Commodity Markets Council
1300 L St., N.W. Suite 1020
Washington, DC 20005
Tel 202-842-0400
Fax 202-789-7223
www.cmcmarkets.org

January 3, 2011

VIA Electronic Mail
Mr. David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RE: Advanced Notice of Proposed Rulemaking On Disruptive Trading Practices
RIN No. 3038-AD4

Dear Mr. Stawick:

Commodity Markets Council ("CMC"), on behalf of its many members, welcomes the opportunity to submit the following comments to the Commodity Futures Trading Commission ("CFTC" or "Commission") regarding its Advance Notice of Proposed Rulemaking ("ANPR") with respect to Section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Antidisruptive Trading Practices.

The new rules outlined in the Dodd-Frank Act are intended to protect fair and equitable trading; however, CMC is concerned the statutory language is overly broad and if not implemented with precision could discourage market participation. This fear was voiced by CMC and other industry groups at the CFTC roundtable on this topic and we urge the Commission to strongly weigh it when drafting rules. There are three principles CMC would like to see the CFTC follow in any future rulemaking:

1. The statutory language is vague and all implementing rules should provide precision and clarity in order to facilitate legitimate trading activity.

2. Definitions of key terms need to be precisely crafted and the scope of application narrow.

3. The standard applied to "disruptive trade practices" should be intentional, deliberate or extreme recklessness.

CMC is a trade association bringing together exchanges and their industry counterparts. The activities of our members represent the complete spectrum of commercial users of all futures markets including energy and agriculture. Specifically, our industry member firms are regular users of the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange and the New York Mercantile Exchange. CMC is uniquely positioned to provide the consensus views of commercial and end users of derivatives. Our comments represent the collective view of CMC members.

The businesses of all our member firms depend upon the efficient and competitive functioning of the risk management products traded on U.S. futures exchanges. Through the Commission's diligent oversight efforts that have fostered Exchange innovation and technology adoption, we have seen the commodity markets grow and prosper. They have become deeper and more liquid, narrowing bid/ask spreads and improving hedging effectiveness and price discovery. Meanwhile, liquidity, technology, clearing quality, price and customer service have driven market selection. All of these developments serve the interests of the trade as well as the public.

A. Vague Statutory Language

Section 747 of Dodd-Frank makes it unlawful for any person to engage in any trading practice or conduct 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 of the character of, or is commonly known as 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution.")

CMC believes this language is far too broad and will encompass within its expansive arms otherwise legitimate trading practices and strategies. While the CMC shares Congress' goals of greater market transparency and preserved integrity, the vagueness of the language risks discouraging market participants from trading out of fear their actions may later be determined illegal – with potentially severe consequences.

Additionally, the section grants the CFTC rulemaking authority to prohibit "… any other trading practice that is disruptive of fair and equitable trading." CMC encourages the Commission to narrowly interpret and clarify this language. Arguably, it cedes legislative authority to the CFTC and raises serious constitutional issues regarding separation of powers.

B. Definition and Clarify Needed

CMC wishes to add to the concerns we and other industry groups voiced at the Commission's recent roundtable as well as the rising chorus of industry participants who have decried the vagueness of the legislation's language and urges the CFTC to adopt regulations implementing Section 747 that provide clarity and precision in defining the proscribed conduct. Absent clearly defined standards of conduct, legitimate trading practices will be chilled, thereby affecting adversely the depth and liquidity of the futures and swaps markets. Congress could not have intended such a result.

The statutory terms "violate bids and offers", "orderly execution of transactions during the closing period" and "spoofing" need clarity and precise definition. They can have multiple meanings from one context to the next. For example, "violate bid and offers" has most frequently been associated with the open outcry environment. It appears to have no application to the electronic trading world where matching algorithms preclude bids and offers from being violated. CMC urges the Commission to draft rules clarifying the language and limiting its application to open outcry venues and only intentional or extremely reckless actions to violate bids and offers are prohibited.

Similarly, CMC recommends the CFTC provide precise clarity on what is meant by orderly execution during the "closing period" and "spoofing." Market participants must be provided with specific standards to which to conform their conduct. "Orderly execution", "closing period" and "spoofing" without precise definition are dangerously elastic terms.

C. Only Intentional Conduct Proscribed

With respect to the practices identified in (A) through (C) of Section 747, CMC believes it is imperative the Commission also make clear that no violation occurs unless the person acts intentionally, deliberately or with extreme recklessness. Extreme recklessness requires a showing either (1) that the alleged offender knew that the conduct was prohibited or (2) that the conduct was so obviously wrong that the alleged offender must have known it was prohibited. Any lesser standard may ensnare inadvertent actions within the ambit of proscribed conduct, thereby chilling market participation and impairing liquidity.

CMC urges the Commission, following extensive consultation with a broad spectrum of market participants, to promulgate specific "rules of the road" within each of the statutory categories. Anything less poses a threat to innocent traders and risks substantial harm to the markets. While the legislative goals are laudable, the means to achieve them must be fair and clear for all market participants. We believe doing so will serve the interests of the trade, lawmakers, regulators and the general public.

The CMC thanks the Commission for the opportunity to present its views on this most important subject. If you have any questions or would like to discuss further, please do not hesitate to contact me via email at christine.cochran@commoditymkts.org or via phone at (202) 842-0400 – ext. 101. Thank you in anticipation of your attention to these comments.

Regards,

Christine M. Cochran
President