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January 3, 2010

Commodity Futures Trading Commission  
c/o David A. Stawick, Secretary  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Notice of Proposed Rulemaking on the Prohibition of Market Manipulation. RIN No. 3038-AD27.**

Dear Mr. Stawick:

Petroleum Marketers Association of America (“PMAA”) submits these comments in response to the Commodity Futures Trading Commission’s Notice of Proposed Rulemaking on the Prohibition of Market Manipulation (the “Notice”). We appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the “Commission”) on its proposed rules to implement new anti-manipulation authority in Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). We respectfully submit comments on the Commission’s proposed two rules:

(i) Proposed Section 180.1, implementing Section 6(c)(1) of the Commodity Exchange Act, as amended (the “CEA”), and promulgated pursuant to Section 753 of the Dodd-Frank Act (“Section 180.1”); and

(ii) Proposed Section 180.2, implementing Section 6(c)(3) of the CEA, as promulgated pursuant to the Commission’s general rulemaking authority under Section 8(a)(5) of the CEA (“Section 180.2”).

PMAA and its members support the Commission’s mission of deterring and preventing price manipulation and other disruptions to market integrity. We depend on honest and open derivative markets with commodity prices that accurately reflect supply and demand. We look forward to working closely with the Commission to promulgate rules that serve the public interest by insuring fairness and transparency of the futures and derivatives markets.

## **I. Summary**

PMAA strongly supports the Commission’s proposed rules. PMAA believes that the Commission’s proposed rules will effectively implement the statutory and Congressional directive to clearly delineate and prevent impermissible conduct by market participants. PMAA requests the Commission establish standards governing the use of algorithmic trading technology by requiring internal controls such as logs and specific notification protocols, directed to the trading entity, when significant code modification of its algorithm takes place including interpretation by the algorithm of digitized news and social networking sources. To that end, we recommend that:

1) PMAA supports the Commission's rational for promulgation of the rules put forth in the Federal Register Notice / Vol. 75, No. 212 / Wednesday, November 3, 2010 / Proposed Rules.

"Section 6(c)(1) The text of CEA section (c)(1) is patterned after section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Exchange Act section 10(b) has been interpreted as a broad, "catch-all" prohibition on fraud and manipulation. Likewise, the Commission proposes to interpret CEA section 6(c)(1) as a broad, catch-all provision reaching fraud in all its forms—that is, intentional or reckless conduct that deceives or defrauds market participants. Subsection (c)(1) is also similar to the anti-manipulation authority granted to the Federal Energy Regulatory Commission ("FERC") in sections 315 and 1283 of the Energy Policy Act of 2005, amending the Natural Gas Act and the Federal Power Act, respectively,<sup>11</sup> and the Federal Trade Commission ("FTC") in sections 811 and 812 of the Energy Independence and Security Act of 2007. The SEC promulgated Rule 10b-5 to implement section 10(b) of the Exchange Act. The FERC and the FTC have promulgated rules based on SEC Rule 10b-5 to implement their respective statutory anti-manipulation authority, but have modified SEC Rule 10b-5 as appropriate to reflect their distinct regulatory missions and responsibilities. Guided by section 6(c)(1)'s similarity to Exchange Act section 10(b), the Commission proposes an implementing rule that is also modeled on SEC Rule 10b-5, with modification to reflect the CFTC's distinct regulatory mission and responsibilities."

PMAA strongly supports the Commission's exercise of broad regulatory authority and believes that the CFTC, in relying on SEC Rule 10b-5, is cognizant of and more than capable of advancing its distinct regulatory responsibilities in insuring a transparent marketplace free from manipulation.

Commodity market participants that rely on these markets to hedge and to discover prices based on supply and demand fundamentals, including PMAA members, have long held concerns over the role of potential market manipulation and the Commission's ability to enforce prohibitions against such manipulation. By relying on SEC Rule 10b-5 as an appropriate means to this end, the Commission has the full support of PMAA and its member companies.

2) PMAA has expressed significant concern related to the emerging sophistication of algorithmic trading capabilities. Algorithmic trading presents special challenges for regulators. The design of algorithmic code is an intentional act. Failure to incorporate safeguards in the code that alerts the human "Trader" of significant code modifications that might rise to the level of market manipulation would be at a minimum "reckless" and therefore the Commission should adopt "recklessness" as the level of scienter as applied under this rule. PMAA has stated before that algorithmic trading is more than a simple human designed machine executed trading strategy. In the brave new world of "Genetic Algorithms" and "Artificial Intelligence", computer code is designed to self modify, change its own code, evaluate digitized news and social networking feeds and to adapt to a dynamic trading environment. The rapid evaluation of market related news and the execution of a trading stratagem that in and of itself will generate market news requires the Commission to insure that its regulatory authority is sufficient to capture both intentional and reckless activities that rise to the level of "manipulation." The Commission must closely regulate these types of Algorithms used to conduct trading. The Commission should develop regulations that are based on the potential of the Algorithm to initiate trading strategies that "evolve" without the affirmative input or authorization of the programmer. Logs and operator alert records should be required to be maintained by the Trader. PMAA urges the Commission to recognize that automated trading devices require enhanced scrutiny. PMAA believes that market manipulation, where algorithms are involved, may not always be the result of intentional human action. Due to the fact that the devil is in the details of the programming code, the fundamental design of the algorithm, and its subsequent use in trading raises serious issues. PMAA supports and encourages the Commission to adopt "recklessness" as the level of scienter particularly when evaluating issues relating to algorithmic market manipulation. The Commission's adoption of

“recklessness” standard in both Section 4c(a)(7) and proposed Section 180.1 and 180.2 should impose enhanced duties of diligence.

PMAA thanks the Commission for the opportunity to provide comments regarding the proposed rules on its new anti-manipulation authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Gilligan". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Dan Gilligan  
PMAA President