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- Antidisruptive Practices Authority
- Proposed Interpretive Order

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed interpretive order on Antidisruptive Practices Authority.

You are proposing this interpretive order to provide interpretive guidance regarding the three statutory disruptive practices set forth in new section 4c(a)(5) of the Commodity Exchange Act (CEA) pursuant to section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank).

Dodd-Frank section 747 also amends section 4c(a) by granting the CFTC (Commission) authority under new CEA section 4c(a)(6) to promulgate such ''rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices'' enumerated therein ''and any other trading practice that is disruptive of fair and equitable trading.'' These wordings, and those of new section 4c(a)(5) are very broad, and it is no wonder that the roundtable discussion participants and comment letters on the ANPR found the provisions to be vague and overly subjective. I agree that the provisions require interpretation, and I welcome this proposed interpretive order thereon.

A. Violating bids and offers

You interpret section 4c(a)(5)(A) as prohibiting any person from buying a contract at a price that is higher than the lowest available offer price and/or selling a contract at a price that is lower than the highest available bid price, with some exceptions, without regard to the intent

of the trader. This is absolutely reasonable and appropriate. The interpretation is fair, consistent with the intention of the antidisruptive practices authority, objective and not arbitrary. The interpretation also passes the "man in the street" test, as it would be considered reasonable by any fair-minded person.

B. Orderly execution of transactions during the closing period

New CEA section 4c(a)(5)(B) prohibits any trading, practices, or conduct on or subject to the rules of a registered entity that ''demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period.'' Once again, this is reasonable and appropriate. "Intentional or reckless disregard" is the appropriate benchmark with which to judge such disruptive practices, and is consistent with the intent under Dodd-Frank. I also agree with your interpretation of "closing period".

C. Spoofing

Spoofing is a particularly insidious and manipulative activity that harms the integrity of the NBBO, reduces confidence in markets, potentially reduces liquidity for bona fide investors and violates securities laws. The new CEA section 4c(a)(5)(C) prohibits any trading, practice, or conduct that ''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).'' To violate section 4c(a)(5)(C), a market participant must act with some degree of intent, or scienter (mens rea), to engage in the prohibited ''spoofing'' trading practices.

On balance, I believe this to be an appropriate interpretation. Moving from A to C above, there is clearly more subjectivity in the proposed interpretations, requiring more judgement each time. However, this merely reflects the nature and internal subjectivity of each of the antidisruptive practices. In this case, let the regulator bring charges of spoofing against a trader (a rebuttable presumption), with supporting evidence[1], and let the trader mount a defence under normal processes. That is meet and just.

In summary, I welcome and support your proposed interpretive order. It brings clarity to the antidisruptive practices authority, and strikes the right balance between rules- and principles-based regulation. I also support the approach taken generally, and that the proposed interpretive order distinguishes between legitimate trading and antidisruptive practices.

Yours sincerely

Chris Barnard

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[1] For example the market context, patterns of trading activity and other relevant information.