.⁷ Similarly, in the final version of Section 747, Congress continued to limit the prohibition to trading, practices and conduct “on or subject to the rules of a registered entity.”⁸ Under the CEA, as amended by the Dodd-Frank Act, “registered entity” means “(A) a board of trade designated as a contract market under section 5; (B) a derivatives clearing organization . . .; (C) a board of trade designated as a contract market under section 5f; (D) a swap execution facility . . .; (E) a swap data repository . . .; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.”⁹ In contrast, companies like Argus typically generate index prices using physical bilateral transactions that are generally executed in the over-the-counter markets. Against this backdrop, it would appear that Congress did not intend for the CFTC to broaden the definition in the manner the agency is now considering.

B. Expanding the definition of “closing period” to include times when price indices are established would be overbroad and could prove unworkable.

Price index compilers do not rely on a standard period of the trading day to gather information for use in the compilation of price indices. For example, Argus uses the entire day’s

⁶ See H.R. 4173, 111th Cong. § 747 (as passed by House of Representatives, Dec. 11, 2009).

⁷ See, e.g., *In the Matter of Anthony J. DiPlacido*, CFTC Docket No. 01-23 (Nov. 5, 2008) (finding that respondent manipulated settlement prices by placing large orders for NYMEX Western U.S. electricity futures contracts on the options expiration days); *CFTC v. Amaranth Advisors, LLC*, 554 F. Supp. 2d 523 (S.D.N.Y. May 21, 2008) (alleging that defendant attempted to manipulate the price of natural gas futures contracts by deliberately waiting to sell a substantial number of those contracts in the final minutes before the close of trading in a strategy known as “marking the close”); *In re Moore Capital Management, LLP, et al.*, CFTC Docket No. 10-09 (Apr. 29, 2010) (alleging that respondent attempted to manipulate the platinum and palladium futures markets by engaging in the practice known as “banging the close” by attempting to exert upward pressure on the settlement prices of the platinum and palladium futures contracts).

⁸ Dodd-Frank Act, Section 747 (CEA Section 4c(a)(5)).

⁹ CEA Section 1a(40).

physical market trading to create many of its price indices.¹⁰ The Oil Price Information Service (“OPIS”) aggregates data from the entire trading day to create its indices.¹¹ In contrast, Platts utilizes a market-on-close (“MOC”) assessment for many of its price indices that examines market information gathered during a defined 30-minute window of time prior to the close of the market.¹² As a result, were the CFTC to define closing period to include periods of the trading day used to establish price indices, it would effectively extend the requirement of orderly execution to a large number of physical markets covering a majority of the trading day.

However, there is presently no uniform concept of orderly execution across all of these markets. In fact, the manner in which trading occurs – as well as the timing of market participants’ trading – from one physical market to another may vary for any number of reasons, including levels of liquidity, number of participants, and locus of the market relative to where the product purchased in the market is ultimately consumed. For example:

- a. Many energy markets in the U.S. trade throughout the working day. Examples of this are most seaborne and pipeline crude oil markets, coal, emissions and refined products.
- b. In the U.S. gasoline and diesel markets at the Pasadena, Texas, Colonial Pipeline hub, trade occurs throughout day, but is significantly more active on the last day of each 5-day loading cycle as companies look to schedule deliveries into terminals in the U.S. southeast and mid-Atlantic region.
- c. In the U.S. gas liquids markets, trade at the Mont Belvieu, Texas, hub often occurs in the morning hours, and is rarely traded actively through the afternoon. This is due to the need to schedule supply down a long distribution system reaching to the U.S. northeast.
- d. In the U.S. natural gas markets, most trade is completed by 11:30am Central Time. This is to allow scheduling to take place for next day delivery.

Given the varied ways in which each market trades, introducing a requirement of orderly execution across all markets would be particularly difficult because it would likely differ for each market. This difficulty is compounded by the fact that there is no standard period of time for what constitutes a closing period among price index compilers. While it may be possible to enforce the orderly trading standard during, for instance, the final thirty minutes of trading, it could prove unworkable if applied to all hours of every trading day. Thus, the Commission

¹⁰ See, e.g., Argus Crude Methodology and Specifications Guide, available at http://www.argusmedia.com/ArgusStaticContent//Meth/crude_meth_latest.pdf (last visited Dec. 30, 2010).

¹¹ See OPIS Methodology, available at <http://www.opisnet.com/methodology.asp> (last visited Dec. 30, 2010).

¹² See, e.g., Platts Methodology and Specifications Guide: Crude Oil, available at <http://www.platts.com/IM.Platts.Content/MethodologyReferences/MethodologySpecs/crudeoilspecs.pdf> (last visited Dec. 30, 2010).

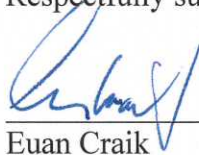
Mr. David A. Stawick
January 3, 2011
Page 5

should not define closing period to include trading periods used to establish indices or reference prices.

III. Conclusion

Argus appreciates the opportunity to provide the Commission with its perspective on the Antidisruptive Practices Rulemaking. Argus welcomes the opportunity to discuss these issues further with the Commission and its Staff.

Respectfully submitted,



Euan Craik
Chief Executive Officer Americas
Argus Media Inc.
3040 Post Oak Boulevard, Suite 550
Houston, TX 77056
Tel: (713) 968-0000
Fax: (713) 622-2991